

Monitoring Officer's Annual Report to the Governance and Ethics Committee – 2021/22

Committee considering report:	Council on 10 May 2022
Portfolio Member:	Councillor Howard Woollaston
Report Author:	Sarah Clarke
Forward Plan Ref:	C4198

1. Purpose of the Report

- 1.1 To provide an update on local and national issues relating to ethical standards and to bring to the attention of Members any complaints or other problems within West Berkshire.
- 1.2 To present the Annual Governance and Ethics Report to Full Council.

2. Recommendations

- 2.1 Members are requested to note the content of the report.
- 2.2 The report to be circulated to all Parish/Town Councils in the District for information.

3. Implications and Impact Assessment

Implication	Commentary
Financial:	There are no financial issues arising from this report. However the costs associated with external investigations may lead to a budget pressure.
Human Resource:	There are no personnel issues associated with this report.
Legal:	There are no legal issues arising from this report. The matters covered by this report are generally requirements of the Local Government Act 2000 in so far as appropriate and the Localism Act 2011 and its supporting regulations.
Risk Management:	The benefits of this process are the maintenance of the Council's credibility and good governance by a high standard of ethical behaviour. The threats are the loss of credibility of the Council if standards fall. Adherence to the requirements of the Code of Conduct also reduce the risk of the Council's decisions being subject to legal challenge.
Property:	There are no property issues associated with this report.
Policy:	There are no policy implications arising from this report.

	Positive	Neutral	Negative	Commentary
Equalities Impact:				
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		X		
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		X		
Environmental Impact:		X		
Health Impact:		X		
ICT or Digital Services Impact:		X		
Council Strategy Priorities or Business as Usual:		X		Business as usual.
Data Impact:		X		.
Consultation and Engagement:	Finance & Governance Group			

4. Executive Summary

4.1 This report is the Monitoring Officer's annual report for the Governance and Ethics Committee, which will be presented to Full Council at the Annual meeting. The report will also be circulated to all Town and Parish Councils.

4.2 The key findings identified in the report are:

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- (a) Standards of ethical conduct across the district remain good.
- (b) The number of gifts and hospitality declared has remained relatively low during 2021/22 as it did in 2020/21. This is likely to reflect the fact that the country has continued to be subject to restrictions imposed in response to the Covid 19 pandemic.

5. Supporting Information

Introduction

- 5.1 The Localism Act 2011 made fundamental changes to the system of regulation of the standards of conduct for elected and co-opted members of Councils and Parish Councils. This report sets out details of the number and nature of complaints received, and informs Members of any other activity that was taking place around the Code of Conduct regime.
- 5.2 This report will also be presented to Full Council at the Annual meeting and will be circulated to all Town and Parish Councils.

Background

Governance Arrangements

- 5.3 During the Municipal Year 2021/22 the Governance and Ethics Committee was comprised of eleven members (nine District Councillors appointed on a proportional basis and two co-opted non-voting Parish/Town Councillors). The membership for 2022/23 will be agreed at the Annual Council meeting.
- 5.4 Three Independent Persons are appointed by Council and are used on a rotational basis on the Initial Assessment Panel and Advisory Panel. The Advisory Panel comprised ten Members: two from the Conservative Party, two from the Liberal Democrat party, two from the Green Party, two parish/town councillors and two independent persons. The membership for 2022/23 will be agreed at the Annual Council meeting.
- 5.5 A revised Code of Conduct was adopted in September 2016. The Code and Governance arrangements are supported by a number of documents including:
 - Terms of Reference for the Governance and Ethics Committee and Advisory Panel;
 - Gifts and Hospitality Protocol;
 - Complaints procedures for breaches of the Code of Conduct;
 - Dispensations procedure;
 - Social Media Protocol.

Independent Persons

- 5.6 Under Section 28 of the Localism Act 2011 the Council has a duty to ensure that it has appointed at least one Independent Person who is consulted before it makes a decision on an allegation it has determined to investigate. The Independent Person may be consulted directly either by the person who has made the complaint or the person the complaint has been made about. Three Independent Persons have therefore been appointed in order to ensure that a conflict situation does not arise.

- 5.7 A person is not considered to be "independent" if:-
- (i) They are or have been, within the last five years, an elected or co-opted Member or officer of the Council or of any Parish Councils within this area. This also applies to committees or sub-committees of the various Councils.
 - (ii) They are a relative or close friend of a current elected, or co-opted, Member or officer of the Council or any Parish Council within its area, or any elected or co-opted member of any committee or sub-committee.
 - (iii) The definition of relative includes the candidate's spouse, civil partner, grandparent, child etc.
- 5.8 In addition The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 require provisions to be made relating to the potential dismissal or disciplining of the Head of Paid Service, Monitoring Officer or Section 151 Officer. A panel needs to be set up to advise on matters relating to the dismissal of these Officers. The Act requires at least two Independent Persons who have been appointed under section 28(7) of the Localism Act 2011 to be appointed to the panel. The role of the Independent Persons therefore includes the requirement of this legislation.
- 5.9 James Rees, Mike Wall MBE and Lindsey Appleton were appointed as the Council's Independent Persons for the 2021/22 Municipal Year. The Council is asked to recognise the significant contribution of the Independent Persons over the past year, and thank them for their ongoing contributions.
- 5.10 A recruitment process of the appointment of Independent Persons for the 2022/23 Municipal Year was conducted in collaboration with the Royal Berkshire Fire Authority. The appointment process was advertised and a number of applications were received. Following an interview process, it is recommended that Lindsey Appleton, Mike Wall MBE, and Alan Penrith are appointed (see short biographies at Appendix A). The Council will be asked to formally appoint Independent Persons at the Annual Meeting. In addition it is also proposed that the Council is also asked to approve a reserve list of appointable candidates consisting of James Rees, Avril Jones and Julie Byron in the event where the appointed are not able to fulfil their term.

Governance and Ethics Committee

- 5.11 The overall purpose of the Governance and Ethics Committee is to provide effective challenge across the Council and independent assurance on the risk management and governance framework and associated internal control environment to Members and the public, independently of the Executive. The Governance and Ethics Committee is also responsible for receiving the annual Audit Letter and for signing off the Council's final accounts.
- 5.12 The Committee is also charged with promoting and maintaining high standards of conduct throughout the Council. They promote, educate and support Councillors (both District and Parish) in following the highest standards of conduct and ensuring that those standards are fully owned locally. The roles and functions of the Governance and Ethics Committee are set out in the Constitution (Part 2 Articles of the Constitution).
- 5.13 At the conclusion of 2021/22 the Governance and Ethics Committee comprised the following Members:

Conservative Group (5 Members)	Tom Marino (Chairman), Jeff Beck, Rick Jones, Tony Linden and Biyi Oloko
Conservative Substitutes (2 Members)	Graham Pask and Claire Rowles
Liberal Democrat Group (3 Members)	Jeremy Cottam (Vice-Chairman), Geoff Mayes and Andy Moore
Liberal Democrat Substitutes (2 Members)	Adrian Abbs and Owen Jeffery
Green Party Group (1 Member)	David Marsh
Green Party Substitutes (1 Member)	Steve Masters

5.14 The Governance and Ethics Committee has a special responsibility regarding the 56 Town and Parish Councils within the District. It is responsible for ensuring that high standards of conduct are met within the parishes and that all Parish and Town Councillors are aware of their responsibilities under their Codes of Conduct.

5.15 The District Councillors are therefore supported on the Governance and Ethics Committee by two co-opted Parish Councillors who are appointed in a non-voting capacity. Two substitute non-voting parish councillors are also appointed to this Committee. During 2021/22 the Governance and Ethics Committee included the following Parish Councillors:

- Bill Graham (co-opted non-voting Parish Councillor)
- David Southgate (co-opted non-voting Parish Councillor)
- Anne Budd (substitute co-opted non-voting Parish Councillor)
- John Downe (substitute co-opted non-voting Parish Councillor)

5.16 The Council is asked to recognise the contribution of the Parish Councillors and thank them for their contributions.

Advisory Panel

5.17 The Advisory Panel is responsible for dealing with complaints where evidence of a breach of the Code has been investigated by an independent investigator. The Advisory Panel considers the investigators report. The views of the Advisory Panel are reported to the Governance and Ethics Committee, which makes the formal decision in respect of any allegations which have been investigated where it is considered that a breach of the relevant code of conduct has occurred.

5.18 The District Councillors on the Advisory Panel were representatives of all three political groups within the Council and are not appointed in accordance with the proportionality rules. During 2021/22 the Advisory Panel comprised the following District Councillors:

Conservative Group (2 Members)	Dennis Benneyworth and Alan Law
Liberal Democrats (2 Members)	Phil Barnett and Lee Dillon
Green Party Group (2 Members)	Carolyn Culver and Steve Masters

5.19 During the 2021/22 Municipal Year the following Parish Councillors were appointed to the Advisory Panel:

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- Anne Budd
- John Downe

5.20 The Council is asked to thank the Parish Councillors for agreeing to be members of the Panel albeit that it has not had to meet during the 2021/22 financial year.

The Monitoring Officer

5.21 The Monitoring Officer is a statutory post and in West Berkshire rests with the Service Director Strategy & Governance. The Monitoring Officer (Sarah Clarke) in 2021/22 was supported by two deputies (Leigh Hogan and Shiraz Sheikh). The Monitoring Officer has a key role in promoting and maintaining standards of conduct. The Monitoring Officer also has a statutory responsibility to establish and maintain a register of interests for members and co-opted members of the authority. The Monitoring Officer acts as legal adviser to the Governance and Ethics Committee and Advisory Panel.

Register of Interests

5.22 All elected Members of West Berkshire Council have completed and submitted their Register of Interest forms. These forms have been published on the Council's website. District Councillors are reminded to review their interests on a regular basis and to notify the Democratic Services Manager of any amendments.

5.23 Parish Councils are reminded via their Clerks to complete and return Declarations of Interest forms to the Monitoring Officer in accordance with the provisions of the Localism Act 2011.

Local Assessment of Complaints

5.24 Quarter 1 – 2021/22

During this period ten complaints were received and processed by the Monitoring Officer. Nine of these complaints (NDC1/21, NDC2/21, NDC3/21, NDC4/21, NDC5/21, NDC6/21, NDC7/21, NDC8/21 and NDC10/21) pertained to District Councillors. Following the initial assessment it was agreed that no further action should be taken on any of the complaints. There was one complaint (NPC9/21) submitted about a parish councillor. It was agreed that no further action should be taken on the complaint.

5.25 Quarter 2 – 2021/22

During this period ten complaints were received by the Monitoring Officer. Six of these complaints (NDC15/21, NDC16/21, NDC17/21, NDC18/21, NDC19/21 and NDC20/21) pertained to District Councillors. Following the initial assessment it was agreed that no further action should be taken on any of the complaints. Four complaints (NPC11/21, NPC12/21, NPC13/21 and NPC14/21) were received about parish councillors. No further action was taken on the complaints.

5.26 Quarter 3 - 2021/22

Eight complaints were received during the third quarter of 2021/22. Three of these complaints pertained to District Councillors. It was agreed that no further action be taken on NDC26/21. It was agreed that an independent investigator would investigate complaints NDC21/21 and NDC22/21. No further action was taken on the five

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complaints (NPC16/20, NPC17/20, NPC18/20, NPC19/20 and NPC20/20) about parish councillors.

5.27 Quarter 4 - 2021/22

Four complaints have been received in the final quarter of the year. Two of these complaints pertained to District Councillors (NDC2/22 and NDC4/22) and two pertained to Parish Councillors (NPC1/22 and NPC3/22). It was agreed that an informal resolution be sought for complaint NDC2/22. No further action was taken in relation to NDC1/22. Complaints NDC4/22 and NPC3/22 are due to be considered towards the end of March 2022.

Year on Year Comparison of Complaints

5.28 Table 1 – The Number of District and Parish Council Complaints received 2017/18 – 2021/22

Table 1	17/18	18/19	19/20	20/21	21/22
District Councillors	1	1	9	12	20
Parish Councillors	15	20	5	21	12
Co-Optees	0	1	0	0	0
Total	16	22	14	33	32

5.29 Table 2 - Action Taken on Complaints received 2017/18 to 2021/22.

	17/18	18/19	19/20	20/21	21/22
Withdrawn/not progressed	2	4	2	7	0
No Further Action	13	14	7	21	27
Other Action	0	2	2	2	1
Investigation	1	2	0	0	2
Outcome Awaited	0	0	3	3	2
Total	16	22	14	33	32

5.30 The total number of complaints in 2021/22 has continued at a similar level to the previous year, as shown in Table 1. This is a continuation of the increase in the number of complaints.

5.31 Table 2 shows that, in respect of the complaints received to date during 2021/22 which have been assessed, in the majority of cases no further action was taken on the complaint. To date, two complaints have been referred for investigation this Municipal Year and one case was resolved by some other form of action or informal resolution.

Learning Points Arising from Complaints

5.32 The rise in the number of complaints has continued into 2021/22. However, it should be noted that 15 of the District Councillor complaints were connected to three separate incidents.

5.33 Fourteen of the complaints related to social media activity, although these were limited only three separate incidents. None of these complaints were referred for investigation, and it is not therefore considered that there is a particular issue with social media use. The complaints do however highlight the need for Members to continue to be careful when using Social Media, and to continue to have regard to the Code of Conduct and the Social Media Protocol.

5.34 Six complaints related to councillor conduct in the planning process, none of which were referred for investigation. These complaints do however highlight the need for Members to ensure that they declare any interest fully, to ensure openness and transparency in the decision making process.

5.35 One complaint, which related to an allegation that a Member had failed to declare an interest at a planning meeting, was considered at the Initial Assessment stage and it was determined that no further action should be taken in respect of the complaint. The complainant disagreed, and commenced judicial review proceedings in the High Court. Having considered the written submissions of the parties, the court refused the application for permission to apply for judicial review, and awarded costs in favour of the Council.

5.36 However, it is of note that 27 complaints resulted in no further action. One complaint resulted in 'other' action, seeking an informal resolution. Two complaints (relating to the same incident) were referred for investigation and the outcome of that is awaited.

Gifts and Hospitality

5.37 The Gifts and Hospitality Protocol is incorporated into the Members Code of Conduct and is set out in Appendix H to Part 13 of the Constitution (Codes and Protocols).

5.38 Officers are also subject to restrictions on those Gifts and Hospitality that are deemed to be acceptable under the Officers' Code of Conduct, which is set out in Part 13 of the Constitution. Like Members, Officers are required to declare gifts or hospitality received.

5.39 The intention of the rules governing Gifts and Hospitality is to ensure that the Council can demonstrate that no undue influence has been applied or could be said to have been applied by any service user, supplier or anyone else dealing with the Council and its stewardship of public funds. The rules therefore set out the obligations imposed on Members and Officers to declare relevant gifts and hospitality which have been offered to or received by them.

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- 5.40 It should be noted that in addition to the risk that there could be a perception of impropriety, the acceptance of a gift or hospitality could amount to an offence under the Bribery Act 2010.
- 5.41 The Bribery Act 2010 creates a number of offences where a gift or other benefit is given or offered, which may amount to an offence of bribing another person, and/or of being bribed. Therefore, if Members or Officers are offered a 'gift' or other benefit by a third party, this could amount to an offence not just by the person offering the gift, but also by the Member or Officer concerned and by the Council. It is important to note that offences under this legislation can be committed by a person offering a gift or reward, even if the gift is not accepted.
- 5.42 In view of the above, it is very important that both Officers and Members understand the potentially serious implications of accepting gifts when it is not appropriate to do so.
- 5.43 There were no declarations of hospitality received by Members during the year 2021/22. This is no doubt reflective of the fact that we have been operating remotely for the majority of the past year.
- 5.44 There was also a significant reduction in the number of gifts / hospitality declared by officers with 28 declarations made during 2020/21, which is a reduction from 72 in the previous year.
- 5.45 The number of gifts or hospitality received by each directorate, and the number refused can be summarised as follows:

Directorate	Number of Declarations	Number refused
People	11	6
Place	13	4
Resources	4	2

Government Response to the Committee on Standards in Public Life review of local government ethical standards

- 5.46 The Committee on Standards in Public Life published its review of local government ethical standards in January 2019. This included a number of recommendations that would have required legislative changes to be introduced by the Government.
- 5.47 The Government issued its response to the above report on the 18th March 2022. In the letter from Kemi Badenoch MP – Minister of State for Equalities and Levelling Up Communities, it was stated that the 'government is committed to working with local authorities and their representative organisations to ensure that local government is supported in reinforcing its reputation for ethical local standards.'
- 5.48 The full response is available at: <https://www.gov.uk/government/publications/local-government-ethical-standards-government-response-to-the-committee-on-standards->

[in-public-life-report/government-response-to-the-committee-on-standards-in-public-life-review-of-local-government-ethical-standards](#) .

- 5.49 Some of the notable responses include that the Government has indicated that it will engage with interested parties on the best means to ensure that candidates and councillors are not required to publically disclose their home addresses. However, the government also confirmed that it did not intend to legislate to increase the types of interests that were classified as disclosable pecuniary interests.
- 5.50 Some of the key recommendations from the Committee on Standards in Public Life report related to the need to give additional powers to sanction councillors when found to have breached the Code of Conduct. Although the Government has rejected the recommendation that it introduce powers to allow local authorities to suspend councillors, it does indicate a commitment to engage with sector representatives to seek views on strengthening sanctions.
- 5.51 The recommendation that the Transparency Code be amended to require local authorities to publish details of complaints was not accepted, although it was stated that this could be incorporated in annual reports. It is considered that this report ensures compliance with this recommendation.
- 5.52 The Government acknowledged the proposal that Independent Persons only sit for a maximum term of two years, and agreed that it was important to preserve the independence of the Independent Persons. However, the Government also recognised that it could be difficult to recruit to such positions, and suggested that this recommendation should be a matter of best practice, but subject to local needs. The Government's response in this regard is welcomed, it can be challenging to appoint suitable Independent Persons.

6. Proposals

- 6.1 Members are asked to note the content of the report.
- 6.2 It is proposed that this report also be circulated to all Town and Parish Councils for information, following consideration at the Annual Meeting of Council in May.

7. Other options considered

- 7.1 Not to produce the report. There is no legal obligation to produce this report, so not doing so would be an option. However, it is considered that an annual report provides a good overview of work being undertaken, and may assist in identifying any significant problems or developing trends. This overview is also helpful in ensuring full transparency regarding complaints. Not producing this report is therefore not recommended as an option.

8. Conclusion

- 8.1 The number of complaints over the past year remains elevated at similar levels to those seen in 2020/21. It is of note that to date, of the 32 complaints received in the past year, only 2 have been referred for investigation. This suggests that Members in West Berkshire continue to maintain high standards of ethical conduct, which is to be applauded.

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8.2 The number of Declarations of Gifts and Hospitality has decreased significantly, which is no doubt reflective of the restrictions imposed in response to Covid 19. As Covid restrictions are now being relaxed or removed completely, it is recommended that the Monitoring Officer write to both Officers and Members with a reminder of the rules on gifts and Hospitality.

9. Appendices

Appendix A - Independent Person short biographies

Subject to Call-In:

Yes: No:

The item is due to be referred to Council for final approval

Wards affected: All

Officer details:

Name: Sarah Clarke
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