
Monitoring Officer's Annual Report 2022/23 – Conduct and Ethics

Committee considering report:	Council
Date of Committee:	5 October 2023
Portfolio Member:	Councillor Jeff Brooks
Date Portfolio Member agreed report:	13 September 2023
Report Author:	Sarah Clarke
Forward Plan Ref:	C4412

1 Purpose of the Report

- 1.1 To provide an update on any local and national issues relating to ethical standards and to bring to the attention of Members a summary of complaints or other problems within West Berkshire.

2 Recommendations

- 2.1 Members are requested to note the content of the report.
- 2.2 It is proposed that the report 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:	None
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:	None			
Policy:	None			
	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 Impact:		X		
Digital Services Impact:		X		

Council Strategy Priorities:		X		
Core Business:		X		
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 Committee, which will be presented to Full Council on 5 October. The report will also be circulated to all Town and Parish Councils.
- 4.2 The key findings identified in the report are:
- (a) Standards of ethical conduct across the district remain good.
 - (b) The number of gifts and hospitality declared remains lower than pre-Covid.

5 Supporting Information

Introduction

- 5.1 The Localism Act 2011 was enacted on 15th November 2011 and it made fundamental changes to the system of regulation of the standards of conduct for elected and co-opted members of Councils and Parish Councils.
- 5.2 In order to ensure that the process was working effectively locally it was agreed that the Monitoring Officer would produce an annual report which would be presented to the Governance Committee. The report would set out the number and nature of complaints received and inform Members of any other activity that was taking place around the Code of Conduct regime. It would also provide a means of updating the Committee on the progress of investigations.
- 5.3 It was also agreed that the report would be presented to Full Council and that it would be circulated to all Town and Parish Councils.

Background

- 5.4 During the Municipal Year 2022/23 the Governance 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 was agreed at the Annual Council meeting.

- 5.5 The Advisory Panel comprised ten Members: two from the Liberal Democrat party, two from the Conservative Party, two from the Green Party, two parish/town councillors and two Independent Persons.
- 5.6 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 Committee and Advisory Panel;
 - Gifts and Hospitality Protocol;
 - Complaints procedures for breaches of the Code of Conduct;
 - Dispensations procedure;
 - Social Media Protocol.

Independent Persons

- 5.7 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. It was agreed by Council that 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.
- 5.8 A person is not considered to be "independent" if:-
- 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.
 - 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.
 - The definition of relative includes the candidate's spouse, civil partner, grandparent, child etc.
- 5.9 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. At least two Independent Persons who have been appointed under section 28 of the Localism Act 2011 to be appointed to the panel. The role of the Independent Persons therefore includes the requirement of this legislation.
- 5.10 Council appointed Mike Wall MBE, Alan Penrith and Lindsey Appleton as the Council's Independent Persons for the 2022/23 Municipal Year. All three Independent Persons have agreed to remain as Independent Persons for the 2023/24 Municipal Year.
- 5.11 The Council is asked to recognise the significant contribution of the Independent Persons and thank them for their ongoing contributions.

Governance Committee

5.12 The overall purpose of the Governance 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 Committee is also responsible for receiving the annual Audit Letter and for signing off the Council's final accounts.

5.13 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 Committee are set out in the Constitution (Part 2 Articles of the Constitution).

5.14 At the conclusion of 2022/23 the Governance Committee comprised the following Members:

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

5.15 The Governance 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.

5.16 The District Councillors are therefore supported on the Governance 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 2022/23 the Governance 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)

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

Advisory Panel

5.18 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 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.

5.19 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 2022/23 the Advisory Panel comprised the following District Councillors:

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

5.20 During the 2022/23 Municipal Year the following Parish Councillors were appointed to the Advisory Panel:

- Bill Graham
- David Southgate
- Anne Budd
- John Downe

5.21 The Council is asked to thank the Parish Councillors for agreeing to be members of the Panel and their contribution for the one occasion it met.

The Monitoring Officer

5.22 The Monitoring Officer is a statutory post and in West Berkshire rests with the Service Director Strategy & Governance. The Monitoring Officer (Sarah Clarke) in 2022/23 was supported by three deputies (Leigh Hogan, Shiraz Sheikh (part year) and Nicola Thomas (part year)). 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 Committee and Advisory Panel.

5.23 The Committee for Standards in Public Life wrote, via the LGA, to local authorities requesting a progress report against the 15 best practice recommendations regarding local government Ethical Standards, which highlighted that West Berkshire Council already complies with most of the recommendations.

5.24 There were some areas where the Council will need to review existing processes and procedures, which will be considered by the Constitution Review Task Group at the relevant time. The areas for review include matters such as the recommendation that Members be required to comply with formal standards investigations, and a recommendation that the Code of Conduct be reviewed on an annual basis.

The Work of the Committee 2022-2023

5.25 During the 2022/23 Municipal Year the work undertaken by the Committee has to date included:

- Consideration of the monitoring cycle for both internal and external audit.
- The Committee Considered Reports from Internal Audit on the work being undertaken by the Team.
- The Committee considered a report into the findings of a review of the effectiveness of the Governance Committee and an action plan was developed to meet the recommendations of the review. An updated Terms of Reference for the Committee was agreed, which will be considered by Council.
- The Constitution Review Task Group has met and phases one and two of the Constitution review have been completed and approved by Council following consideration by the Governance Committee. The last phase of this complete review of the Constitution will be progressed in 2023/24.

5.26 The Monitoring Officer, under delegated authority, granted a dispensation to all West Berkshire Councillors in 2022/23 to speak and vote on any items pertaining to Council Tax.

Register of Interests

5.27 Following the election in May 2023 all elected Members of West Berkshire Council completed and submitted their Register of Interest forms. These forms have been published on the Council's website. A number of interests that have been declared by Members have been withheld from publication where the Monitoring Officer has been satisfied that the interest is a sensitive interest in accordance with the provisions of section 32 of the Localism Act 2011.

5.28 District Councillors are reminded to review their interests on a regular basis and to notify the Democratic Services Manager of any amendments.

5.29 Parish Councils are reminded via their Clerks to complete and return Declarations of Interest forms to the Monitoring Officer in order that compliance with the Localism Act 2011 is maintained.

Local Assessment of Complaints

5.30 Quarter 1 – 2022/23

During this period six complaints were received and processed by the Monitoring Officer. Three of these complaints (NDC08/22, NDC10/22, and NDC13/22) pertained to District Councillors, of which one was withdrawn. Following the initial assessment, it was agreed that no further action should be taken on any of the complaints. There were three complaints (NPC09/22, NPC11/22, and NPC12/22) submitted about parish councillors. Following the initial assessment, it was agreed that no further action should be taken on any of the complaints.

5.31 Quarter 2 – 2022/23

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During this period four complaints were received and processed by the Monitoring Officer. All four of these complaints (NPC14/22, NPC15/22, NPC16/22, and NPC17/22) pertained to District Councillors, of which one was withdrawn. Following the initial assessment, it was agreed that no further action should be taken on two of the complaints, and one complaint was referred for informal resolution. There were no complaints submitted about parish councillors.

5.32 Quarter 3 - 2022/23

During this period three complaints were received and processed by the Monitoring Officer. Two of these complaints (NDC19/22 and NDC20/22) pertained to District Councillors. Following the initial assessment, it was agreed that no further action should be taken on one of the complaints, and one complaint was referred for informal resolution. There was one complaint (NPC18/22) submitted about parish councillors. Following the initial assessment, it was agreed that no further action should be taken on the complaint.

5.33 Quarter 4 - 2022/23

During this period nine complaints were received and processed by the Monitoring Officer. Seven of these complaints (NDC01/23, NDC04/23, NDC05/23, NDC06/23, NDC07/23, NDC08/23, and NDC09/23) pertained to District Councillors. Following the initial assessment, it was agreed that no further action should be taken on five of the complaints, one complaint was referred for informal resolution, and one complaint was referred to independent investigation. There were two complaints (NPC02/23 and NPC03/23) submitted about parish councillors. Following the initial assessment, it was agreed that no further action should be taken on any of the complaints.

Year on Year Comparison of Complaints

Table 1 – The Number of District and Parish Council Complaints received 2018/19 – 2022/23

Table 1	18/19	19/20	20/21	21/22	22/23
District Councillors	1	9	12	20	16
Parish Councillors	20	5	21	12	6
Co-Optees	1	0	0	0	0
Total	22	14	33	32	22

Table 2 - Action Taken on Complaints received 2018/19 to 2022/23.

	18/19	19/20	20/21	21/22	22/23
Withdrawn/not progressed	4	2	7	0	2
No Further Action	14	7	21	28	16
Other Action	2	2	2	1	3
Investigation	2	0	0	3	1
Outcome Awaited	0	3	3	0	0
Total	22	14	33	32	22

5.34 Table 2 shows that, in respect of the complaints received to date during 2022/23, in the majority of cases no further action was taken on the complaint.

Learning Points Arising from Complaints

5.35 The number of complaints have reduced overall in the past year. In addition, it is significant to note that the large majority of these result in no further action. However, 3 have resulted in other action and 1 has been referred for an independent investigation.

5.36 It was noted that a number of the complaints referred for independent investigation took a considerable length of time to complete, and although there were reasons for those delays, procedures have been reviewed to reduce the likelihood of similar delays occurring in future cases.

5.37 A further point of learning was the need for officers ensure better communication with the parties involved in a complaint once a matter was referred for investigation, to ensure that they are kept informed of progress.

Gifts and Hospitality

5.38 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).

5.39 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.

5.40 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.

5.41 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.

5.42 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.

5.43 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.

5.44 There were 41 declarations of hospitality received by Members during the year 2022/23. This represents an increase on the previous year, reflecting that Covid

restrictions on socialising are no longer in place. This information is published on the Council website.

5.45 There was also an increase in the number of gifts / hospitality declared by officers with 45 declarations made during 2022/23, which is an increase in the previous year. This number remains lower than pre-Covid figures.

5.46 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	4	0
Place	35	0
Resources	6	0

Proposals

5.47 Members are asked to note the content of the report.

5.48 It is proposed that this report also be circulated to all Town and Parish Councils for information.

6 Other options considered

6.1 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.

7 Conclusion

7.1 Despite the number of complaints over the past year, it is considered that Members in West Berkshire continue to maintain high standards of ethical conduct, which is to be applauded.

7.2 The number of Declarations of Gifts and Hospitality has increased, reflective of the restrictions around COVID 19 being lifted. The levels remain lower than prior to the pandemic. The recommendation that the register of Gifts and Hospitality be published on a quarterly basis will no doubt assist to highlight the need to declare such matters on a regular and consistent manner.

8 Appendices

None

Subject to Call-In:

Yes: No:

- The item is due to be referred to Council for final approval
- Delays in implementation could have serious financial implications for the Council
- Delays in implementation could compromise the Council's position
- Considered or reviewed by Scrutiny Commission or associated Committees, Task Groups within preceding six months
- Item is Urgent Key Decision
- Report is to note only

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