

Meeting:	Audit and Governance Committee
Meeting date:	8 November 2023
Report of:	Director of Governance
Portfolio of:	Cllr Douglas Leader, responsible for Strategy, Policy, and Partnerships

Audit and Governance Committee Report: Corporate Governance Performance Report

Subject of Report

1. This report provides Members with updates in respect of:
 - Responses and updates to queries and questions from Committee in July 2023;
 - Corporate Governance Team (CGT) performance indicators update;
 - Information Commissioners Office (ICO) enforcement notice;
 - Ombudsmen update including:
 - Local Government and Social Care Ombudsman (LGSCO) and Housing Ombudsman Service (HOS) cases from the previous report in July 2023 to date of preparing this report on 26 October 2023;
 - Update on HOS;
 - Covert surveillance training.

Policy Basis

2. Having appropriate processes and procedures in place to ensure the council:
 - Investigates and responds to complaints (corporate, adults social care and children's social care), comments, compliments and concerns, and Ombudsmen cases;
 - Manages and monitors valid and in time responses to all FOI and EIR requests and other requests for information or information disclosure;

- Provides support, advice and guidance for data protection and privacy compliance;
 - Provides assurance to customers, employees, contractors, partners, and other stakeholders that all information, including confidential and personal information, is dealt with in accordance with legislation and regulations and its confidentiality, integrity and availability is appropriately protected.
3. Compliance is aligned to the current and draft Council Plan which is part of the council's corporate code of governance. This also then aligns with the 10-year Plan (York 2032) such as performance management and service planning.

Recommendation and Reasons

4. Members are asked:
- i. To note the details contained in this report.
 - ii. To provide any comments or feedback from this report.

Reason: So that members are updated with details of the corporate governance report.

Background

5. **Responses and updates from report in July**
- i. The figures for Q4 for 2022/2023 are included at Annex 1.
 - ii. I can confirm the one adult social care complaint (April to June 2021) shown as in progress was completed at the time and was only showing as being "in progress" for the end of that reporting period of April to June 2021.
 - iii. There are no additional Ombudsmen decisions to provide to Committee from the last report and that it was an error as complaint reference 23001684 was on the report twice.

6. Corporate Governance Performance Indicators Update

- i. The full performance indicators are available on York Open Data at <https://data.yorkopendata.org/group/transparency> and includes the indicators linked to the Council Plan – see below:
 - % Of Grade 1 4Cs Complaints responded to 'In Time' – which is available at <https://data.yorkopendata.org/dataset/kpi-ig22a>
 - FOI & EIR % Requests responded to In time - (YTD) – which is available at <https://data.yorkopendata.org/dataset/kpi-foi02-01a/resource/52928d4c-d274-4e11-bd27-198ec9b98364>
- ii. Please see the detailed performance indicators for the reporting periods covering Quarter 1 (Q1) – April to June 2023 and Quarter 2 (Q2) – July to September 2023 at Annex 2.
- iii. Complaints about council services are dealt with under the council's corporate procedure for Complaints, Concerns, Comments and Compliments (the 4Cs). This procedure was designed using the guidance and good practice specified in the statutory procedures and by the Local Government and Social Care Ombudsman (LGSCO) and Housing Ombudsman Service (HOS).
- iv. There has been a decrease in the total number of grade 1 and grade 2 corporate complaints received in Q2 compared to Q1 (364 compared to 480). But there has also been a reduced in time performance – from 96.12% to 93.75%. The Corporate Governance Team (CGT) are working to identify the issues or concerns that have contributed to this reduced in time performance and options for improvements including additional targeted support to service areas from CGT.
- v. There has been a decrease in Q2 compared to Q1 in complaints received and dealt with under both the adult and children's social care services legislation:
 - The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009;
 - The Children Act 1989 Representations Procedure (England) Regulations 2006.

- vi. For adults' social care services complaints, there has been a significant improvement in Q2 in the number of these complaints responded to in time. It has increased from 50% in Q1 to 100% in Q2.
- vii. Similarly, for children's social care services complaints there has been an improvement in Q2 in the number of these complaints responded to in time. It has increased from 88.89% in Q1 to 100% in Q2.
- viii. The CGT will continue to work closely with these service areas to ensure that these improvements are maintained. Also we are working on providing for next Committee as that will be following on from the annual complaints report, the shared themes and lessons learned from complaints.
- ix. There has been a small decrease in the number of data subject access request to records (SAR) responded to in time in Q2 compared to Q1 and compared to the full year figures for the previous 3 years. This will in some part be due to the increased complexity of some SAR requests. To be able to determine the complexity of a request, we do have to be able to demonstrate and provide evidence of one or more of the below examples:
 - Technical difficulties in retrieving the information – for example if data is electronically archived;
 - Applying an exemption that involves large volumes of particularly sensitive information;
 - Clarifying potential issues around disclosing information;
 - Any specialist work involved in obtaining the information or communicating it to the requester in an intelligible form;
 - Clarifying potential confidentiality issues around the disclosure of sensitive medical information to an authorised third party;
 - Needing to obtain specialist legal advice but not if legal advice is required routinely;
 - Searching large volumes of unstructured manual records such as social care records.
- x. The CGT are exploring whether its possible to report on "number of pages" for each SAR request that is retrieved and then requires checking for and redacting, any information that should not be disclosed. This may provide more context for

managers, CMT and this Committee on the performance of responding to SAR requests.

- xi. Although we continue to increase the number of FOI and EIR requests that are responded to in time, there are details in the next section of this report about the backlog of requests that have received no response. The CGT are exploring whether it's possible to report on "number of questions" asked in each FOI and EIR which may provide more context for managers, CMT and this Committee on the performance of responding to FOI and EIR requests.
- xii. Also, as requested from the previous report in July, we are working on providing the performance figures for FOI and EIRs by directorate which will include where there has been no response sent after the legal timescale for responding.

7. ICO enforcement notice for overdue FOI and EIR responses

- i. The ICO issued the council with an enforcement notice on 14 September 2023 about FOI/EIR requests that had not received a valid response between 1 April 2021 and 1 August 2023. A copy of the enforcement notice is at Annex 3 and can also be found at [20221003 EN template \(ico.org.uk\)](https://ico.org.uk/20221003-EN-template)
- ii. The enforcement notice required the council to:
 - Publish an improvement plan within 35 calendar days;
 - Issue valid responses to the backlog of FOIs and EIRs within 6 months.
- iii. The consequence of failing to comply with an ICO enforcement notice is that the ICO may make written certification of this fact to the High Court pursuant to section 54 of FOI. Upon consideration and inquiry by the High Court, the Council may be dealt with as if it had committed a contempt of court.
- iv. Whilst there are processes in place to support service areas to respond to FOI and EIR requests in a timely way including advice and guidance, a fortnightly report showing all outstanding requests, etc the backlog of overdue requests highlights that there needs to be increased awareness of the council's requirements to comply with FOI/EIR in a timely way

and the consequences of not doing this and the improvement plan identifies how we will achieve and maintain this.

- v. There also needs to be a renewed joined up effort across the council to provide responses to both the overdue requests and new requests, and quickly identify and remove any barriers or blockers to providing responses. This will support a significant and sustained improvement in responses being provided.
- vi. We have met the requirement to publish an improvement plan within 35 calendar days. Please see Annex 4. It is published at [Information Commissioner's Office \(ICO\) enforcement notice and improvement plan – City of York Council](#)
- vii. The improvement plan was approved by the Council Management Team (CMT) and regular reports on progress with it will be reported to CMT and to this Committee.
- viii. Between 1 April 2021 and 1 August 2023, the council received 4972 requests for information. These include:
 - FOI requests
 - EIR requests
 - Requests for information from third parties such as police, other councils, etc
 - Requests from individuals for their own information that the council holds under data protections right to request access to records (SARs)
- ix. For this period, 3620 were either FOI or EIR requests and there were 261 recorded, which is 5.25% of the total requests for information received, as having had no response sent.
- x. As of the date of preparing this report on 26 October 2023, and from the focussed work undertaken by the Corporate Governance Team, managers, and teams across the council, 247 valid responses (94.6% of the backlog) have now been sent and 14 (5.4% of the backlog) still to complete. This means we are highly likely to complete sending out responses to the backlog of requests ahead of the timescale set out in the enforcement notice which was 6 months.

- xi. From 14 September 2023 when the enforcement notice was issued and 26 October 2023 when this report was prepared, there have been three complaints made to the ICO about no responses being provided to current FOI/EIR requests and the ICO has noted these further complaints. They may take further action against the council if it continues to receive complaints about no valid responses being issued. There has also been one complaint to the ICO regarding the backlog of requests that were subject of the enforcement notice.
- xii. However there have been no published decision notices by the ICO on their website from date of previous report to this Committee and 26 October 2023.

8. Ombudsmen update

- i. There were seven Ombudsmen decisions since the last report to Committee in July to date this report was prepared. Details of all the decisions including recommendations, remedies and actions are shown at Annex 5.
- ii. Six cases were determined by the Local Government and Social Care Ombudsman (LGSCO) and the decisions were:
 - 2 were closed after initial enquiries with no further action;
 - 1 was closed as out of the jurisdiction of the LGSCO;
 - 1 was not upheld and no further action;
 - 1 was closed as it was premature as it had not been through the council's complaint procedures;
 - 1 was upheld with fault and injustice.
- iii. There was one case determined by the Housing Ombudsman Service (HOS) and their decision was severe maladministration with action and recommendations.
- iv. The CGT undertakes ongoing work with CMT, Directorate Management Teams as well as with individual service areas to ensure that we share learning opportunities across the

council and to identify areas for improvement from Ombudsmen cases.

- v. The HOS introduced their Complaint Handling Code in July 2020. You can find out more about this Code at [Complaint Handling Code - Housing Ombudsman \(housing-ombudsman.org.uk\)](https://housing-ombudsman.org.uk).
- vi. It sets out good practice that will allow landlords to respond to complaints effectively and fairly. There was overwhelming support for the Code when it was introduced, and the HOS updated it to strengthen provisions to support a positive complaint handling culture.
- vii. The council must carry out an annual assessment against the Code to ensure our complaint handling remains in line with its requirements and publish the results. We have recently completed this and it is published at [Housing Ombudsman Service - Complaint handling Code - Self Assessment form \(york.gov.uk\)](https://york.gov.uk).
- viii. The previous HOS self-assessment(s) are also available on the council website [Housing Ombudsman Service - Complaint handling Code - Self Assessment form \(york.gov.uk\)](https://york.gov.uk).

9. Covert surveillance training

- i. Following this training, information will be reported to this Committee as part of the Corporate Governance report on an annual basis, for your oversight. This will cover reporting period of April to March.

Consultation Analysis

- 10. No consultation was undertaken for this performance report. However, feedback from reports to CMT, meetings and discussions with managers informs this report.
- 11. Where required, internal and/or external consultation will be conducted to progress the work and actions required to comply

with the improvement plan in response to the ICO enforcement notice.

Risks and Mitigations

12. The council has a duty to comply with the various aspects of complaints, data protection, privacy, and information governance related legislation. Failing to comply with these can result in Regulators/Ombudsmen taking actions against the council such as reprimands, enforcement action, monetary fines, financial remedies for individuals. Often these decisions and actions are published on the Regulator or Ombudsman websites, and they can often do press statements. This can lead to reputational damage, reduce the council's overall effectiveness as well as a loss of trust in the council.
13. In some circumstances individual members of staff may be at risk of committing criminal offences for example if they knowingly or recklessly breach data protection legislation and compliance requirements or deliberately destroy, alter, or conceal a record after it has been requested, etc
15. As there is no personal data, special categories of personal data or criminal offence data being processed for this performance report, there is no requirement to complete a data protection impact assessment (DPIA) which has been evidenced by completion of DPIA screening questions. DPIAs are an essential part of our accountability obligations and is a legal requirement for any type of processing under UK GDPR. Failure to conduct a DPIA when required may leave the council open to enforcement action, including monetary penalties or fines.

Contact details

16. For further information please contact the authors of this Report.

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Report approved:	Yes
Date:	26 October 2023

Background papers

None

Annexes

Annex 1 – Corporate Governance Performance Report – indicators 2022 2023

Annex 2 - Corporate Governance Performance Report – indicators 2023 2024

Annex 3 – ICO enforcement notice

Annex 4 – published improvement plan

Annex 5 – Ombudsmen decisions