

ANNUAL REPORT OF THE MONITORING OFFICER

1. Purpose/Summary

To receive a report of the Monitoring Officer since her appointment in December 2019, addressing the Council's governance and assurance frameworks. It is intended that this report shall support the Council's Annual Governance Statement. This report covers the period 2019-2020 but where necessary provides updating information from 1st April 2020, to the point of submission of the Annual Governance Statement in June 2020.

2. Information

The Council's Director of Governance & Monitoring Officer commenced in post on 16th December 2019. This is a newly created senior post and has strategic management of the following services:

- Legal Services;
- Information Governance and Customer Complaints;
- Democratic Services & Civic Office;
- Elections; and
- Internal Audit

Since her appointment, the Monitoring Officer has:

- Met with the Council's Head of Paid Service and s151 Officer;
- Met with the Head of Internal Audit and the Council's External Auditor, Mazars;
- Met with the Corporate Directors [Amanda, Sharon, Sharon, Neil];
- Been consulted on and contributed to the Council's current Code of Corporate Governance;
- Been consulted on and contributed to the Council's Annual Governance Statement for 2019/2020; and
- Undertaken a review of the Council's constitution and in doing so has attended a number of constitutionally prescribed

meetings so as to gain an initial insight as to the effectiveness of the Council's governance and assurance frameworks.

3. Role of the Monitoring Officer

The law requires the Council to designate one of its senior officers as the Monitoring Officer. The Monitoring Officer is a member of the Council's Corporate Management Team.

The Monitoring Officer:

- Maintains an up-to-date version of the Constitution and ensures that it is widely available for consultation by Councillors, Officers and the public;
- Ensures that the Council acts and operates within the law, advising on whether decisions of the Executive are lawful and in accordance with the Budget and Policy Framework;
- Is required to report to the full Council or to the Executive if she considers that any proposal, decision or omission would give rise to unlawfulness. Such a report would have the effect of stopping the proposal or decision being implemented until the report has been considered;
- Reports to the Audit & Governance Committee and Full Council where the Local Government and Social Care Ombudsman issues a Public Report in respect of maladministration or a failure to provide services or a failure in any services provided, under section 31 of the Local Government Act 1974;
- Helps to promote and maintain high standards of conduct by Council members, officers, partners and contractors;
- When required, processes complaints about alleged breaches of the code of conduct in accordance with the local arrangements and work with the Joint Standards Committee to deal with breaches and to achieve high standards; and
- Ensures that the register of councillors' disclosable pecuniary interests is being maintained and considers applications in relating to the granting of dispensations.

4. Other Proper Officer roles

In addition to the above strictly Monitoring Officer roles this Report also covers other roles related to the Council's wider governance that do not necessarily result from the statutory functions of the Monitoring Officer. In particular, the roles of:

- Senior Responsible Officer in respect of the Regulation of Investigatory Powers Act and reporting on Covert Surveillance;
- Senior Information Risk Owner (SIRO), with overall accountability and responsibility for information risk within the Council and shared risks with delivery partners and third party suppliers. This includes leading and fostering a culture that values, protects and uses information for the public good;
- Deputy Returning Officer for Elections; and
- Nominated Officer point of contact for the Council's Whistleblowing policy.

This Report covers all of these various responsibilities.

5. Statutory Monitoring Officer Reports

There were no occasions where the Monitoring Officer had reason to believe that there was a likelihood that the Council was about to take a decision that would be unlawful or give rise to maladministration. Consequently, no reports have been issued to the council under Section 5(2) of the Local Government and Housing Act (1989).

6. The Constitution

Prior to her appointment, the Council had made a commitment to undertake and had commenced a review of the Constitution; the Monitoring Officer was consulted as part of this review. The proposed amendments were considered by the Audit & Governance Committee on 5th February 2020 whose role is to act as the custodian of the Constitution ensuring it remains a robust, fit for purpose document. Unfortunately, due to the COVID-19 pandemic, it has not yet been possible for these amendments to be considered by Full Council.

The Monitoring Officer is of the opinion that the Constitution, as a fundamental governance framework for the Council, should remain under constant review to ensure it remains a robust toolkit which can deliver decision-making at pace and with certainty for the council. The COVID-19 pandemic has required urgent revisions of the constitution [detailed within this report] to be implemented by the Monitoring Officer. Whilst the Constitution is effective in its current form, it is proposed that a further review of the Constitution is undertaken to build upon the work considered by the Audit & Governance Committee and the changes required due to COVID-19.

The Joint Standards Committee acts as the custodian of the Council's ethical governance framework. It is accepted by this Committee that a

review of the Members Code of Conduct is needed so as to incorporate where possible the findings arising from the Committee for Standards in Public Life and is awaiting receipt of the LGA's Model Code of Conduct to contribute to the review which is needed. The Monitoring Officer is of the opinion that the Member Code of Conduct and the Procedure for dealing with Complaints about Councillors is in need of review to ensure it can remain fit for purpose and supports fairness and transparency for all concerned.

7. Role of Governance, Risk and Assurance Group

The Council has an established Governance, Risk and Assurance Group, known hereafter as GRAG. The Monitoring Officer has taken responsibility for GRAG and has refreshed the terms of reference and membership of this group. There are clear reporting lines to CMT and to the Audit & Governance Committee and GRAG takes an active role in the preparation of the Annual Governance Statement. All aspects of the Council's governance framework are able to be reviewed by this Group.

The Monitoring Officer is working closely with the Corporate Director of Children, Education & Communities and the Corporate Director of Health, Housing & Adult Social Care across a range of governance improvement initiatives to address longstanding and systemic failures. For example, failures in Children's Social Care were identified when the new management team came into post. The Monitoring Officer is satisfied that the Senior Management Team have commissioned a range of external reviews to support improvement planning and established a new governance structure in the form of an Improvement Board for social care and one for SEND. Both of these have external representation and challenge and were in place prior to the Ofsted Focused visit and SEND inspection.

8. Opinions received from the Council's external regulators

Ofsted

On 3rd June 2020, the Council submitted a Written Statement of Action in response to the Local Area Inspection of Special Educational Needs and/or Disabilities.

Local Government and Social Care Ombudsman (LGSCO)

In 2019-2020 there were 44 cases received by the LGSCO. Of these:

- 17 were considered outside of the LGSCO's jurisdiction or closed after initial enquiries
- 4 no fault was found by the LGSCO
- 13 are ongoing
- 10 cases of maladministration without a report, were found

There were no cases resulting in maladministration with a public report under section 31 of the Local Government Act 1974.

The LGSCO publishes decision notices on its website in anonymised form whether or not a finding is made against the Council as well as in its annual review letter to the council.

Housing Ombudsman (HO)

In 2019-2020 there were 4 cases received by the HO. Of these:

- 0 were considered outside of the HO's jurisdiction or closed after initial enquiries
- 1 no fault was found by the LGSCO
- 0 are ongoing
- 3 cases of maladministration without a report, were found

There were no cases resulting in maladministration with a public report.

Information Commissioner (ICO)

We are not made aware of every concern or complaint against the council made to the ICO, however in 2019-2020 there were 7 cases in regards to FOI and EIRs where the ICO produced and published a decision notice. Of these:

- 3 were upheld in favour of the complainant
- 1 was not upheld
- 3 were partially upheld in favour of the complainant

Senior Information Risk Owner

In 2019-2020 the below information security incidents were recorded and investigated by the council:

- 850 automatically detected and blocked requests to malicious websites

- 15,830,996 phishing/scam emails and attempts by customers to visit malicious website were automatically blocked by the council's CYC's corporate malware detection services
- 238 scam/phishing emails, which managed to evade the corporate malware detection services, were reported by customers to ICT for the Information Security team to investigate.
- 5 potentially high risk information security incidents involving council information or systems, which could have potentially led to a data loss were investigated by the council
- 11 mobile phone/handsets were reported as lost or stolen
- 1 laptop was reported as lost or stolen

There were 257 potential breaches of data protection recorded and investigated by the council. Of these:

- 161 were near misses or had no further action to be taken
- 7 are ongoing
- 86 resulted in actions being taken to improve processes or to reduce further risk of human error

3 of the reported potential breaches and information security incidents were subject to onward reporting to the Information Commissioners Officer (ICO).

9. Response to COVID -19

Responding to Coronavirus required the Council to completely transform the way the council operates, reprioritising support to those most in need and to facilitate the ongoing delivery of critical services. This also included how the Council operates its governance and decision-making frameworks.

To ensure that the Council was still able to respond effectively the following amendments to the Constitution were implemented by the Monitoring Officer. These have all been published on the Council's website.

Urgent Decision Making Guidance implemented on 23rd March 2020

In the absence of being able to hold face to face member meetings due to the implications of the national lockdown, decision-making transferred to the Interim Head of Paid Service in consultation with key statutory officers such as the s151 Officer, Director of Public Health

and the Monitoring Officer. Decisions made were and continue to be published on the Council's website.

Remote Meetings Guidance to amend the Council's Standing Orders in the Constitution implemented on 29th April 2020

Following the implementation of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020, the Monitoring Officer amended the council's constitution to provide for remote member meetings. This amendment to the Standing Orders will remain in force until 7th May 2021, but remain under review in the meantime.

In response to these Regulations, the Council postponed its Annual Meeting on 21st May 2020, and all constitutional appointments remain in place.

Guidance for the delivery of Scrutiny issued on 19th May 2020

Recognizing that a vital aspect of the council's decision-making is the delivery of scrutiny, arrangements have been put in place to support meetings of the Customer and Corporate Services Scrutiny Management Committee [hereafter referred to as CCSSMC] which satisfies the requirements of the Local Government Act 2000 and Article 6 of the constitution]. The remaining scrutiny committees which form sub committees of the CCSSMC, will be supported informally. The delivery of scrutiny will remain under review.

10. Other Governance issues

Elections

The Council had conducted a number of national elections during this year and no petitions were received following the declaration of the respective results. The Monitoring Officer in her capacity as Deputy Returning Officer with Full Powers has liaised closely with the Electoral Commission in respect of delivery of the Elections, and has commenced plans for the delivery of the (now postponed) Police, Crime and Fire Commissioner election.

RIPA

Responsibility for overseeing the Council's activities under the Regulation of Investigatory Powers Act (RIPA) transferred from

Veritau to the Council's Monitoring Officer in March 2020. There were two RIPA applications authorised during this year. The Monitoring Officer acts as the Senior Responsible Officer and is supported by the Information Governance Manager. The Council's procedures have not been inspected by the Surveillance Camera Commissioner during this year.

Whistleblowing

The administration of the Whistleblowing Policy rests with the Head of Internal Audit who ensures that, where necessary, Audit & Governance Committee receive a report detailing the whistleblowing activity. The Council's Monitoring Officer acts as an Officer point of contact within the Council and liaises where necessary with the Head of Internal Audit.

Councillors' Code of Conduct

In 2019-2020 there have been a number of informal and formal complaints that councillors and parish councillors had allegedly breached the respective Codes of Conduct. The Joint Standards Committee has routinely received an update in respect of the progress of complaints received and has also held Sub-Committees to determine the outcome of some of the complex cases made.

The Council appoints Independent persons to assist it in determining any outcomes of an investigation.

Register of Councillors' disclosable pecuniary interests

All Councillors have made entries on their register of disclosable pecuniary interests. A number of councillors amended their entries during the year as their circumstances changed. This includes any declarations of gifts and hospitality received during the year.

Register of Officers' Interests

Managers continue to ensure that officers are aware of their obligations in respect of the Register of Officers' Interests. The register is maintained by the Monitoring Officer. This includes any declarations of gifts and hospitality received during the year.

11. Opinion of the Monitoring Officer

Based on her work to date, the Monitoring Officer is of the opinion that effective governance and assurance frameworks are currently in place but it is also acknowledged that action does need to be taken to ensure that the council's governance and ethical governance frameworks remain robust and fit for purpose.

Janie Berry
Director of Governance & Monitoring Officer
City of York Council

June 2020