

Meeting:	Audit and Governance Committee
Meeting date:	28/02/2024
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 November 2023
 - Corporate Governance Team (CGT) performance indicators update
 - Information Commissioners Office update
 - Ombudsmen update including
 - Local Government and Social Care Ombudsman (LGSCO) and Housing Ombudsman Service (HOS) cases from the previous report in November 2023 to date of preparing this report on 13 February 2024
 - Update on LGSCO and HOS complaint handling codes

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 provided with details and current performance from the Corporate Governance Team.

Background

5. Corporate Governance Performance Indicators Update

- 5.1 The full performance indicators are available on York Open Data at <https://data.yorkopendata.org/group/transparency>
- 5.2 Please see the performance report for Quarter 3 – 1 October to 31 December 2023 at Annex 1.
- 5.3 You will note that the performance report has been changed from how these are usually presented. These changes have been from comments and feedback and due to the current ongoing configuration and build of performance reports, following the implementation of a change to the case management system.
- 5.4 This work is taking longer than anticipated due to increased demands in the CGT due to staffing resource and capacity.

- 5.5 However I can confirm the performance data reported to this Committee and published for FOI/EIR when this work is completed, will show the full year data and the comparison data for previous years. It will meet the legislative requirements set out in part 8.5 of the [section 45 code of practice](#) as well as the additional ICO guidance [How to report on your performance on handling requests for information under FOIA 2000 | ICO](#) such as the number of requests subject to FOIA or EIR, the time period that the data is split into and performance against statutory timescales for FOI/EIR.
- 5.6 There has been an improvement in both the number of FOI/EIR and data protection subject access to records (SAR) requests responded to within the statutory timescale this quarter.
- 5.7 There has been an increase in this quarter of the number of 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
- 5.8 This is likely to be from the increased demand on these services and the restrictions the current budget and financial circumstances are placing on these services. However there has been improvements in number of complaints responded to in time in these areas in previous quarters and we will be able to show in future reports the full year data with previous years data for comparison.

6. ICO enforcement notice for overdue FOI and EIR responses

- 6.1 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 can be found at [20221003 EN template \(ico.org.uk\)](#)
- 6.2 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

- 6.3 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.
- 6.4 We have fully complied with the requirements set out in the enforcement notice. However, whilst the ICO group manager has acknowledged that we have complied fully with the requirements, they will not update the details on their website etc until the end of the 6-month period (13 March 2024)
- 6.5 The progress of our improvement plan is published on the council website at [Information Commissioner's Office \(ICO\) enforcement notice and improvement plan – City of York Council](#)
- 6.6 There has been no published ICO decision notices about the council's handling and responding to FOI/EIRs on their website.

7. Ombudsmen update

- 7.1 There were no HOS cases and six LGSCO decisions since the last report to Committee in November 2023 to date this report was prepared. Details of all the decisions including recommendations, remedies and actions are shown at Annex 2.
- 7.2 Of the six cases determined by the LGSCO, 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
 - 2 were upheld with fault and injustice
- 7.3 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.

8. Complaint handling codes

- 8.1 Following on from previous reports providing details of the HOS introduction of their Complaint Handling Code in July 2020 [Complaint Handling Code - Housing Ombudsman \(housing-](#)

[ombudsman.org.uk](https://www.ombudsman.org.uk)) and the annual assessment we now conduct and publish at [Housing Ombudsman Service - Complaint handling Code - Self Assessment form \(york.gov.uk\)](https://www.york.gov.uk) the LGSCO have now launched their Complaint Handling Code in February 2024 [Complaint Handling Code - Local Government and Social Care Ombudsman](https://www.york.gov.uk)

- 8.2 The Code does not replace any existing statutory complaint processes such as The Children Act 1989 Representations Procedure (England) Regulations 2006 or Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- 8.3 The LGSCO are encouraging councils to adopt it as soon as they can and will start to consider it as part of their processes from April 2026 at the earliest. This is to give councils the opportunity to adopt the Code successfully into working practices and to allow the LGSCO to work with a number of pilot councils to understand the impact of the Code and provide further guidance to all local councils.
- 8.4 We have been working on the possible implications and impacts from the launching of this Code including taking part in various network group discussions with the Ombudsman, completing the consultation and will now continue this work to ensure we adopt the code into our complaints handling policies and procedures as soon as possible and will provide updates to this Committee in future reports. This includes
- Review and update the corporate complaints policy and procedures to ensure it reflects the Code
 - The timescales to respond to complaints through the corporate complaints' procedures
 - The impact on the timescales for resources and capacity across the council
 - The impact on performance in responding to complaints across the council
 - Reviewing the data protection impact assessment
 - Completing a new equalities impact assessment for the new requirements from the Code
 - Developing and implementing a communications plan ensuring where required, any identified improvements to accessibility
- 8.5 If we do not ensure the Code and standards are adopted into our complaints handling, the LGCSO may make a finding of maladministration against us

Consultation Analysis

9. No consultation was undertaken for this report. However, feedback from reports to CMT, meetings and discussions with managers informs this report.
10. 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

11. 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.
12. 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
13. 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

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

Author

Name:	Lorraine Lunt
Job Title:	Information governance and feedback manager/DPO
Service Area:	Governance and Monitoring
Telephone:	01904 554145
Report approved:	Yes
Date:	19/02 /2024

Background papers

No papers but listed below the links to background information shown in the report

<https://data.yorkopendata.org/group/transparency>

[section 45 code of practice](#)

[How to report on your performance on handling requests for information under FOIA 2000 | ICO](#)

[20221003 EN template \(ico.org.uk\)](#)

[Information Commissioner's Office \(ICO\) enforcement notice and improvement plan – City of York Council](#)

[Complaint Handling Code - Housing Ombudsman \(housing-ombudsman.org.uk\)](#)

[Housing Ombudsman Service - Complaint handling Code - Self Assessment form \(york.gov.uk\)](#)

[Complaint Handling Code - Local Government and Social Care Ombudsman](#)

Annexes

- Annex 1 – Performance report
- Annex 2 – Ombudsmen cases