

## **ANNUAL REPORT OF THE MONITORING OFFICER**

### **1. Purpose/Summary**

To receive a report of the Monitoring Officer 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 2020-2021 but where necessary provides updated information from 1<sup>st</sup> April 2021, to the point of submission of the Annual Governance Statement in December 2021.

### **2. Information**

The Council's Director of Governance & Monitoring Officer has strategic management of the following services:

- Legal Services;
- Corporate Governance (information governance and customer complaints);
- Democratic Services & Civic Office;
- Elections;
- Internal Audit;
- Policy;
- Communications;
- Business Intelligence; and
- Carbon Reduction.

In preparing this Report, the Monitoring Officer has:

- Regularly met with the Council's Head of Paid Service and s151 Officer;
- Regularly met with the Head of Internal Audit and has had to opportunity to meet with the Council's External Auditor, Mazars where necessary;
- Regularly met with the Corporate Directors and the Director of Public Health;

- Been consulted on and contributed to the Council's current Code of Corporate Governance;
- Drafted the Council's Annual Governance Statement for 2020 - 2021; 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 assurance as to the effectiveness of the Council's decision-making framework. This has been particularly pertinent as the Council, for the totality of this period, has been responding to the Coronavirus Pandemic
- Considered the outcomes of reports prepared by the Council's regulators including any Peer Reviews.

### **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 they consider 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 roles, the Monitoring Officer also has a number of other roles and responsibilities. This Report covers these in so far as they relate to the Council's wider governance arrangements and 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. Report in the Public Interest issued by the Council's External Auditor on 19<sup>th</sup> April 2021.**

As detailed within the Annual Governance Statement, discussion with External Audit continued throughout 2020 – 2021 and this resulted in the issuing of the Report in the Public Interest. This Report was formally received by an Extraordinary Meeting of Full Council on 4<sup>th</sup> May 2021.

Prior to the publication of the Report in the Public Interest, External Audit has given an “except for” opinion in respect of value for money. In coming to this conclusion, the External Auditor considered the evidence in respect of the severance agreement with the former Chief Executive. In their Audit Completion Report conclusions, presented to the Audit & Governance Committee on 31<sup>st</sup> March 2021, four areas relating to elements of the exit package, content and form of the business case, decision records and safeguards to prevent conflict of interest, were highlighted which led them to the opinion that in respect of this decision, they were not satisfied that the Council had arrangements in place for acting in the public interest, through demonstrating and applying the principles and values of sound governance.

The Monitoring Officer, Section 151 Officer and the Head of HR, have taken all steps necessary to ensure that there has been prompt delivery against the agreed Action Plan for the Audit & Governance to consider. As well as the Audit & Governance Committee, GRAG [Governance, Risk and Assurance Group - *see section 7 below for further details*] and the Corporate Management Team receive regular updates in respect of progress of the Action Plan. However it is also acknowledged that the delivery of the Action Plan outcomes must be embedded across the Council.

The fundamental review of the constitution and the adoption of the Model Code of Conduct [both detailed within this report] are key aspects of ensuring long term robustness to the Council’s governance and assurance framework. The Monitoring Officer and the Section 151 Officer support the assistance offered by the Local Government Association in respect of both the short and longer term assurance assessments.

A detailed position, as at November 2021, is included within the Annual Governance Statement in respect of the progress made to deliver the Action Plan approved by Full Council in response to the Report in the Public Interest. The Audit & Governance Committee has continued to discuss progress and the LGA has been commissioned to provide Peer Support with an initial report being given to the Committee in December 2021 and a further report commenting on whether the work has been embedded as part of the refreshed governance culture in December 2022.

## 7. The Constitution

Almost immediately prior to the national lockdown in March 2020, the Audit & Governance Committee considered amendments to the constitution (a process which commenced in 2019). These amendments were approved by Full Council at its first virtual meeting during the lockdown in October 2020.

The Monitoring Officer has now undertaken a fundamental review of the constitution and a draft revised constitution was presented to the Audit & Governance Committee on 8<sup>th</sup> September 2021. The Committee has committed to reviewing the constitution as part of its work programme with a view to being in a position to recommend the same to Full Council for approval in December 2021.

During the lockdown, a plethora of legislation (Acts of Parliament, Regulations and Statutory Instruments) were issued and as such the current constitution was kept under continuous review and amendment so as to ensure there was no detriment in decision making process or the delivery of key services to residents. All such amendments were reported to the Audit & Governance Committee and Full Council.

Going forward, there is a commitment from the Monitoring Officer and the Audit & Governance Committee to undertake a six monthly review of the constitution and an annual fitness for purpose review to ensure it remains up to date and reflective of the Council's role and functions.

The Joint Standards Committee acts as the custodian of the Council's ethical governance framework. As such, the Committee has undertaken a review of the Members Code of Conduct and made a decision to recommend that Full Council adopt the LGA Model Code of Conduct. Full Council is being asked to adopt and immediately implement the same at its meeting in October 2021. The Monitoring Officer has remained of the view that the existing Member Code of Conduct, which is based on the LGA Model Code from 2012, is out of date and that the associated Procedures for dealing with Complaints about Councillors is in need of review. The Committee has agreed and these will be discussed at the meeting of the Joint Standards Committee on 23<sup>rd</sup> September 2021. To support the adoption and implementation of the LGA Model Code (2021 version) and the review of the procedures, the Council has commissioned the support of Hoey Ainscough who are nationally recognised experts in this field.

Member and Officer training hosted by Hoey Ainscough in respect of the LGA Model Code of Conduct and identification of conflicts of interest has already commenced.

#### Update November 2021:

As detailed within the Annual Governance Statement, the Audit & Governance Committee has progressed its work to review the constitution and has also sought the support of a cross party working group which met throughout October 2021, and early November 2021. The Committee intends to further consider the constitution at its meetings in November and December 2021 and thereafter, if in a position to do so will refer the constitution to Full Council for adoption and immediate implementation in December 2021.

The LGA Model Code of Conduct was approved and immediately adopted by Full Council on 21<sup>st</sup> October 2021. The Joint Standards Committee has now commissioned Hoey Ainscough Ltd to undertake a review of the supporting procedures and will consider the same at its meeting on 23<sup>rd</sup> November 2021. Once approved the Joint Standards Committee will recommend the same to Full Council for adoption and immediate implementation. Once approved, these procedures will be inserted into the Council's Constitution.

### **8. Role of Governance, Risk and Assurance Group**

The Governance Risk and Assurance Group, known hereafter as GRAG had continued to meet and its role as a source of assurance has become more embedded. The Council's Director of Public Health (and Calidicott Guardian) has now formally joined GRAG. There are clear reporting lines to Corporate Management Team and to the Audit & Governance Committee and GRAG takes an active role in the preparation of the Annual Governance Statement and has been consulted in the revisions to the Constitution. All aspects of the Council's governance framework are able to be reviewed by this Group.

During the national lockdown, GRAG played a key role in terms of information sharing to support assurance for example, raising awareness of potential concerns, agreeing proposals for alternative decision making procedures etc.

In the previous report, details were provided as to the steps being taken to address historic concerns in the Children's and Adults

Directorates respectively. During this year, the restructure of the Corporate Management Team has seen the formal amalgamation of the two Directorates into one People Directorate. In the last report the following comment was:

*“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.”*

During the course of this year, the People Directorate has brought regular briefing papers to the Corporate Management Team and to the Executive to ensure all are fully apprised of the progress being made but also to highlight staffing issues, aspects of reduced or severely limited resilience, budgetary concerns as well as [high level] major/complex cases.

## 9. Opinions received from the Council’s external regulators

### Local Government and Social Care Ombudsman (LGSCO)

In 2020-2021 there were cases received by the LGSCO. Of these:

Invalid or Incomplete	Advice Given	Referred Back for Local Resolution	Closed after Initial Enquiries	Not Upheld	Upheld	Total Investigated	Total	Uphold Rate (%)	Average uphold rate (%) of similar authorities
1	1	6	17	7	12	19	44	63%	63%

- The LGSCO published reports show the % of upheld decisions based only on the cases where they conduct a detailed investigation and for the council this year it was 63%.of all detailed investigation were upheld. This compares to an average of 63% in similar authorities. However when considered as a % of all cases received by the LGSCO that they have made a decision on, it is 27% were upheld.
- In 100% of cases the LGSCO was satisfied that the council had successfully implemented their recommendations. This

compares to an average of 99% in similar authorities.

- In 17% of upheld cases the LGSCO found the council had provided a satisfactory remedy before the complaint reached them. This compares to an average of 10% in similar authorities. In practice this means that although the LGSCO found there had been fault, the authority had already acknowledged this and provided an appropriate remedy.

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 Service (HOS)

In 2020 to 2021 there were 6 cases determined by the HOS, of these:

- 5 were upheld as maladministration without a public report
- 1 was not upheld as the council had already offered a satisfactory remedy

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 2020-2021 there were 3 cases in regards to FOI and EIRs where the ICO produced and published a decision notice. Of these:

- 2 were upheld in favour of the complainant
- 1 was partially upheld in favour of the complainant.

## Senior Information Risk Owner

In 2020-2021 the below information security incidents were recorded and investigated by the council:

<b>Incident</b>	<b>1 April 2020 – 31 March 2021</b>	<b>1 April 2019 – 31 March 2020</b>
Automatically detected and blocked requests to malicious websites	383032  (Significant difference from last year due to revised method of reporting)	850
Scam/phishing emails, which managed to evade the corporate malware detection services, which were reported by customers to ICT for the Information Security team to investigate	16,373,193	15,830,996
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	278	238
Potentially high risk information security incidents involving council information or systems, which did or could have potentially led to a data loss, and which were investigated by the council	1	5
Mobile phone/handsets which were reported as lost or stolen	3	11
Laptops which were reported as lost or stolen	Waiting for figures from: <a href="mailto:insurance.claims@york.gov.uk">insurance.claims@york.gov.uk</a> . As soon as we receive the figures, ICT Info	1

There were 239 potential breaches of data protection recorded and investigated by the council which is a small decrease from the previous year 228 of these were found to be actual breaches. Of these:

- 109 were near misses or had no further action to be taken
- 119 resulted in actions being taken to improve processes or to reduce further risk of human error

There was a small decrease in the number of significant breaches we notified and reported to Information Commissioners Office from 3 in 2019-2020 to 2 in 2020-2021.

## **10. Response to Coronavirus Pandemic**

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. Details as to the Council's response to the Coronavirus Pandemic are contained within the Annual Governance Statement prepared for 2020-2021. However the procedures put in place to enable decision making to continue and at pace were successful with the Council delivering a wide range of remote meetings including Full Council.

## **11. Other Governance issues**

### Elections

The Council successfully delivered the Police, Fire and Crime Commissioner Election for York in May 2021. Due to Coronavirus Pandemic, the planning and overall delivery of the election was

fundamentally reviewed as a result of a number of challenges including difficulties with the recruitment of staff, a large proportion of the polling stations not being accessible and a change in count venue to allow for social distancing. The Director of Governance & Monitoring Officer in her capacity as Deputy Returning Officer with Full Powers has liaised closely with the Electoral Commission throughout the process and actively involved key stakeholders including North Yorkshire Police in the wider planning and lessons learned. It is now essential that work commences to plan for the 2023 City Elections.

#### Update November 2021:

Due to the resignation of the North Yorkshire Police, Fire and Crime Commissioner, a by-election has been called with Polling Day on 25<sup>th</sup> November 2021. Lessons Learned from the May election have been put into practice for this by-election and engagement continues with the Electoral Commission to ensure all project plans and performance measures and risks and integrity planning are in place.

#### 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. We are reviewing the policy and procedures for Covert Surveillance Policy - RIPA and IPA - including use of social media to ensure we have effective and efficient processes (including the provision of training) in place for the operation of the council's actions with regard to covert surveillance and Covert Human Intelligence Sources (CHIS) and that we meet the Investigatory Powers Commissioner's Office (IPCO) requirements for these. There will also be a programme of work with Elected Members/Audit and Governance Committee to enable them to conduct an annual "fit for purpose" review. The Council was not inspected during this year but was notified the IPCO would conduct their inspection on 27<sup>th</sup> August 2021.

#### Update November 2021:

The outcome of the inspection has now been received and in conclusion, the IPCO is content with the work undertaken to date and has not highlighted any major concerns with the Council's procedures.

## 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 2020-2021 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. However during this year, both Independent Persons have indicated that they wish to cease undertaking this role. A recruitment exercise to attract new Independent Persons was unsuccessful and therefore steps are being taken to review options; this includes the re-convening of the Independent Remuneration Panel.

## 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.

## **12. Opinion of the Monitoring Officer**

Based on the 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 and that such activity must remain under constant review.

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

October 2021  
Updated November 2021