

Cherwell District Council

Council

28 February 2018

Monitoring Officer Annual Report 2017
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Report of Monitoring Officer

This report is public

Purpose of report

To provide an overview of the work of the Monitoring Officer in the past year.

1.0 Recommendation

The meeting is recommended to:

- 1.1 Note the Monitoring Officer's Annual Report

2.0 Introduction

- 2.1 This is the first Annual Report of the Monitoring Officer covering the period January 2017 to December 2017. The purpose of the report is to provide an overview of the work of the Monitoring Officer in the past year, (including the Monitoring Officer's statutory responsibilities) and summarises how these duties have been discharged.

3.0 Report Details

- 3.1 The role of the Monitoring Officer derives from the Section 5 of the Local Government and Housing Act 1989 (as amended by Schedule 5 paragraph 24 of the Local Government Act 2000)(the **Act**) The Act requires local authorities to appoint a Monitoring Officer. The post of Monitoring Officer was held by Kevin Lane until his retirement on 30 June 2017 and by James Doble from 1 July 2017.
- 3.2 The Monitoring Officer has the specific duty to ensure that the Council, its Officers, and its Elected Members, maintain the highest standards of conduct in all they do. The three main roles of the Monitoring Officer are set out and explained below.
- 3.3 The Monitoring Officer has a pro-active role in promoting good practice, good procedures and good governance. This involves networking, collaboration and joined-up working practices and decision making as well as ensuring standing orders, codes of practice and procedures are kept under review and up to date.

- 3.4 Collaborative working entails regular weekly meetings with the Chief Executive, the Chief Finance Officer (S151 Officer), Executive Directors and Assistant Directors as well as working in partnership with officers to develop and disseminate policies and procedures. The Monitoring Officer also undertakes partnership work with other authorities.
- 3.5 In order to ensure separation of roles, the Monitoring Officer may not also fulfil the duties of the Chief Finance Officer or the Head of Paid Service.

The Monitoring Officer has three main roles:

1. To report on matters which are illegal or amount to maladministration

- 3.6 The Monitoring Officer has a duty to write a report if he considers any proposal, decision, or omission made by the Council, or on behalf of the Council, is illegal or would be illegal. This is not a duty to write a report every time an allegation of illegality is made, but only if in his personal opinion that it did, or will occur.
- 3.7 The duty is a personal duty, and the Monitoring Officer cannot delegate it to someone else unless he is ill or away, in which case the Deputy Monitoring Officers can take over the role. The Deputy Monitoring Officers will also act when the issue involves the Monitoring Officer himself, or regards some advice he has previously given. The Monitoring Officer has designated the Interim Legal Services Manager and Team Leader – Non Contentious Business to fulfil the positions of Deputy Monitoring Officer.
- 3.8 The Monitoring Officer is the Council's lead adviser on issues of lawfulness and the Council's powers and, in consultation with the Head of Paid Service and the Chief Finance Officer (S151 Officer), advises on compliance with the Budget and Policy Framework. Part of this role involves monitoring Committee reports, agendas and decisions to ensure compliance with legislation and the Constitution. This aspect is covered in more detail later in this report.
- 3.9 The sound governance arrangements operated by the Council ensure that the power to report potentially unlawful decision making is rarely used and the Monitoring Officer has not had to issue such a report in the period this report covers.

2. To be responsible for Matters relating to the conduct of councillors and officers.

Councillor Code of Conduct

- 3.10 The Monitoring Officer contributes to the promotion and maintenance of high standards of conduct by councillors and officers both generally and through support to Committees and advising members on the interpretation of the Code of Conduct. The current Standards Regime, set up under the Localism Act 2011, was implemented by these Councils in 2012.
- 3.11 The Code of Conduct of relevant authorities must include provision for the registration and disclosure of "disclosable pecuniary interests", as defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. Members

with Disclosable Pecuniary Interests in the business of their authorities are prohibited from participating in such business unless they have a dispensation. The Localism Act 2011 introduced criminal offences relating to failure to register Disclosable Pecuniary Interests. Members convicted of such offences are liable to a scale 5 (£5,000) fine and may also be disqualified from being a councillor for up to five years.

- 3.12 The prohibitions on councillors participating in any discussion or vote on an item of Council business in which they have a Disclosable Pecuniary Interest ensures that Councillors cannot put their private financial interests before the public interest. However, where a Councillor has a Disclosable Pecuniary Interest but stands to make no personal financial gain by participating in a discussion or vote on Council business related to that interest, they can apply for a dispensation, under section 33 of the Localism Act 2011. The grounds for granting a dispensation will depend on the circumstances.
- 3.13 There is an Oxfordshire-wide Code in Cherwell and in Northamptonshire a shared Code is also in place amongst many councils including South Northamptonshire. The Codes of Conduct are available on the respective websites:
[Cherwell Code of Conduct](#) / [South Northamptonshire Code of Conduct](#)
- 3.14 At the time the new Codes of Conduct were introduced in 2012, both Cherwell District Council and South Northamptonshire Council encouraged all Town and Parish Councils within their respective areas to adopt the Council's Code. This was accepted by all Town and Parish Councils with the exception of one Council in Cherwell which has adopted the National Association of Local Councils' model.
- 3.15 The Localism Act 2011 makes no provision for sanctions against Members who are found to have breached the codes of conduct of their authorities. However, authorities are able to censure members, to publicise breaches of their codes of conduct, to report to their Councils and to recommend that members are removed from positions on committees and outside bodies.
- 3.16 Members are also required to declare to the Monitoring Officer gifts / commercial sponsorship / hospitality received in connection with the position or duties as an elected Member of Cherwell or South Northamptonshire. For South Northamptonshire Members, a gift or hospitality with an estimated value of at least £50 must be declared. Cherwell Members must declare gifts or hospitality with an estimated value of at least £25.

Complaints against Members

- 3.17 16 complaints have been received at Cherwell CDC and 8 at South Northamptonshire SNC between January and December 2017. It should be noted that these figures do not reflect telephone enquiries which were not progressed or the number of calls and interactions regarding each complaint. Many of the complaints investigated have been complex in nature and have taken considerable time to resolve. An overview of the complaints received is set out in Table 1 (CDC) and Table 2 (SNC) below.
- 3.18 In the case of enquiries relating to Parish Councils, it should be noted that many enquiries are received relating to Parish Councils but relate to the Parish Council as a whole as opposed to individual councillors and are outside the jurisdiction of the

Monitoring Officer. This situation would be greatly eased by the creation of an ombudsman for Parish Councils; unfortunately such legislation has not yet been enacted by parliament.

- 3.19 The Monitoring Officer is fortunate in having access to three independent persons at each council who have provided excellent support, guidance and opinions in the assessment of complaints and have been invaluable during the course of the year.

Table 1

CDC Standards Complaints Received 1 January 2017 - 31 December 2017		
	Parish	Result
Complaint against Parish Council	Sibford Gower	Investigated. Breach - local resolution recommended. Statement of apology to be minuted.
Complaint against Parish Councillor	Gosford & Water Eaton	Investigated - complaint not upheld. Complaint against Parish Council not individual councillor.
Complaint against District Councillor	Banbury	Not investigated. Complaint about highways - not Cherwell, complainant referred to county Highways.
Complaint against District Councillor	Mollington	Investigated - no breach found
Complaint against Parish Councillor	Sibford Gower	Investigated upheld in part. Breach - local resolution recommended. Statement of apology to be minuted.
Complaint against District Councillor	Mollington	Investigated - no breach found
Complaint against Parish Councillors	Swalcliffe	Councillor 1 - no further action Councillor 2 referred to Police as failure to disclose Disclosable Pecuniary Interest to Monitoring Officer.
Complaint against Parish Councillor	Steeple Aston	Complaint form requested - no response received from complainant
Anonymous complaint against Parish Councillors	Adderbury	Not progressed as complainant wanted to remain anonymous
Complaint against District Councillor	N/A	Private matter not investigated as a standards complaint
Complaint against Parish Councillor	Sibford Gower	Investigated. Breach to code. Local resolution, Councillor to apologise to complainant at next Parish Council meeting and apology minuted.
Complainant against Parish Councillor	Adderbury	No breach - no further action required.
Complaint against Parish Councillor	Gosford & Water Eaton	Complaint against Parish Council not individual councillor - no further action we can take
Complaint against Parish Councillor	Gosford & Water Eaton	This was answered in the first complaint.
Complaint against Parish Councillors	Adderbury	Alleged fraud. Monitoring Officer decision: no complaint to answer - matter not investigated.
Complaint against Parish Councillors	Kidlington	Monitoring Officer to investigate alleged breach of the Localism Act.

Table 2

SNC Standards Complaints Received 1 January 2017 - 31 December 2017		
	Parish	Result

Complaint against District Councillor	Chipping Warden	Complaint investigated - no breach found
Complaint against Parish Councillor	Upper Boddington	3 part complaint - 1 upheld - 2 not upheld. Part 1 apology to be made at next Parish Council meeting.
Complaint against Parish Councillor	Cosgrove	Complaint investigated, councillor resigned so investigation halted
Complaint against Parish Councillor	Paulerspury	Not progressed as complaint was against Parish Council not individual councillor
Complaint against Parish Councillors	Pattishall	Investigated - all found to be no breach
Complaint against Parish Councillor	Deanshanger	Investigated - no breach found
Complainant against Parish Councillors	Syresham	Councillor 1 and 2 - No breach - matter won't be progressed. Councillor 3 - breach - resolution of a public apology.
Complainants against Parish Councillor	Boddington	No breach - local resolution, apology to be made at next Parish Council meeting and recorded in minutes.

Officer Code of Conduct

- 3.20 The Officer Code of Conduct forms part of the employees' terms and conditions of employment. The Code is well publicised on the Council's internal intranet and is introduced to employees through the induction process.
- 3.21 Under the Code employees must declare any non-financial or financial interests that they or members of their family have which they consider could conflict with the Council's interests. Chief Officers and the Chief Executive declarations on non-financial or financial interests are declared to the Monitoring Officer.
- 3.22 All relationships of a business or private nature with external contractors, or potential contractors should be made known to the employees' Managers and Chief Officers.
- 3.23 All hospitality received and given should be appropriate, necessary and must, wherever possible, have a prior sanction of the relevant Chief Officer and must be recorded.

Whistleblowing

- 3.24 The Councils are committed to having effective whistleblowing arrangements, in order to safeguard individuals who have genuine cause for raising concerns in the work place and to promote good governance and safeguard the public interest.
- 3.25 The Council's Whistle Blowing Policy sets out how to raise concerns within the organisation and is designed to give statutory protection to employees who "blow the whistle" on their employer's malpractice. In addition, the Council aims to mitigate the risk of inappropriate behaviour by those undertaking work on behalf of the Council and the Council refers to this Policy in contracts with suppliers and service providers, in the Procurement Guide and in its partnership arrangements.
- 3.26 The Council takes seriously and will investigate all reports of improper activities. The Policy aims to ensure that when concerns are raised, the Council will address the concerns and protect the person raising the concern.

3.27 In the last calendar year no formal concerns have been raised under the Council's current Whistle Blowing Policy.

3. To be responsible for the operation of the Council's constitution.

3.28 The Constitution sets out how the Council operates and how decisions are made. It sets out the procedures which are followed to ensure that these decisions are efficient, transparent and that those who make the decisions are accountable to local people.

3.29 The Monitoring Officer is responsible for ensuring that the Constitution operates efficiently, is properly maintained and is adhered to. In matters of interpretation of the Constitution's Rules and Procedures, the Monitoring Officer is responsible for making a determination if necessary.

3.30 The Monitoring Officer is responsible for assessing the effectiveness of the constitution and recommending changes in the light of legislation or best practice. The Monitoring Officer may make factual changes to the Constitution as necessary in order to ensure that the Constitution complies, and keeps up to date, with the law.

3.31 Any significant proposed amendments to the Constitution shall be agreed by Council. The Monitoring Officer shall ensure that, where appropriate, members of relevant Council committees are consulted on proposed amendments, prior to their consideration by Council and that the responses to the consultation are included in any subsequent report. A review of the constitutional and governance arrangements is currently under way.

3.32 The Monitoring Officer ensures that agendas, reports and minutes of all Council meetings are made publicly available unless there is a reason for exemption under the Local Government Act 1972. In addition Lead Member decisions at Cherwell are also made publicly available subject to the same caveat as are all planning and licensing decisions made by Officers including other Officer delegated decisions as required by the new legislation entitled "The Openness of Local Government Bodies Regulations 2014".

3.33 The distribution and publication of committee reports, agendas and decisions is central to meeting the requirements of a key deliverable. It is the Monitoring Officer's responsibility to oversee the process and ensure that these documents comply with statutory and constitutional requirements. This includes:

- Distributing and publishing all agendas within five clear working days of the meeting taking place and ensuring that all agenda are compliant with the access to information rules and exempt information is marked up accordingly. Advertising public meetings five clear days before the meeting date. Ensuring that papers are made available to the public.
- Giving the required 28 days notification of key decision to be taken.
- Publishing a record of all decisions including key decisions taken by Cabinet/Executive within 24 hours of the meeting.
- Ensuring that petitions are handled in accordance with the Council's Constitution including e-petitioning.
- Ensuring that meetings are accessible.

- Complying with the requirements of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- The Openness of Local Government Bodies Regulations 2014.

Statutory Meeting Analysis

3.34 Between 1 January 2017 and 31 December 2017, Tables I and II set out the number of meetings that were serviced by the Democratic and Elections team. With the exception of Council and Executive/Cabinet, Communications Advisory Panel and Community Funding Panel, the number of meetings in Table I include the first meeting of the 2018/2019 municipal year held at the conclusion of the Annual Council meeting at which the Chairman and Vice Chairman were appointed. Where there is an equivalent committees in table I, these have been listed against each other.

Table I

CDC		SNC	
Council	6	Council	7
Executive	12	Cabinet	10
Accounts, Audit & Risk	6	Audit	7
Appeals Panel	2	Appeals	2
Budget Planning	9	Budget & Financial Strategy	10
Personnel	1	Appointments & Personnel	1
Planning	14	Planning	13
Overview & Scrutiny	9	Scrutiny	9
Standards	1	Standards	1
Licensing	1	Licensing	1
Licensing Sub-Committee	4	Licensing Sub-Committee	0
		Planning Policy & Regeneration Strategy	7
		Communications Advisory Panel (informal meeting)	4
		Community Funding Panel (informal meeting)	4

Table II

Joint (SNC and CDC only)	
Joint BPM (not a formal committee)	2
Joint Commissioning Committee	13
Joint Councils Employee and Engagement Committee	4

3.35 The volume of meetings represents a substantial commitment of both Councillors' and Officers' time and resources. It is of great importance that meetings constitute an effective use of time and resources; that they add value to corporate effectiveness and help in meeting the aims and objectives of the Constitution and Council.

4.0 Conclusion and Reasons for Recommendations

- 4.1 The law requires every local authority (except parish or town councils) to designate one of its senior officers as the Monitoring Officer and the role of the Monitoring Officer has been set out in this report.
- 4.2 The Monitoring Officer's role encompasses both proactive and reactive elements. The proactive role centres on raising standards, encouraging ethical behaviour, increasing awareness and utilisation of the elements of good governance and ensuring that robust procedures are in place. The reactive role focuses on taking appropriate action to deal with issues and potential problems as they arise.
- 4.3 This Annual Report is submitted to Council for information.

5.0 Consultation

None in relation to the production of this report

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

No alternative options have been identified

7.0 Implications

Financial and Resource Implications

- 7.1 There are no financial implications arising directly from this report.

Comments checked by:

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Legal Implications

- 7.2 This report has been prepared by the Monitoring Officer and legal implications have been included in the report.

Comments checked by:

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Risk Implications

- 7.3 It is important that the council has robust procedures in place. This report has been provided to appraise members of the arrangements that are in place to mitigate risk to the councils.

Comments checked by

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8.0 Decision Information

Wards Affected

All.

Links to Corporate Plan and Policy Framework

The Monitoring Officer is a statutory appointment under Section 5 of the Local Government and Housing Act 1989

Lead Councillor

Councillor Barry Wood (CDC) and Councillor Phil Bignell (SNC)

Document Information

Appendix No	Title
None	
Background Papers	
None	
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