

Report Title:	Monitoring Officer Annual Report
Contains Confidential or Exempt Information	Main report - No - Part I; Appendix 1 – Yes - Not for publication by virtue of paragraphs 1 and 2 of Part 1 of Schedule 12A of the Local Government Act 1972.
Lead Member:	Councillor Rayner, Deputy Leader of the Council, Resident and Leisure Services, HR, IT, Legal, Performance Management and Windsor; Armed Forces Champion
Meeting and Date:	Member Standards Panel 12 April 2021
Responsible Officer(s):	Emma Duncan Monitoring Officer and Deputy Director of Law and Strategy
Wards affected:	All

REPORT SUMMARY

This report introduces the Annual Monitoring Officer Report as required under the Council's Constitution which Members are asked to note.

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That the Member Standards Panel notes the report.

2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

N/A

3. KEY IMPLICATIONS

N/A

OPTIONS

4.1 Members are asked to note the report.

4. CONSULTATION

4.1 N/A

5. TIMETABLE FOR IMPLEMENTATION

5.1 Not subject to call in

6. APPENDICES

6.1 The Monitoring Officer's report is supported by 1 Appendix:

- Appendix 1 EXEMPT – details of complaints where maladministration has been found - **Not for publication by virtue of paragraphs 1 and 2 of Part 1 of Schedule 12A of the Local Government Act 1972**

7. BACKGROUND DOCUMENTS

7.1 This report is supported by 0 background documents:

8. CONSULTATION (MANDATORY) – not relevant as this relates to the discharge of a statutory function.

Name of consultee	Post held	Date sent	Date returned
Cllr Rayner	Deputy Leader of the Council, Resident and Leisure Services, HR, IT, Legal, Performance Management and Windsor; Armed Forces Champion		
Duncan Sharkey	Managing Director		
Adele Taylor	Director of Resources/S151 Officer		
Andrew Durrant	Director of Place		
Kevin McDaniel	Director of Children's Services		
Hilary Hall	Director of Adults, Health and Commissioning		
Andrew Vallance	Head of Finance		
Elaine Browne	Head of Law		
Nikki Craig	Head of HR Corporate Projects and IT		
Louisa Dean	Communications		
Karen Shepherd	Head of Governance		

REPORT HISTORY

Decision type:	Urgency item?	To follow item?
Member Standards Panel to note	No	No

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Monitoring Officer
Annual Report 2020/21
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Monitoring Officer Annual Report 2020/21

1. Introduction

1.1 The Monitoring Officer's Annual Report summarises the more important matters arising from the Monitoring Officer's work for the Council from 1 April 2020 to 31 March 2021 and comments on other current issues.

1.2 Corporate Governance is the system by which local authorities direct and control their functions and relate to their communities. It is founded on the fundamental principles of openness, integrity and accountability together with the overarching concept of leadership. In this respect, RBWM recognises the need for sound corporate governance arrangements and has put in place policies, systems and procedures designed to achieve this.

1.3 The Monitoring Officer is appointed under Section 5 of the Local Government and Housing Act 1989 and has a number of statutory functions in addition to those conferred under the Local Government Act 2000 and subsequent regulations governing local investigations into Member conduct. These are outlined in the next section of the report.

2. The Monitoring Officer's Work April 2020 – March 2021

- 2.1 Mary Severin performed the role of the Monitoring Officer of the Council until 1 February 2021 and following the appointment of Emma Duncan (Deputy Director Law and Governance) she has carried out the statutory functions since that time. She is supported by three Deputy Monitoring Officers, Mary Severin, Elaine Brown (Head of Law) and Karen Shepherd (Head of Governance).
- 2.2 The three statutory officers (The Head of Paid Service, the S151 Officer and the Monitoring Officer), often called the “golden triangle” have specific roles within the organisation and responsibility, with other officers and with senior members. The Statutory Officers together with their deputies, form the Statutory Officers Group that meets regularly and provides advice to the authority as a whole on the governance framework.
- 2.3 Good governance is a critical part of engendering trust with communities and importantly reduces the risk of organisational failures.
- 2.4 It is acknowledged that many of the systems and behaviours that underpin good governance at the Royal Borough were either underused or absent. Significant progress has been made in the past year or so in terms of strengthening the framework but there are still elements that are weak in the structure.
- 2.5 The more significant issue for the authority is engendering a culture of good governance throughout the officer and Member cohorts. These behavioural issues are now acknowledged as the key factor in building a robust governance framework.
- 2.6 Following recent high profile governance failures in local government, the Centre for Governance and Scrutiny (CfGS) undertook a research piece to produce a new [Governance Risk and Resilience Framework](#), which identifies behaviours that support a healthy governance environment and the work behind the Annual Governance Statement and the CIPFA principles in “[Delivering Good Governance](#)”.
- 2.7 The behaviours are as follows;
- **Extent of recognition of individual and collective responsibility for good governance.** *This is about ownership of governance and its associated systems;*
 - **Awareness of political dynamics.** *This is about the understanding of the unique role that politics plays in local governance and local government. Positive behaviour here recognises the need for the tension and “grit” in the system that local politics brings, and its positive impact on making decision-making more robust;*
 - **How the council looks to the future to set its decision-making priorities.** *This is about future planning, and insight into what the future might hold for the area, or for the council as an institution and includes the way the council thinks about risk;*
 - **Officer and councillor roles.** *Particularly at the top level, this is about clear mutual roles in support of robust and effective decision-making and oversight. It also links to communication between key individuals, and circumstances where ownership means that everyone has a clear sense of where accountability and responsibility lie;*
 - **How the council's real situation compares to its sense of itself.** *This is about internal candour and reflection; the need to face up to unpleasant realities and to listen to dissenting voices. The idea of a council turning its back on things “not invented here” may be evidence*

of poor behaviours, but equally a focus on new initiatives and “innovation” as a way to distract attention, and to procrastinate, may also be present;

- **Quality of local (external) relationships.** *This is about the council’s ability to integrate an understanding of partnership working and partnership needs in its governance arrangements, and about a similar integration of an understanding of the local community and its needs. It is about the extent to which power and information is shared and different perspectives brought into the decision-making, and oversight, process;*
- **The state of member oversight through scrutiny and audit committees.** *This is about scrutiny by councillors, and supervision and accountability overall.*

2.8 Some work (described later in the report) has started to address these factors and will be used moving forward as a basis for identifying areas of risk for the authority in its governance frameworks.

3. The Monitoring Officer duties

Duties	Work undertaken
<p>1. Maintaining the Constitution.</p> <p><i>The Monitoring Officer will maintain an up to date version of the Constitution and will ensure that it is widely available for consultation by Members, staff and the public.</i></p>	<p>A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended.</p> <p>To achieve this the Monitoring Officer has;</p> <ul style="list-style-type: none"> • observed meetings of different parts of the Member and Officer structure; • undertaken an audit trail of a sample of decisions; • recorded and analysed issues raised with him/her by Members, Officers, the public and other relevant stakeholders and • compared practices in this Council with those in other comparable authorities, or national examples of best practice. <p>During the year the Constitution has been updated a number of times to reflect best practice and provide clarification with the principles that are articulated within the Constitution.</p>
<p>2. Ensuring lawfulness and fairness of decision making.</p> <p><i>After consulting with the Head of Paid Service and Director of Resources, the Monitoring Officer will report to the Council or to Cabinet in</i></p>	<p>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. Counsel’s advice has been sought by the Monitoring</p>

relation to an executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

Officer to clarify the position where necessary and to ensure effective discharge of the function.

Consequently, no reports have been issued to the council under Section 5(2)(a) of the Local Government and Housing Act (1989).

The Monitoring Officer is a member of the Council's Director's Team, Statutory Officer Group and Corporate Leadership Team, together with the Head of Paid Service and the s151 Officer and is able to comment on issues discussed there.

The Council's legal team provider SLS provide advice and assistance to officers throughout the Council and report to the Monitoring Officer on any areas of concern in relation to lawfulness and compliance with the Council's protocols and processes.

SLS assess and respond to either changes in the legal framework and in particular this year, with Democratic Services have implemented the remote meeting provisions.

The Monitoring Officer and her teams attend meetings and provide advice to officers and Members at an early stage, including seeing reports to committee prior to publication.

Officers have been trained in Member/Officer roles so it is clear where and by whom the decision is being made.

The Monitoring Officer also requires appropriate recording of delegated authority to evidence compliance with the Constitution. These procedures have been reviewed and updated in light of the ongoing pandemic.

There have been a number of issues with member behaviour at meetings of the Council leading to reputational issues for RBWM.

In terms of Ombudsman complaints there have been 8 where maladministration was found and these are detailed in Appendix 1. Discharging the Monitoring Officer responsibility under

	s5(2)(b) of the Local Government and Housing Act 1989
<p>3. Proper Officer for access to information.</p> <p><i>The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.</i></p>	The Head of Governance has refreshed the officer decision making recording process and guidance to provide clarity.
<p>4. Advising whether Cabinet decisions are within the budget and policy framework in accordance with the requirement under the Budget and Framework Rules.</p> <p><i>The Director of Resources in consultation with the Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.</i></p>	Both the Monitoring Officer and s151 Officer and their deputies see reports prior to publication and advise on the Budget and Policy Framework rules.
<p>5. Providing advice.</p> <p><i>The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors and will support and advise councillors and officers in their respective roles.</i></p>	The Monitoring Officer and Deputies regularly advise officers and Members on issues of lawfulness including seeking external legal opinion where necessary.
<p>6. Contributing to corporate management.</p> <p><i>The Monitoring Officer will contribute to the corporate management of the Council, in particular through the provision of professional advice on the lawfulness or probity of any matter.</i></p>	<p>The Monitoring Officer is a member of the Council's Director's Team, Statutory Officer Group and Corporate Leadership Team. The Head of Law and the Head of Governance both sit on CLT.</p> <p>The Council has increased capacity for governance in the past year, including the appointment of a full time Monitoring Officer and the creation of a new corporate core directorate to build capability and to spin out consistent governance standards and processes throughout the rest of the organisation so underpin decision making. This is part of the</p>

	governance strand of the interim strategic position and the “investing in strong foundations” work identified as part of the Council’s values.
7. Overseeing breaches of the tendering rules	No breaches have been reported. This is an area where further work is needed to ensure systems are working effectively.
8. To set out guidance for Directors for the preparation of directorate registers of interests.	The appraisal form has been updated to include this requirement.
9. To monitor the operation of the Members’ Code of Conduct.	In the current municipal year the Monitoring officer has received 36 complaints. The number of complaints are significantly up on previous years and is mainly in relation to matters that are connected to RBWM Members. The majority of complaints do not meet the threshold for investigation however they have required quite significant resource to process and have not contributed to the raising of standards at the authority.
10. To promote and maintain high standards of conduct by Members, co-opted Members, including church and parent governor representatives	Following the appointment of the new Monitoring Officer and Deputy Director a new approach has been taken to dealing with complaints following the model identified by the Committee on Standards in Public Life in their best practice recommendations. This focuses on raising standards across the board, rather than seeking to use the Code as a way of resolving minor issues, which is costly, time-consuming and can be counter productive. This is resulting in behaviour being addressed more effectively than it would potentially be through the formal Code of Conduct routes.
11. To assist Members, co-opted members, including church and parent governor representatives, to observe the Members’ Code of Conduct	The Monitoring Officer has met with the Group Leaders to discuss the new approach to standards within the existing framework and has also met with other Members to discuss behaviour at the Council so that there is a clear understanding of how issues are approached and behaviours addressed.
12. To recommend to the Council on the adoption or revision of its Members’ Code of Conduct	The Member Standards Panel are considering the adoption of the LGA Model Code at their next meeting.
11. Advising, training or arranging to train Members, co-opted members and church and parent governor representatives on matters relating to the Members’ Code of Conduct;	Members have been trained on the Code, including common issues that have arisen around social media and Member/Officer roles. However it is the application of the Code and

	<p>the understanding of Members as to “how we do things around here” that is important.</p> <p>The Member training budget has been cut to £500 for the year and this represents a potential risk to the Council as development of Members is a key area for governance.</p>
12. To consider an annual report on Member Standards by the Monitoring Officer	This is the annual report.
13. To maintain and keep up to date a register of Members’ interests	<p>All Members of both the Borough and Parish Councils completed new returns following the 2019 elections and subsequent by-elections. Members are reminded to keep these up to date on a regular basis.</p> <p>The Register of Members’ Interests is published on the Council’s website.</p>
14. To prepare and keep under review a protocol for managing Member and officer relationships.	<p>Members and CLT have had training on the Member Officer Protocol. There is a need to train Members and Officer further on this aspects and will be picked up as part of the work on the Risk and Resilience Framework.</p>

3. Key Messages

3.1 The key messages to note from the year are:

- (i) The systems of internal control administered by the Monitoring Officer including compliance with the Council’s Constitution were adequate and effective during the period for the purposes of the latest Regulations at a minimum level.
- (ii) The Constitution continues to be regularly updated.
- (iii) Whilst there are no significant systems of governance control absent, the issue is the culture and behaviours around them, including Member behaviour. This does need to be addressed as it presents a significant risk of governance failure for the authority.
- (iv) The Code of Conduct process was being used for minor issues resulting in large numbers of complaints. This has now been addressed for the moment, but the progress made, needs to be embedded.

4. Looking Forward

The key issues for 2021/22 are as follows;

4.1 Code of Conduct

4.1.1 The Member Code of Conduct is being considered by the Member Standards Panel.

4.2 Corporate Governance Framework

4.2.1 The Council will keep the Code of Corporate Governance under review, and will undertake work with Members and officers on the CfGS risk and resilience framework to strengthen the position.

4.2.2 The Monitoring Officer will continue to provide an assurance in respect of the Code and the Annual Governance Statement by way of this Annual Report.

4.3 **Constitution and Regulations**

4.3.1 The Constitution will continue to be kept under review by the Monitoring Officer working closely with the Democratic Services Team.

4.3.1 It will be appropriate to continue to remind Members and staff of the importance of compliance with the Council's regulations, as set out in the Constitution and other policy framework documents, and the Monitoring Officer and other staff will give advice accordingly.

5. **Overall opinion on the adequacy and effectiveness of the Governance framework**

The Monitoring Officer confirms that she is not aware of;

- Any breaches of, or deficiencies in, internal control in respect of fraud or compliance with relevant legal provisions that could have a significant effect on the entity or a material impact on the financial statements;
- Any actual, suspected or alleged frauds or breaches of legislative requirements during 2020/21;
- Any excessive or undue pressure to meet financial or operating targets that may unduly influence the actions of either those charged with governance or management;
- Any actual or potential litigation or claims that would have a significant effect on the entity or a material impact on the financial statements;
- Any circumstances that would call into question the preparation of the financial statements on an ongoing basis.
- That the systems of internal control administered by the Monitoring Officer including the Code of Conduct and the Council's Constitution, were adequate and effective during the year between April 2020 and March 2021 for the purposes of the latest regulations (subject to the areas outlined above).

Emma Duncan

Monitoring Officer and Deputy Director for Law and Strategy

31/05/2021