

**Monitoring Officer**  
**Annual Report 2021/22**  
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## **Monitoring Officer Annual Report 2021/22**

### **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 2021 to 31 March 2022 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 2021 – March 2022

- 2.1 Emma Duncan (Deputy Director Law and Governance) has carried out the statutory functions since February 2021. She is supported by two Deputy Monitoring Officers, Elaine Browne (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 Governance Officers Group that meets regularly and provides advice to the authority as a whole on the governance framework and monitors the Annual Governance Statement Action Plan.
- 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 in the past 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 few years to strengthen the governance framework, as acknowledged by the LGA Corporate Peer Challenge in February 2022.
- 2.5 Work continues to engender a robust 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 The governance framework of the Council has been assessed against these key areas by the Statutory Governance Officers and the Action Plan for the annual governance statement is partly derived from this work, together with the CIPFA Guidance. This means the governance framework is actively managed through a risk-based model.

### 3. The Monitoring Officer duties

Duties	Work undertaken
<p><b>1. Maintaining the Constitution.</b></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"> <li>• observed meetings of different parts of the Member and Officer structure;</li> <li>• undertaken an audit trail of a sample of decisions;</li> <li>• recorded and analysed issues raised with him/her by Members, Officers, the public and other relevant stakeholders and</li> <li>• compared practices in this Council with those in other comparable authorities, or national examples of best practice.</li> </ul> <p>The Constitution Working Group has met to consider amendments to the Constitution.</p> <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><b>2. Ensuring lawfulness and fairness of decision making.</b></p>	<p>During the year the Monitoring Officer and her staff have been asked to determine whether decisions and actions proposed or taken by the Council were unlawful. Counsel's advice has</p>

*After consulting with the Head of Paid Service and Director of Resources, the Monitoring Officer will report to the Council or to Cabinet in 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.*

been sought by the Monitoring Officer to clarify the position where necessary and to ensure effective discharge of the function.

A number of issues have arisen during the year and in particular the following have been addressed:

From 9 September 2021, the types of accommodation that could lawfully be used by local authority Social Services departments when placing a looked after child was limited by law to regulated placements under new Regulations. This meant that it became unlawful for local authorities to place a child under the age of 16 in an accommodation which is not regulated by Ofsted and left many local authorities without lawful placements for some looked after children.

The Monitoring Officer was notified by the Executive Director for Children's Services at the end of October that following the granting of a deprivation of liberty order (DOL order) by the High Court in respect of one young person, it was necessary because of the lack of regulated placements, to make a placement in an unregulated setting, in the young person's best interest. Ofsted were notified accordingly. The Statutory Governance Officers Group discussed the issue and noted the placement, determined to keep the issue under review and recommended that the issue be reported in the MO Annual Report.

The position was clarified by caselaw earlier this year which determined that where a young person is subject to a DOL order it is lawful for them to be placed in an unregulated setting.

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One report was made to Cabinet on 10 February 2022 in relation to a delegated decision and the Audit and Governance Committee have been asked to consider the corrective actions.

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The Council is currently subject to a number of judicial reviews of decisions upon which legal advice has been sought. On the basis of that advice it is not considered that any further reporting under the statutory provisions is necessary and this will be kept under review.

	<p>The Monitoring Officer is a member of the Council's Directors' Team, Statutory Governance Officers 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.</p> <p>The Council's legal team 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 and assess and respond to changes in the legal framework.</p> <p>This has been strengthened this year with the bringing back of the service in house.</p> <p>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.</p> <p>The Monitoring Officer also requires appropriate recording of delegated authority to evidence compliance with the Constitution. These procedures were reviewed and updated in light of the pandemic and further work is being undertaken currently, in light of the Section 5 report to embed this further.</p> <p>In terms of Ombudsman complaints there have been no cases where maladministration was found; all complaints are detailed in Appendix 1. This reporting discharges the Monitoring Officer responsibility under s5(2)(b) of the Local Government and Housing Act 1989</p>
<p><b>3. Proper Officer for access to information.</b></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>	<p>The Head of Governance has refreshed the officer decision making recording process and guidance to provide clarity.</p> <p>A refresher session is planned on delegated decision making for CLT.</p> <p>There has been one disclosure of confidential information contained in a Cabinet Report.</p>

	Members and Officers have been reminded of their obligations under the Code of Conduct.
<p><b>4. Advising whether Cabinet decisions are within the budget and policy framework in accordance with the requirement under the Budget and Framework Rules.</b></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><b>5. Providing advice.</b></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><b>6. Contributing to corporate management.</b></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 Directors' Team, Statutory Governance Officers 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, 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 to underpin decision making. This is part of the Council's Corporate Plan in the "investing in strong foundations" work identified as part of the Council's values.</p> <p>This investment was recognised as having made significant progress in terms of the governance framework in the Corporate Peer Challenge in January 2022.</p>
<b>7. Overseeing breaches of the tendering rules</b>	There are a number of areas where the use of waivers needs to be reviewed to ensure that the Council is getting best value for money.

	<p>These are within the tendering rules. A list of waivers granted within the municipal year is attached at Appendix 2</p>
<p><b>8. To set out guidance for Directors for the preparation of directorate registers of interests.</b></p>	<p>The appraisal form has been updated to include this requirement. No issues have arisen.</p>
<p><b>9. To monitor the operation of the Members' Code of Conduct.</b></p>	<p>In the current municipal year, the Monitoring officer has received 79 complaints. The number of complaints is significantly up on previous years (36 in 20/21). This is partly due to the number of multiple complaints in relation to one member (18) and a complaint made by one individual in respect of one political grouping (22). The remainder of the matters (39) are almost entirely in relation to matters that are connected to RBWM Members and are spread evenly across the Groups. The majority of complaints do not meet the threshold for investigation – four investigations have taken place. There are a significant number of member to member complaints. Further detail on the complaints appears at Appendix 3.</p> <p>The volume of complaints being received means that officer capacity is often stretched in dealing with complaints that rely on multiple inputs by the complaints team, the complainant, the subject member and the Monitoring Officer or Deputies.</p> <p>The average length of time from receipt of complaint to the issue of the Decision Notice is 76 days.</p>
<p><b>10. To promote and maintain high standards of conduct by Members, co-opted Members, including church and parent governor representatives</b></p>	<p>The Corporate Peer Challenge (CPC) identified that Member behaviour and the relationships between the Groups were issues that impacted on the reputation of the Council</p> <p>“There are still issues with continuing “tit for tat” Code of Conduct complaints between members (especially around social media). The Monitoring Officer is addressing this, but there is a reluctance from some Group Leaders to address the poor behaviour of a small number of members. Elected members engagement in</p>



	<p>public needs to be consistently constructive to enable good community engagement, public confidence and demonstrate effective progression on key issues. Group leaders should shape the tone of the political culture, they should be role models for the behaviour that is expected – and needed – across the parties. They should be working with the Monitoring Officer to clarify their roles to drive improved behaviours across all groups including using group structures to support improved behaviour. The Code of Conduct should not be used as a way to settle scores between individuals or seen as a way of abdicating personal responsibility.</p> <p>To attempt to resolve some of the issues with tit for tat complaints mediation routes are being utilised. There are a number of improvement actions identified in the CPC report which will be implemented. Four complaints have been investigated.</p> <p>Members have been provided with training on social media and also been given materials to support them in engaging constructively on social media.</p>
<b>11. To assist Members, co-opted members, including church and parent governor representatives, to observe the Members' Code of Conduct</b>	The Monitoring Officer provides advice to Members around the Code of Conduct and associated probity issues to support high standards of behaviour and this is, in the main, acted upon.
<b>12. To recommend to the Council on the adoption or revision of its Members' Code of Conduct</b>	<p>The LGA Model Code was adopted in May 2021 and this has brought some clarity to the operation of the Code.</p> <p>A small number of correction amendments have been made through delegation during the year.</p>
<b>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;</b>	<p>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 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</p>

	potential risk to the Council as development of Members is a key area for governance. The Corporate Peer Challenge noted the need for a comprehensive induction programme designed in conjunction with the Group Leaders.
<b>12. To consider an annual report on Member Standards by the Monitoring Officer</b>	This is the annual report.
<b>13. To maintain and keep up to date a register of Members' interests</b>	<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>
<b>14. To prepare and keep under review a protocol for managing Member and officer relationships.</b>	Members and CLT have had training on the Member Officer Protocol.

### 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. Delegated authority and procurement are areas that have been addressed and will continue to be addressed in the forthcoming year.
- (iv) The Code of Conduct process is being used for minor issues resulting in large numbers of complaints. This has been abated in the short term but needs to become a more permanent position.

### 4. Looking Forward

The key issues for 2021/22 are as follows:

#### 4.1 Code of Conduct

- 4.1.1 The expectation around Member behaviour particularly around public discourse and the use of social media needs to be reset and there needs to be an understanding around the Code not being used to settle political scores. If successful, this approach should reduce the amount of complaints received.

#### **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.
- 4.3.2 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.
- 4.3.3 The focus this year will be to strengthen understanding and compliance with officer delegated decision making and procurement waivers.

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

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 2021 and March 2022 for the purposes of the latest regulations (subject to the areas outlined above).

Emma Duncan  
Monitoring Officer and Deputy Director for Law and Strategy  
25/04/2022

## **Appendix 1 – complaints to the Ombudsman 2021/22**

<b>Service</b>	<b>Decision outcome</b>	<b>Reason</b>
Communities, Enforcement and Partnerships	Premature referral	not completed RBWM complaints process
Communities, Enforcement and Partnerships Adult Services Planning Strategy and Commissioning	LGSCO did not investigate In progress Evidence of fault In progress	Remedy offered by RBWM
Communities, Enforcement and Partnerships Revenues and Benefits Library and resident services Planning Planning Children's Services Revenues and Benefits Planning Planning Library and resident services Children's Services	Discontinued Investigation LGSCO did not investigate Fault caused LGSCO did not investigate LGSCO did not investigate LGSCO did not investigate LGSCO did not investigate LGSCO did not investigate LGSCO did not investigate LGSCO did not investigate LGSCO did not investigate	Remedy offered by RBWM Alternative appeal route Council to reconsider decision Alternative appeal route Alternative appeal route No evidence of fault Alternative appeal route Alternative appeal route Insufficient evidence of fault Alternative appeal route
Solicitor and Team Leader Revenues and Benefits	LGSCO did not investigate LGSCO did not investigate	Can achieve no meaningful outcome No evidence of fault Unlikely to find fault and cannot investigate
Housing Services Children's Services Revenues and Benefits	LGSCO did not investigate Premature referral No fault	personnel issues not completed RBWM complaints process No fault

Planning Strategy and Commissioning	LGSCO did not investigate LGSCO did not investigate	No evidence of fault and did not meet LGSCO Assessment Code No significant injustice has been caused Insufficient evidence of any significant injustice
Housing Services Children's Services Planning Adult Services	LGSCO did not investigate In progress LGSCO did not investigate Submitted	Out of time and alternative appeal route
Strategy and Commissioning Housing Services Children's Services Planning Children's Services Children's Services Planning	LGSCO did not investigate In progress In progress Premature referral In progress In progress premature referral	No evidence of fault and alternative appeal route  not completed RBWM complaints process  not completed RBWM complaints process
Strategy and Commissioning Children's Services Children's Services Children's Services Strategy and Commissioning Planning Children's Services Communities, Enforcement and Partnerships	LGSCO did not investigate In progress LGSCO did not investigate In progress LGSCO did not investigate LGSCO did not investigate LGSCO did not investigate LGSCO did not investigate	No fault Out of time Insufficient evidence of fault Out of time, alternative appeal route and did not meet Assessment Code Alternative appeal route / Unlikely to find fault and unlikely to achieve more Did not meet Assessment Code. Has not caused the complainant significant injustice

Planning  
Planning  
Adult Services

LGSCO did not investigate  
LGSCO did not investigate  
In progress

Did not meet Assessment Code. No evidence of fault  
Old case

## **Appendix 2 – details of procurement waivers**

<b>Service area</b>	<b>Contract details</b>	<b>Value</b>	<b>Reason for waiver</b>
Infrastructure, Sustainability and Economic Growth	Bikeability Training Delivery	£105,000	A tender was carried out for these services in 2021 to which only two suppliers responded. Due to the lack of market interest in RBWM's requirements at this time a further tender at this stage is not a realistic option.
Transformation	PARIS Social Care Case Management System	£172,000	The PARIS Case Management System (CMS) used primarily by Children's and Adult Social Care is at the end of its life and needs urgent replacement. Owing to the scale and complexity of the 6 system, a significant resource commitment is needed to successfully progress further. RBWM, Optalis and AfC have now made this resource commitment and the procurement process has begun. The two-year period is required to allow for supplier engagement, specification and contract writing, tender preparation, tender duration, evaluation, approval, and transition.
IT	Broadband Digital Lines	£275,000	This waiver is for the provision of broadband digital lines (service via the lines, not the physical lines themselves) into the Council's buildings. It is a subsequent waiver to one for the same requirement which was approved in September 2020 covering the period 01/10/2020- 31/03/2022. The current waiver is requesting (now retrospectively as the renewal date for the lines has passed) authority to enter into a three-year contract (on a 1+1+1 basis) with the incumbent covering the period 01/04/2022- 31/03/2025. This will enable the Authority to define its requirements, tender and if the incumbent is unsuccessful at tender to transition to a new provider. If the incumbent is successful at tender then only a 12-month waiver period will be required.

Place	Windsor Vision Project	£50,300	The waiver was seeking authority to appoint a consultant to use a particular approach suitable for the scheme using an Enquiry by Design (EbD) approach which will add value to the project through engagement with key stakeholders and residents as well as presenting a strong, recognisable brand that enhances that of the council as the project develops.
Pension Fund	Custodian Services for the Berkshire Pension Fund	£458,333	The waiver is to cover the period retrospectively from the 01/06/2021 and for the existing rolling contract for a further maximum period of 15 months to 31 March 2023 in order to enable a compliantly tendered contract to be awarded and put in place.
Environmental Services	Dog Warden and Pest Control Services	£291,808	The waiver is to cover a 10-month period (January 2022 to and including October 2022) and to account for the previous period of time during which a waiver was required. The applicable services are statutory dog warden services and a subsidised resident pest control service. The Council has not had a formally procured contract in place for these services since September 2014
Communications	Offsite External Printing	£117,000	The client has spoken with Procurement and will be setting up a meeting in order to progress the requirement

### **Appendix 3 – Code of Conduct complaints**

**Total number of complaints received was 79. It should be noted that there were two sets of complaints that need to be distinguished to adequately reflect the numbers – ONE complainant made the same complaint against multiple members (22), and multiple complainants (18) made the same complaint against ONE member. These have been separately identified in the figures.**

Numbers of complaints by Subject Member

Conservative Group	Liberal Democrat Group	Local Independents Group	Parish Councillors
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16 18 identical complaints about a single member 22 complaints regarding group decision on BLP	7	12	4
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Number of complaints by Complainant

Member of the Public	Conservative Group	Liberal Democrat Group	Local Independents Group	Parish Councillors
58	10	2	8	