

<b>Meeting:</b>	<b>Audit and governance committee</b>
<b>Meeting date:</b>	<b>24 November 2015</b>
<b>Title of report:</b>	<b>Annual report of the monitoring officer</b>
<b>Report by:</b>	<b>Monitoring officer</b>

## **Classification**

Open

## **Key decision**

This is not an executive decision.

## **Wards affected**

Countywide

## **Purpose**

To inform the committee of performance in the areas within the remit of the monitoring officer for the municipal year 2014/15.

## **Recommendation(s)**

**THAT:**

- (a) **the annual report of the monitoring officer be reviewed and any areas for further work identified for inclusion in the work programme.**

## **Alternative options**

- 1 There are no alternative options as the report provides a factual summary of performance.

## **Reasons for recommendations**

- 2 To enable the committee to be assured that high standards of conduct continue to be promoted and maintained and the council is adhering to the principles of openness and transparency.

## Key considerations

- 3 The role of the monitoring officer is a statutory office whose duties are set out in the Local Government and Housing Act 1989 and the Local Government Act 2000.
- 4 The main responsibilities of the monitoring officer are to ensure that the council, its elected councillors and its staff act with probity and that all the council's activities are in accordance with the law and the council's constitution. The monitoring officer has responsibility for ensuring that the council avoids findings of maladministration and that it responds appropriately to the local government ombudsman in that regard.
- 5 The monitoring officer is also responsible for dealing with allegations that councillors have failed to comply with the members' code of conduct, and for administering the local standards framework. The monitoring officer's responsibilities dovetail with those of the other statutory officers: the head of paid service (chief executive) and the section 151 officer (director of resources).

## Standards

- 6 In accordance with the provisions of the Localism Act 2011 the council has adopted a code of conduct, and this has been made available to all parish councils in the county to inform the adoption of their own code. Council has appointed a number of independent people to serve on a panel to consider complaints that cannot be resolved informally and to provide a sounding board for the monitoring officer regarding complaints received. The monitoring officer is grateful for the time and commitment these independent panel members give. Following resignations from two independent persons recruitment is underway to appoint additional people to this role.
- 7 The council maintains a register of interests for members of Herefordshire Council and parish councillors; these declarations are published on the 'your councillors' pages of the council's website. An annual reminder is sent to members and parish councillors to ensure that declarations are kept up to date. The monitoring officer provides periodic briefing sessions for Herefordshire councillors and parish councillors on the code of conduct, including induction training for members following elections. Under the powers delegated to the monitoring officer by Council in September 2012 the monitoring officer granted one general dispensation to enable members to vote on appointments at the annual meeting of Council in May 2014.
- 8 Between May 2014 and April 2015 a total of 11 complaints alleging a breach of the code of conduct were received. The table below shows the outcome of those complaints. This figure is a significant reduction on that for 2013/14. This is most likely explained by the fact that the changes to the standards regime brought about by the Localism Act 2011 lead to a number of complaints under the previous regime being heard in 2013. As the new standards regime has noticeably less 'teeth' than the previous system it is also possible that individuals are less likely to pursue complaints if they feel the outcome will have little impact.

Complaints received			No breach identified		Resolved informally		Formal panel recommendation	
Year	13/14	14/15	13/14	14/15	13/14	14/15	13/14	14/15
Herefordshire councillor	16	3	6	2	5	1	5	0
Town and parish councillor	20	8	8	6	10	2	2	0
<b>Total</b>	<b>36</b>	<b>11</b>	<b>14</b>	<b>8</b>	<b>15</b>	<b>3</b>	<b>7</b>	<b>0</b>

9 Members are required to register offers (whether accepted or declined) of gifts and hospitality with an estimated value in excess of £25.00; any declarations received are published on the 'your councillors' pages of the council website.

10 The council's information access team, manages:

- All formal complaints (note that with effect from 1 June 2014 the statutory children's social care (CSC) complaints process has been administered and managed by the quality assurance team in the children's wellbeing directorate)
- Freedom of information (FOI) requests
- Subject access requests (SAR)
- Environmental regulation requests (EIR)
- Potential data breaches
- Police requests including proof of life requests
- Requests from other authorities to share information
- Community trigger alerts (since October 2014)

11 Complaints performance and trends are regularly monitored and reviewed by the council's management board. The table below provides a high level summary of the number of issues the team dealt with during the year and the previous year to provide comparison.

	Complaint	FOI	EIR	SAR	Data incident	Police request	LA request	Community trigger
2013/14	880	1280	153	56	64	34	8	N/A
2014/15	78 (CSC) 867 (other) 945 (total)	1165	76	76	63	101	72	0

12 Data incidents are incidents (potential breaches) reported internally to be investigated – they are not full-blown data breaches. However, all incidents are investigated so that we can improve practice and learn from any mistakes. Mandatory training is provided for all employees and for elected members on information governance issues, and the rate of reporting indicate a high level of awareness among staff of the

processes to be followed if a potential data breach has occurred. During 2014/15 three data breaches were reported to the information commissioner's office (ICO). The ICO has closed all of those cases finding the council's response to them satisfactory.

- 13 During 2014/15 three FOI/EIR referrals were made to the ICO. The ICO have upheld the council's decision in all three cases.
- 14 The number of police and other local authority requests for information appears to have risen significantly over the two years; this is due to a change in the governing legislation, and subsequent change in local recording processes, which ensure that such requests are logged and monitored centrally.
- 15 The community trigger gives individuals and communities the right to request a review of their case of anti-social behaviour or hate crime, if they are not happy with the response from the relevant authorities.
- 16 A community trigger can be applied for if:
- an individual has reported three or more incidents of anti-social behaviour in the past six months to the local authority, the police or their housing association
  - an individual and four or more further individuals have complained separately about similar incidents of anti-social behaviour in the past six months to the local authority, the police or their housing association.
- 17 During 2014/15 a total of 47 enquires were reviewed by the Local Government Ombudsman (LGO) compared to 63 in 2013/14. Of these 17 were up-held, compared to two in 2013/14. The LGO investigations that were upheld are listed as follows:
- Adults and wellbeing had four LGO decisions upheld, concluding maladministration and injustice, three of these were adult social care cases where compensation was paid totalling £6,950 and one was housing related with a payment of £150. A further housing related case was upheld concluding maladministration but no injustice.
  - Economy communities corporate had six LGO decisions upheld, concluding maladministration but no injustice, of which five were due to "The Council failing to consider the National Planning Policy Framework when considering a planning application."
  - Children's Wellbeing had three LGO decisions upheld, two concluding maladministration and injustice, but no compensation paid and one concluding maladministration but no injustice.
  - Balfour Beatty Living Places had two LGO decisions upheld, one with no further action and one concluding maladministration but no injustice.
  - Hoople had one LGO decision upheld with no further action.
- 18 The monitoring officer is responsible for ensuring that concerns raised by whistleblowers are investigated in accordance with the council's policy. During 2014/15 one disclosure was made, one was also made in 2013/14. As the matter related to a staffing issue it was more appropriate to deal with under the staff grievance process. In addition, one public interest declaration was made to an external body; the outcome of their investigation was reported to the committee in September 2014.

## Corporate Governance

- 19 In line with the council's agreed values, one of the key elements of good corporate governance is open and transparent decision making. It is therefore appropriate to note any occasions when closed sessions of public meetings have taken place, when less than 28 days' notice of intention to take a key executive decision has been given, and the number of scrutiny call-ins conducted.
- 20 The public can be excluded from the whole or part of a meeting if the meeting is to discuss confidential or exempt information (as defined in schedule 12a of the Local Government Act 1972 as amended). During 2014/15 there were two occasions when this took place (once relating to regulatory sub-committee and once to the employment panel).
- 21 Key decisions to be taken by the executive are notified on the council's website generally giving the required 28 days' notice. It is not always possible to provide this amount of notice and during 2014/15 there were eighteen occasions when a key decision was taken with more than five days but less than 28 days' notice being given; in all cases the chairman of the relevant overview and scrutiny committee was informed of this and of the reason in each case. This is a significant increase over the 2013/14 figure of nine. Whilst the reduction in notice period was in most cases due to matters beyond the council's control (e.g. to respond to government deadlines or to respond in a timely way to rapidly changing circumstances) there were a number of instances which related to contract awards. The governance team is working closely with the commercial team and directorate commissioners to improve forward planning. There were no cases of 'special urgency' where key decisions were taken with less than five days' notice.
- 22 General overview and scrutiny committee called-in two decisions of the executive during 2014/15, compared to one the previous year. The first was in relation to the South Wye transport package; two recommendations were made to cabinet requesting that further consideration be given to the robustness of the financial appraisal and the selection of SC2 given the costs related to environmental mitigation work. Cabinet considered these matters further and reaffirmed their decision. The second was in relation to a decision taken by the Marches local enterprise partnership joint committee regarding the Marches enterprise zone and, the committee endorsed the decision making no further recommendations.
- 23 During the year 2014/15 the general overview and scrutiny committees made a total of 50 recommendations to the executive. Of these 35 were accepted in full, ten accepted in part, and five rejected.
- 24 The monitoring officer is responsible for ensuring that any investigation using discreet surveillance or similar evidence gathering techniques is appropriately authorised in accordance with the provisions of the Regulation of Investigatory Powers Act 2000 (RIPA). During 2014/15 no such authorisations were requested. In addition during the municipal year 2014/15 the Office of Surveillance Commissioners undertook an inspection of the council's exercise and performance in relation to the powers available under RIPA. The inspector found that whilst the council had not made use of the powers for some time, the council maintained "... an enduring commitment to, and an understanding of, the responsibilities which the legislation places upon the organisation." Three recommendations were made to ensure that the council's policies remained in line with changing legislation and there is an action plan in place to implement these recommendations.

## **Community impact**

- 25 This report provides information about the council's performance in relation to being open, transparent and accountable.

## **Equality duty**

- 26 There are no equality duty implications arising directly from this report, which is for information.

## **Financial implications**

- 27 There are no financial implications arising directly from this report, which is for information.

## **Legal implications**

- 28 As set out in the report.

## **Risk management**

- 29 There are no risks arising directly from the report which is for information. Effective governance processes mitigate the risk of legal change to decision-making and maintaining high standards of conduct mitigates risks to the reputation of the authority.

## **Consultees**

- 30 Not applicable.

## **Appendices**

- None.

## **Background papers**

- None identified.