



AUDIT & ACCOUNTS COMMITTEE
28 September 2016

Report of the Monitoring Officer

ITEM 2e

Annual Governance Report prepared by the Monitoring Officer

SUMMARY

- 1.1 Section 5 Local Government and Housing Act 1989 requires the Council to appoint a Monitoring Officer. Derby City Council has appointed Janie Berry, Director of Governance as Monitoring Officer. I am a practicing solicitor and Chief Legal Officer for the City.
- 1.2 The Monitoring Officer's Annual Governance Report supports the Council's Annual Governance Statement and provides a review of my work as part of the Council's governance arrangements.

RECOMMENDATION

- 2.1 To note the contents of this report.

REASONS FOR RECOMMENDATION

- 3.1 It is good practice for the Monitoring Officer to provide comment on the Council's governance arrangements.



Derby City Council

AUDIT and ACCOUNTS COMMITTEE 28 September 2016

Report of the Monitoring Officer

SUPPORTING INFORMATION

4.1 Role of the Monitoring Officer

The principle responsibilities of my role are:

- A duty to report to Full Council and Cabinet in any case where I am of the opinion that any proposal or decision is, or is likely to be, illegal or constitute maladministration;
- A range of functions relating to Member conduct;
- Specific functions prescribed by Article 12 of the Council's Constitution and Part 3 of the Constitution.

4.2 I also have a number of duties that do not necessarily result from the statutory functions of the Monitoring Officer but for which the person in that role is best placed to be the Proper Officer:

- I am the Senior Responsible Officer in respect of the Regulation of Investigatory Powers Act 2000. I report quarterly on the Council's use of these powers to the Audit and Accounts Committee
- I am the Senior Responsible Officer for the Council's Confidential Reporting Code (Whistleblowing Policy). I ensure that the Audit and Accounts Committee receives updating reports where necessary;
- I act as the Council's Electoral Registration Officer and (Acting) Returning Officer Derby City and the three Parliamentary Constituencies of Derby North, Derby South and Mid Derbyshire;
- I am the Proper Officer for the Registration Service (since March 2015).

4.3 One aspect of the way in which the Monitoring Officer fulfils her responsibilities is by ensuring that legal advice is available to Full Council and its committees. In practice, I, or a solicitor, attend all meetings of Full Council, Cabinet, the Regulatory Committees, Corporate Scrutiny and Governance Overview and Scrutiny Committee, Audit and Accounts Committee and the Standards Committee. I, or a representative, also attend the Scrutiny Boards and other meetings as required.

4.4 I also ensure legal advice is available to Officers as required.

5.1 Monitoring of the Constitution

The day-to-day operation of the Constitution is undertaken by the Head of Democracy, in consultation with me.

During 2015 / 2016 a comprehensive review of the Council's Constitution has been undertaken.

The refreshed Constitution now fully reflects the senior management restructure launched in 2015, has an updated Scheme of Delegation and revised Financial and Contractual Procedure Rules.

The Constitution received Full Council approval in late 2015.

6.1 Members Code of Conduct and the Standards Committee

I am supported by a Democratic Services Officer in all aspects of Code of Conduct issues and the promotion and effectiveness of the Standards Committee.

I have a good working relationship with the Chair of the Standards Committee in order to effectively deal with any Code of Conduct complaints which are received.

The Standards Committee is made up of:

- Five Elected Members (appointed on a proportionality basis, ie three from the Administration and two from the Opposition groups)
- Two Co-Opted persons, and
- Two Independent Persons.

In April 2016, the Conservative Group took up their allocated seat but the seat offered to the Liberal Democrat Group remained vacant.

Following the Annual General Meeting in May 2016, both the Conservative Group and UKIP took up the seats offered to them.

However, in March 2016, one of the Independent Persons appointed resigned, leaving a vacancy which is yet to be recruited to. The Annual Report of the Standards Committee presented to Full Council on 14 September 2016 is attached as Appendix 2.

Following the May 2016 Local Elections, DBS checks have been undertaken in respect of all Elected Members to offer strong ethical governance to all Elected Members.

As can be seen from the Annual Report, a significant number of complaints in relation to the Report in the Public Interest have been received during this year, but with very few being upheld.

In July 2016 the Monitoring Officer received a number of complaints relating to the Code of Conduct as a direct result of information contained within the Report in the Public Interest. These particular complaints remain ongoing.

7 Ethics and Governance

7.1 Meetings

Report sign-off guidelines have continued to be used in relation to all reports prepared

for constitutionally prescribed meetings.

Analysis of usage of the same has served as a useful check and balance to ensure factually accurate advice is being provided to the Council's decision makers.

7.2 Supervision of the Monitoring Officer and the s151 Officer

The Chief Executive and Head of Paid Service continues to have direct supervisory responsibility for the Monitoring Officer and the s151 Officer.

In my opinion this continues to have a positive impact on the Council's governance arrangements.

Both the Monitoring Officer and the s151 Officer attend the Chief Officer Group alongside the Strategic Director of People and the Strategic Director of Communities and Place.

7.3 Relationship with Ernst & Young, External Auditor

Having developed a strong professional working relationship with the Council's previous external auditor, Grant Thornton, I have continued to develop this with the Council's External Auditor, Ernst & Young.

As a direct result of the preceding two years of conditional Annual Governance Statements and the subsequent publication of a Report in the Public Interest by Grant Thornton for the Audit of Accounts 2013 / 2014 and 2014 / 2015, I meet with Ernst & Young on a regular basis.

These regular meetings have, in my opinion, been a valuable opportunity to offer reassurance and challenge on the Council's strengthening governance framework and to support the Chief Officer Group in continuing to develop a culture of transparency and integrity.

I have, in conjunction with the s151 Officer, continued to support the Council's Head of Governance and Assurance and the Chair of Audit and Accounts Committee to ensure Ernst & Young have the ability to meaningfully contribute at Audit and Accounts Committee meetings.

7.4 Statutory Monitoring Officer Reports

During 2015 / 2016, I have not had cause to issue any formal report to Council pursuant to s5(2) Local Government and Housing Act 1989.

7.5 Regulation of Investigatory Powers Act 2000

The Council continues to report its RIPA activity on a quarterly basis to Audit and Accounts Committee.

In April 2016 the Council's procedures were inspected by the Officer of Surveillance Commissioners. The Office of Surveillance Commissioners Inspection reported that:

- *"Derby City Council is now a minimal user of covert surveillance having a distinct preference for acting overtly. It is unlikely that there will be any substantial changes from these practices in the near future. Nevertheless the Council takes a highly responsible approach to its RIPA responsibilities. The officers managing RIPA are experienced and knowledgeable and provide an excellent gatekeeping service to ensure the quality of both application and authorisation. This has resulted in a much improved authorisation being produced since the last inspection. Its written Guidance is an excellent document providing a clear framework of the legal principles involved with good practice. As a result Derby City Council may be regarded as a well performing RIPA authority."*
- *The single most important weakness perceived is in the provision of refresher training. The training in 2013 should have been taken as a starting point with periodic follow-up refreshers. The latter has not been undertaken, quite probably because the organisational upheavals at the Council have distracted officers from this requirement. Nevertheless the officers have undertaken to engage in such periodic training in the future."*
- *It was encouraging to note that most of the recommendations of the last inspection had been discharged".*

The report recommended that the Council:

- (i) *"Establish a training programme encompassing regular refresher training of authorising officers and likely applicants (Paragraphs 14(i), 17 and 18).*
- (ii) *Amend the Guidance to Staff on Surveillance under RIPA 2000. (Paragraphs 14(v), 21 and 22)".*

Action is being taken by the Head of Legal Services to appropriately address these recommendations.

7.6 **Elections**

I and Paul Robinson, Deputy Returning Officer with Full Powers have continued to strengthen internal governance arrangements for the delivery of all elections and referenda.

To date, the following have taken place, or are imminent:

| | | |
|-----------|---|--|
| May 2016 | - | Local Elections |
| May 2016 | - | Police and Crime Commissioner Election (I was appointed the Police Area Returning Officer for Derbyshire) |
| June 2016 | - | EU Referendum |

29 September 2016

-

By-Election Allestree Ward

All elections concerns reported to me and Mr Robinson were fully investigated and where necessary, reported to the Derbyshire Constabulary.

The Council continues to have a strong / robust professional working relationship with Derbyshire Constabulary.

Derby City Council is now one of 18 Local Authorities named by the Electoral Commission as having a higher risk of election fraud. As such, robust integrity planning is crucial. The Council remains under a positive duty to submit all performance reports to the Electoral Commission for evaluation. All returns have been satisfactory or above standard.

7.7 Election Fraud

There has been one successful conviction for election fraud arising from the May 2016 Local Elections.

The successful candidate for Allestree Ward resigned from his seat shortly after the election and was subsequently charged and convicted of an offence pursuant to s13D Representation of the People Act 1983.

On 23 August 2016, Mr Smalley received a two month custodial sentence and one year probation upon release.

Two other allegations of election fraud are still being investigated, both of which have arisen from the May 2016 Local Elections.

7.8 Local Government Ombudsman

In 2015 / 2016 the Council received 47 complaints from the Ombudsman across the three Directorates. These have resulted in the following outcomes:

- 4 - upheld
- 2 - partially upheld
- 2 – no fault found
- 34 – not investigated
- 3 – in progress

Of the six complaints which were upheld or partially upheld two resulted in compensation being paid to the respective complainants.

7.9 Job Evaluation

The Council implemented job evaluation across the non-schools and schools (non-teaching) workforce on 1 June 2016. The Council now operates the Hay Job Evaluation methodology across the entirety of the workforce covered by the "Green Book" terms and conditions.

To date, the Council has not been served with any legal proceedings directly relating to the implementation of job evaluation.

7.10 Assurance Functions

In September 2015, the Council brought together all its assurance functions (other than finance) into a single department led by the Monitoring Officer. This has created a strong and cohesive department, made up of professionals from various disciplines, to work together to improve and embed good governance. The teams within the departmental work together to identify areas of weakness and deliver improvements which benefit the council and its residents.

As part of the assurance function, the previously informal relationship with the Head of Governance and Assurance is now fully embedded within the new departmental structure, which I believe is enhancing resilience and integrity, particularly around whistleblowing and the use of probity days within the action plan.

7.11 Freedom of Information and Subject Access Requests

As regularly reported to the Audit and Accounts Committee, the Council continues to experience growing numbers of Freedom of Information and Subject Access Requests.

Whilst compliance with responses to freedom of information requests remains very high it is less so with Subject Access Requests. This is due to a combination of complexity of issues, third party implications, very high numbers of requests and high volumes of paperwork relating to many of the requests.

7.12 Insurance and Risk

As has been reported previously to Audit and Accounts Committee, the Insurance and Risk Team was significantly under-resourced which had the potential to compromise the said functions.

Funding was secured which has fundamentally increased the size of the Team to a level sufficient to meet the Council's need.

However, as detailed within the (Interim) Annual Governance Statement, there do remain ongoing challenges.

A report to Cabinet in July 2016 was approved to secure additional funding to address the Council's insurance valuations of Council properties. It is anticipated that the programme of insurance valuations will be concluded by February 2017.

- 7.13 The (Interim) Annual Governance Statement outlines the Council's ongoing commitment to enhance and reinforce its corporate governance framework arrangements.

In conjunction with the Head of Paid Service, I have responsibility for ensuring that the work undertaken by this group becomes business as usual arrangements. We also work closely with the Cabinet Member for Governance to ensure that the valuable work undertaken has the full support of political leadership.

All aspects of the work to enhance the governance framework is reported to the Audit and Accounts Committee.

7.14 **Final Accounts**

I am fully aware that the Council was unable to publish the final draft accounts within the pre-requisite timeframe, which in turn will result in the Council being unable to meet the statutory deadline for the publication of accounts of 30 September 2016. This also impacts on the publication of the Council's Annual Governance Statement.

I am reassured that the s151 Officer is working constructively with Ernst & Young to reach a satisfactory conclusion.

7.15 **Report in the Public Interest Audit of Accounts 2013 / 14 and 2014 / 15**

In November 2015 Grant Thornton formally notified the Audit and Accounts Committee of their intention to investigate pursuant to Section 8 of the Audit Commission Act 1998 as a result of a number of governance failings as previously detailed in the Annual governance Statements for 2013/2014 and 2014/2015 and listed as Appendices 3 and 4 to this report respectively, and their receipt of whistleblowing allegations.

Derby City Council fully co-operated with the Grant Thornton investigation in all aspects, ie provision of resources, staff availability for interview and the disclosure of documents. Grant Thornton formally published the Report on 16 June 2016.

On 1 July 2016 the Council convened an extraordinary meeting of Full Council for the sole purpose of debating the report. The Council formulated an action plan in response to the 12 recommendations issued by Grant Thornton.

The Head of Paid Service and Monitoring Officer are tasked with delivering against the Action Plan in conjunction with the Cabinet Member for Governance. The statutory review of progress made against the action plan is scheduled for 10 October 2016 with Ernst Young.

The Administration's Action Plan is at Appendix 5.

8.1 **Overall Opinion on the Adequacy and Effectiveness of the Council's**

Governance Framework

It is very difficult for me to give an unqualified opinion about the adequacy and effectiveness of the Council's Governance Framework. As a result of the existence of the Report in the Public Interest and a fundamental number of key governance issues still to be addressed it would be inappropriate for me at this stage to provide an opinion. However, I do remain mindful that some areas of the Council's business do demonstrate sufficient robust internal controls though I do not believe this gives me the ability to use these as a basis to form an overall opinion.

| |
|---------------------------------|
| OTHER OPTIONS CONSIDERED |
|---------------------------------|

- 9 It is good practice for the Monitoring Officer to provide comment on the Council's governance arrangements

This report has been approved by the following officers:

| | |
|--|---|
| Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s) | Janie Berry, Director of Governance & Monitoring Officer Martyn Marples, Director of Finance & Chief Finance Officer Paul Robinson, Chief Executive and Head of Paid Service Richard Boneham, Head of Governance and Assurance |
| For more information contact: Background papers: List of appendices: | Janie Berry 01332 642552 janie.berry@derby.gov.uk CIPFA and Solace Framework for Good Governance Annual Governance Statement 2015/2016 Appendix 1 – Implications Appendix 2 – Annual Report of the Standards Committee 2015/2016 Appendix 3 – Annual Governance Statement 2013/2014 Appendix 4 – Annual Governance Statement 2014/2015 Appendix 5 – Administration's Action Plan |

| |
|---------------------|
| IMPLICATIONS |
|---------------------|

Financial and Value for Money

- 1.1 None arising from this report.

Legal

- 2.1 As detailed within the report.

Personnel

- 3.1 None arising from this report.

IT

- 4.1 None arising from this report.

Equalities Impact

- 5.1 None arising from this report.

Health and Safety

- 6.1 None arising from this report.

Environmental Sustainability

- 7.1 None arising from this report.

Property and Asset Management

- 8.1 None arising from this report.

Risk Management

- 9.1 None arising from this report.

Corporate objectives and priorities for change

- 10.1 It is good practice for the Monitoring Officer to provide a report on governance issues arising across the Council