

Monitoring Officer Report 2023/24

Audit and Governance Committee
5 December 2024

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Appendix 1

Appendix 2

1. Role of the Monitoring Officer

- 1.1 Under the Local Government and Housing Act 1989 ('the 1989 Act'), it is the duty of every relevant local authority to designate one of its officers as Monitoring Officer.
- 1.2 The Monitoring Officer has the specific duty of ensuring that the Council, its officers, and its elected members maintain the highest standards of conduct in all that they do.
- 1.3 The legal basis for the Monitoring Officer's role is found in Section 5 of the 1989 Act.
- 1.4 There are three main aspects to the role:
 - To report on matters that he/she believes are, or are likely to be, illegal or amount to maladministration.
 - To be responsible for matters relating to the conduct of Councillors and officers; and
 - To be responsible for the operation of the Constitution
- 1.5 The Monitoring Officer is required to prepare a report to the Authority if it appears that any proposal, decision or omission by the Authority has given rise to, or is likely to, or would give rise to:-
 - a) A contravention of any enactment or rule of law
 - b) Maladministration or failure as described in Part 3 of the Local Government Act 1974 ('the 1974 Act')
- 1.6 Maladministration or failure under the 1974 Act is a reference to a finding of such made by the Local Government Ombudsman

following an investigation undertaken by him/her.

- 1.7 The Localism Act 2011 makes the Monitoring Officer responsible for maintaining a Register of Member Interests. The Monitoring Officer at Cheshire East maintains such a register for both Cheshire East Council and Town and Parish Council's in its area. The Monitoring Officer also operates the procedures for dealing with Code of Conduct complaints against both Cheshire East Borough Council Members, and Members of Town and Parish Councils.
- 1.8 Under the requirements set out above, the Monitoring Officer ultimately assumes responsibility for the lawfulness of decision-making processes and several other governance controls, some of which are the subject of bespoke delegations in the constitution. These key additional functions are covered in this report. By a combination of these measures and responsibilities, the Monitoring Officer has a key role to play in ensuring sound corporate governance and in informing the production of each Annual Governance Statement.
- 1.9 The Monitoring Officer must be designated by Full Council and cannot be the Chief Executive (Head of Paid Service) or the Director of Finance /Section 151 officer. The duties of the Monitoring Officer must be performed by him/her personally unless he or she is unable to act by reason of illness or absence, in which case a deputy/deputies, appointed by the Monitoring Officer, may act on his or her behalf.
- 1.10 Irrespective of illness or absence, where the Monitoring Officer is of the view that he or she ought not to perform functions relating to a Code of Conduct matter personally, s/he may delegate those functions to a person nominated by her/him as Deputy Monitoring Officer for that purpose. The Monitoring Officer at Cheshire East Council currently has 3 nominated Deputy Monitoring officers, the Head of Legal Services, the Legal Team Manager (Place) and the Legal Team Manager (People).
- 1.11 In addition, Section 28 of the Localism Act 2011 requires local authorities to have at least one Independent Person (IP) whose views must be sought, and taken into account, by the authority before it makes its decision on an allegation relating to a breach of the Code of Conduct. Cheshire East has two IP's Mrs Margaret Rathbone and Mrs Margaret Smith, who are consulted, in accordance with the relevant complaints procedure, following preliminary/initial assessment, to decide the next steps to be

taken.

2. Member's Code of Conduct

- 2.1 Cheshire East Council's current Code of Conduct came into force on 16 October 2022 (hereinafter referred to as 'the new code'), the previous Code came into force on 1 January 2018 (hereinafter referred to as 'the old code'). It is the responsibility of the Audit and Governance Committee to monitor the operation of this Code as part of the Committee's responsibility for promoting high standards of ethical behaviour.
- 2.2 Town and Parish Council's within Cheshire East operate under a combination of the old code, the new code or have their own version, based upon the Seven Principles of Public Life, also known as the 'Nolan Principles.' All Town and Parishes have been offered a briefing/training session on the new code, organised by the Cheshire Association of Local Councils (ChALC) and were encouraged to adopt it from 2023. Most have taken up that facility and have adopted the new code.
- 2.3 Upon receipt of a completed complaint form, the Monitoring Officer, or one of the Deputy Monitoring Officers, undertakes a preliminary or initial assessment of each complaint received, consulting one of the Independent Persons where appropriate, before making and notifying the Complainant and in appropriate cases, the subject member, of his/her decision as to whether and how the complaint should proceed. This 'triage' process enables complaints which do not engage the Code or are trivial, vexatious or 'Tit for Tat' to be rejected, without the need to convene an assessment meeting.
- 2.4 Details of the 45 complaints received in 2023/24 is shown in the table below. In addition, the complaints received against Town and Parish Councils are a mixture as some are under the old code and some the new code, where that has been adopted. The obligations and/or standards have been summarised/collated for ease of reference. The details also take into account the fact some complaints related to more than one councillor and that most included more than one alleged breach.

Table 1 - Code Breaches

Obligations/Standard & No. Received		
	CEC	Town or Parish
Selflessness	1	3
Integrity	2	10
Objectivity	1	1
Accountability	2	3
Openness	1	9
Honesty	0	0
Leadership	0	0
Disrepute	8	8
Respect/ Treat others with courtesy	14	15
Make choices on merit	0	0
Promote high standards of conduct	1	9
Uphold law and public trust	3	8
Exercise independent judgement/ remain objective/impartiality	1	5
Bullying/Breach of equality laws	10	16
Declaring/registering interests	4	8
Use of resources	4	2
Impartiality of officers	5	1
Use of position	3	3
Disclose confidential information/access to information	4	10
Comply with the Code	6	4
Gifts and Hospitality	1	0

2.5 The decision of the Monitoring Officer or the Deputy/s in respect of the 45 complaints received was as follows:

Table 2 – Code Breaches Outcomes

Outcome	2023/24		2022/23		2021/22	
	CEC	Town or Parish Council	CEC	Town or Parish Council	CEC	Town or Parish Council
Rejected at preliminary assessment stage; failed to meet the assessment criteria	10	16	5	27	16	31
Concluded at Initial	9	8	0	5	3	8

Outcome	2023/24		2022/23		2021/22	
	CEC	Town or Parish Council	CEC	Town or Parish Council	CEC	Town or Parish Council
Assessment Meeting (IAM) (breach or no breach)						
Referred for formal external investigation	0	2	0	2	2	9 Includes 3 internal investigations
Referred to Standards Hearing Sub Committee	0	0	0	0	0	6
Complaint ongoing	0	0	0	0	0	1

- 2.6 The overall number of complaints received has increased during 2023/24, there being 39 in 2022/23. It is however still below that totalling 69 in 2021/22. The number of complaints remains highest in relation to Town and Parish councillors but most complaints are dealt with at preliminary/initial assessment and are determined as not in the public interest to pursue. There still remains a number of repeat complainants, and it should be noted that there are 2 matters ongoing which are the subject of an external investigation. This will result in costs implications for Cheshire East Council.
- 2.7 Of those complaints that were referred to and concluded at IAM, 11 were found to be a likely breach, the other 6 were found not likely to be in breach. Advice regarding the conduct and the provision of apologies where appropriate, together with requests to undertake training was provided.
- 2.8 The costs of the external investigations for 2023/24 was nil as the investigations referred to have not yet been completed. However, the internal 'costs' associated with officer time for the work undertaken by the Deputy Monitoring Officers and a Legal Officer who supports them, the costs of internal DMO and legal officer support, based on a regular 1 hour meeting of 4 people per week and additional work on each matter, reviewing complaints and responses, drafting decisions, attending IAM's with IP, equalling 4 hours is approx. 880 hours a year and at external charge out rate for 2023/24 of £242.65 is equal to £213,532.
- 2.9 The cost of the IP's is published as part of members allowances at the end of every financial year. For 2023/24 the total figure was £250. IP's are

entitled to claim £75 per hour for meetings up to 4 hours long and £150 anything over that time.

- 2.10 It should also be noted that the current external investigations relate to Town and Parish Councillors. Cheshire East Council does not currently seek to recover the cost of this work from Town and Parish Councils, but this is currently under review.

3. Register of Member's Interests

- 3.1 Cheshire East Council Members, and Members of Town and Parish Councils in its area, are required to declare and register certain classes of interests with the Monitoring Officer, by completion of the relevant Register of Interests form (ROI). They must then conduct themselves accordingly in relation to any interest that arises when transacting business on behalf of their authority.
- 3.2 Registerable interests are explained in their respective Code of Conduct and include for all Members, Disclosable Pecuniary Interests. Additionally, there is a requirement to declare other interests as set out in the individual Council's Code of Conduct.
- 3.3 A failure to declare an interest, and act accordingly in relation to the same, is capable of amounting to a breach of the Code of Conduct. In relation to Disclosable Pecuniary Interests, it can also amount to a criminal offence.
- 3.4 The relevant registers for Cheshire East Council and Town and Parish Council's in its area, are available on, or through, Cheshire East Council's website. There is a requirement to register upon taking office, and it is each Member's responsibility to ensure their register remains up to date as and when interests change.
- 3.5 Following the local elections in 2023, all new and returning members were asked to complete and return a ROI form. Most members submitted an initial form following their code of conduct training, followed by an updated form once appointments to Committees and outside organisations had been concluded. ROI forms received were added to the website by the end of July 2023, but it was noted that there was a degree of delay in receiving them.
- 3.6 Members who do not return forms by stated deadlines are sent a reminder, followed by a second reminder which is copied to their group leader/group administrator. If no response is received, the matter is referred to the Monitoring Officer.
- 3.7 From May 2024, both Cheshire East and Town and Parish members have been asked to complete an annual review each year; either to confirm that

their circumstances remain the same or to submit a revised form. This exercise has not yet been completed.

3.8 Training in respect of Member interests is covered below.

4. Register of Gifts and Hospitality

4.1 Cheshire East Council Members are required to register with the Monitoring Officer details of any gifts or hospitality received where the value is considered to be in excess of £100. Town and Parish councillors are asked to do the same.

4.2 The register of gifts and hospitality is maintained by the Monitoring Officer and is available for inspection by appointment at the Council's Office in Westfields. The method by which declaration of gifts and hospitality are made is currently under review.

4.3 The gifts and hospitality received by Members that were declared to the Monitoring Officer in 2023/2024;

Table 3 – Declared Gifts and Hospitality

2023/2024	Number Declared
CEC	1
Town and Parish	0

4.4 Training in respect of gifts and hospitality is covered in the train sessions on the Code of Conduct, which is referenced below.

5. Member Training and Development

5.1 The Member's Code of Conduct is recognised in Cheshire East Council's Member Training and Development Programme as being mandatory along with others such as those for members sitting on planning and licensing committees.

5.2 The programme for the start of the municipal year 2023 to 2024, is attached at Appendix 1 along with the Member Development Core Programme at Appendix 2. These set out the offer, method of delivery, how regular they are provided and whether they are mandatory or not.

5.3 A new revised programme is currently being devised and whilst the Council does have an overall member development strategy, this has not been reviewed for a number of years and therefore it is in the process of being revised and refreshed.

5.4 The data relating to individual attendance at the various training courses

is currently provided to group leaders but there are concerns as to its accuracy. Further work is therefore underway to resolve that issue alongside development of both the new programme and strategy. This information will be brought to a future meeting for approval and noting.

- 5.5 In respect of Town and Parish Councils, a training session on the new code was delivered in July 2023 and was devised in association with CHaLC. All local council's have been encouraged to adopt the new code. Further sessions with individual councils and councillors has been offered and it has been requested and provided. This will continue to be undertaken as required.

6. Dispensations

- 6.1 The Monitoring Officer is empowered to grant dispensations enabling Cheshire East Council Members to take part in council business in which they would otherwise have an interest which would prevent their dispensation.
- 6.2 There are a number of "standing" or general dispensations which apply to all Cheshire East Council Members, which have been approved by the Committee. These have recently been renewed by the Committee and an additional dispensation granted until the next report to the Committee after the local elections in 2027. These are;
- a) Any allowance, payment or indemnity given to Members;
 - b) Any Ceremonial Honours given to Members;
 - c) Statutory sick pay under Part X1 of the Social Security Contributions and Benefits Act 1992 where they were in receipt of or entitled to receive such pay;
 - d) Setting the Council Tax or a precept under the Local Government and Finance Act 1992 (or any subsequent legislation);
 - e) Setting a Local Council Tax Reduction Scheme or Local scheme for the payment of business rates (Including eligibility for rebates and reductions) for the purposes of the Local Government Finance Act 2012 (or any subsequent legislation);
 - f) School Meals or School Transport or Travelling expenses where the Member is a parent/guardian of a child in full time education or a parent governor (unless the matter relates specifically to the school the child attends).
 - g) To the extent that it may amount to a disclosable pecuniary registrable or non registrable interest, any allowance or other remuneration received from the Council in respect of Council duties or directorships of Council owned ASDVs in and respect of such other bodies in which the Council has a

financial interest.

- h) To allow Members to take part and vote on Community Governance Review matters in which they have a disclosable pecuniary registrable and non registrable interests.
- i) To allow Members to vote where a matter arises at a meeting which relates to the business of the Council and which has a direct financial impact on all Cheshire East Town and Parish Council's.

7. Regulation of Investigatory Powers Act 2000 (RIPA)

7.1 The Council occasionally uses directed surveillance and sometimes obtains communications data to carry out its enforcement functions effectively, e.g. trading standards, planning enforcement, licensing enforcement, environmental protection and community enforcement. RIPA provides a regulatory framework within which the Council and its officers must work, to enable public authorities to obtain private information using certain covert investigatory techniques.

7.2 The Council is inspected by the Investigatory Powers Commissioner's Office every three years. The last inspection was in November 2022 and the Committee received a report on the outcome of that inspection in March 2023 and an update on the actions following the inspection in July 2023. It is anticipated that the next inspection will be some time in 2025.

7.3 When investigating alleged wrongdoing, it is imperative that certain conditions are met in each case for successful prosecutions to be made. It is essential that covert surveillance is only used when it is necessary and proportionate to do so and when all other avenues of investigation have been explored. Therefore, applications must be properly authorised and recorded, the tests of necessity and proportionality must be satisfied, and the potential for collateral intrusion must be considered and minimised.

7.4 The Council's Constitution provides that all Executive Directors and Directors excluding the Monitoring Officer may act as authorising officers. However, authorising officers must have had appropriate training and therefore, at present there are only two who undertake this role as they have received specific training to enable them to act, namely:

Peter Skates, Director of Growth and Enterprise
Jill Broomhall, Director of Adult Social Care Operations

7.5 The departure of some senior officers in recent months has reduced the number of trained authorising officers for the Council. This will be addressed through the training of new Executive Directors and Directors when permanent appointments are made pursuant to the Council's new

senior management structure. Given the low usage of RIPA powers, two authorising officers is sufficient in the meantime.

- 7.6 Once authorised, all applications need the approval of a Justice of the Peace/Magistrate, as required by the Protection of Freedoms Act 2012. The Act also restricts the use of RIPA authorised surveillance to the investigation of offences which attract a custodial sentence of six months or more. The Director of Governance and Compliance assumes responsibility for the integrity of the process to ensure that the Council complies with the legislation.

Use of Covert Human Intelligence Source (CHIS)

- 7.7 Covert human intelligence sources may only be authorised if there are certain additional arrangements in place, including an employee of the Council being responsible for the source’s security and welfare and a senior officer with general oversight of the use made of the source. Use of a CHIS can only be authorised by the Chief Executive (or their designated deputy in their absence) before it is approved by a Justice of the Peace/Magistrate.

Authorised Applications

- 7.8 Surveillance activity, including test purchases, has reduced significantly in recent years with only one directed surveillance application being authorised in 2022 and one application for communications data this year; however, activity is expected to commence again later this year. The table below shows the number of authorised applications in the last four years.

Table 5 - RIPA Applications Authorised

	2023/24	2022/23	2021/22	2020/21
Directed Surveillance	0	1	0	0
Communications Data	1	0	0	0
CHIS	0	0	0	0

8. Local Government and Social Care Ombudsman Referrals

- 8.1 The Council’s ‘Corporate Compliments, Suggestions and Complaints Policy and Procedures’ offer all customers the opportunity to appeal to the Local Government Social Care Ombudsman (LGSCO) if they are unhappy with the way in which the Council has handled their complaint.
- 8.2 Tables 5, 6, 7, 8 and 9 show the number of Decision Notices issued to the Council during 2023/24 (90). For comparison, during 2022/23 and 2021/22 the Council received 91 and 64 Decision Notices respectively. In

2020/21 it was 64, in 2019/20 it was 73 and in 2018/19 it was 78.

- 8.3 Of the 90 Decision Notices issued by the LGSCO in 2023/24, 67 cases were closed after the LGSCO conducted their initial enquiry with no further action for the Council. They carried out detailed investigations on 23 cases. In 6 of these cases they found 'No Fault', while in 4 cases they found there had been 'Fault with No Injustice' and in 13 cases there was 'Fault with Injustice' to the complainant. The services where the most 'Fault' was found were Adult Social Care with 3 and the Special Educational Needs and Disabilities (SEND) Service with 6.
- 8.4 Of the 90 Decision Notices there were 4 cases which the Ombudsman received which were rejected on receipt and referred back for local resolution. There may be others as the Council is not always notified of these cases and these figures are published in the LGSCO's annual report, which is usually issued by the end of July following the end of the financial year.
- 8.5 An update report on LGSCO referrals will be submitted to a future Audit & Governance Committee meeting, following the publication of the Ombudsman's Annual Report.
- 8.6 Information regarding general complaints under the Council's Corporate Compliments, Suggestions and Complaints Policy, as well as the Council's Adults and Children's Social Care Complaints Policies, is contained in the Annual Complaints Report 2023/24, presented to the Audit and Governance Committee on 29 July 2024.

Table 6 – LGSCO Referrals – Adults

Team	Final Decisions received this period	Outcomes of Final Decisions this period			
		Rejected	No Fault	Fault but no Injustice	Fault with Injustice
Social Care Business Support & Finance	3	2	0	0	1
Commissioning	2	2	0	0	0
East Learning Disability Team	3	2	0	0	1
Short Term Intervention South	1	1	0	0	0
South Learning Disability Team	2	1	0	0	1
Safeguarding	2	2	0	0	0
Nantwich & Rural	1	1	0	0	0
South Mental Health Team	1	1	0	0	0
Total	15	12	0	0	3

Table 7 - LGSCO Referrals – Childrens

Team	Final Decisions received this period	Outcomes of Final Decisions this period			
		Rejected	No Fault	Fault but no Injustice	Fault with Injustice
CHECS	2	2	0	0	0
CIN/CP Crewe	3	3	0	0	0
CIN/CP Macclesfield	2	2	0	0	0
Children with Disabilities	1	1	0	0	0
Education Transport	1	1	0	0	0
Family Service	2	2	0	0	0
Fostering	1	1	0	0	0
School Admissions	1	1	0	0	0
SEND	15	5	2	2	6
Total	28	18	2	2	6

Table 8 – LGSCO Referrals – Corporate

Team	Final Decisions received this period	Outcomes of Final Decisions this period			
		Rejected	No Fault	Fault but no Injustice	Fault with Injustice
Council Tax	4	2	1	1	0
Legal Services	3	3	0	0	0
Total	7	5	1	1	0

Table 9 LGSCO Referral – Place

Team	Final Decisions received this period	Outcomes of Final Decisions this period			
		Rejected	No Fault	Fault but no Injustice	Fault with Injustice
ANSA Transport	1	1	0	0	0
ANSA Waste	2	2	0	0	0
Assets & Property	1	0	0	0	1
Building Control	2	0	2	0	0
Community Enforcement	1	0	0	0	1
Commercial Services	2	2	0	0	0
Development Management	8	8	0	0	0
Environmental Commissioning	4	4	0	0	0
Highways	10	7	0	1	2
Housing	2	0	2	0	0
Parking	1	1	0	0	0
Planning Enforcement	5	4	1	0	0
Rural & Green	1	1	0	0	0

Team	Final Decisions received this period	Outcomes of Final Decisions this period			
		Rejected	No Fault	Fault but no Injustice	Fault with Injustice
Infrastructure					
Total	40	30	5	1	4

9. Constitution/Decision Making Process in Operation

- 9.1 The Constitution is monitored and reviewed at officer level by the Monitoring Officer and at member level by the Constitution Working Group and the Corporate Policy Committee. Significant changes are submitted to Council for approval. Minor changes can be made by the Monitoring Officer.
- 9.2 During 2020/21, a completely rewritten Constitution was produced to support the Council's transition to a committee system form of governance. The new Constitution was the product of extensive work undertaken by the Monitoring Officer and members of the Constitution Committee. The new Constitution was in place in time for the commencement of the new arrangements. Reviews have been carried out to identify any further updates or enhancements that have been considered necessary now that the new Constitution has been in operation for a period of time. There have consequently been 4 meetings of the Constitution Working Group during that period and 4 reports to full Council to approve amendments to the Constitution.
- 9.3 Amendments during 2023/24 related to the following matters;
- a) Rules of debate and Notices of Motion including amendments and closure motions
 - b) Functions of the Rights of Way sub-committee were incorporated into those of the Highways and Transport Committee .
 - c) That the three planning committees continue, meeting on a less frequently with the Strategic Planning Board meeting bi-monthly, and Southern Planning Committee and Northern Planning Committee meeting around every 6 weeks.
 - d) Amendments to the current delegations to the Executive Director of Place to take into account the cancellation of HS2.
 - e) insertion of a new table detailing the functions of the Returning Officer and the Elector Registration Officer and the deletion of the related references from the 'Statutory Officers' and 'Proper Officers'.
- 9.4 In relation to formal meetings during 2023/2024, of the total number of meetings held, there were approximately 34 closed Committee sessions

held under Schedule 12A of the Local Government Act 1972. These included Full Council, Corporate Policy Committee, Children and Families Committee, Adults and Health Committee, Economy and Growth Committee Finance Sub Committee, Audit & Governance Committee, General Appeals Sub-Committee, Staffing Appeals Sub-Committees, General Licensing Sub- Committee, and LA School Governor Panel.

- 9.5 In February 2024 full Council resolved that each Service Committee, including the Finance Sub Committee, arrange one twilight meeting over the course of its scheduled cycle of meetings during 2024/25. This was to accommodate working members and to assess whether twilight meetings should be held more frequently during the 2025/26 municipal year.
- 9.6 Those meetings were scheduled and held, and a survey is to be undertaken to assess members views.