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**REPORT TO: MORAY COUNCIL ON 6 DECEMBER 2023**

**SUBJECT: MONITORING OFFICER REPORT FROM 1 NOVEMBER 2022 TO 31 OCTOBER 2023**

**BY: MONITORING OFFICER**

**1. REASON FOR REPORT**

- 1.1 To inform the Council on the range of activities undertaken by the Monitoring Officer.
- 1.2 This report is submitted to Council in terms of Section III A (4) of the Council's Scheme of Administration relating to public performance reporting.

**2. RECOMMENDATION**

- 2.1 **It is recommended that the Council consider and note the contents of this report.**

**3. BACKGROUND**

- 3.1 There is a statutory requirement for every Council to appoint a Monitoring Officer. The Head of Governance, Strategy and Performance performs this role in Moray Council supported by the Legal Services Manager who acts as Depute Monitoring Officer.
- 3.2 Legislation requires the Monitoring Officer to bring to the attention of the Council:
  - *A contravention of law or any code of practice made or approved under any enactment; or*
  - *Maladministration or injustice in each case actual or potential and whether by the Council, committees, sub-committees or officers.*
- 3.3 The position adopted by the Monitoring Officer is that a breach would require to be material, or a significant breach of the law in terms of the operations or finances of the Council to cause the Monitoring Officer to issue a report to the Council.
- 3.4 It is normal practice within local authorities for the Monitoring Officer to:
  - Promote good governance and sound decision making.
  - Promote the Councillors Code of Conduct.

3.5 The Council's Policy and Resources Committee on 2 October 2012 agreed that the Monitoring Officer would present an annual report on the activities of the post (para 8 of the minute refers).

#### **4. SUMMARY OF WORK UNDERTAKEN BY THE MONITORING OFFICER:**

##### **Statutory role**

4.1 There have been no formal reports by the Monitoring Officer of legal contravention or maladministration as described in paragraph 2.2. The Council have a number of systems and processes in place to deal with breaches or non-compliance with legislation/policy at a lower level.

##### **Governance role**

4.2 During the period covered by the report the Monitoring Officer has:

4.3 Helped commission external assistance to improve collaborative leadership of Councillors and Officers to help the Council make progress with its strategic agenda and priorities. The results of this work were considered by the Council's Corporate Committee on 4 October 2023.

4.4 Helped ensure continued flexibility for Council/Committee meetings with the option of hybrid meetings.

4.5 Signed off agendas, reports and notices of motion submitted for all formal meetings of the Council and its Committees/Sub-Committees with assistance from the Legal Services Manager (Depute Monitoring Officer), Committee team and Legal team.

- This is a significant element of the Monitoring Officer's workload, often undertaken over a very restricted period to enable Committee Agendas to be published within the statutory timescales.
- Given increasing and competing demands on the roles of the Monitoring Officer/Depute, and staffing gaps within Legal Services, a lighter touch is now being given to the report review process with time spent being relative to the risk.
- Due to workload pressures in other areas reports are often received late which puts additional pressure on the agenda preparation process.

4.6 The combined effect of these issues creates an increased risk that procedural problems arise at committee which could have been resolved at an earlier stage.

4.7 Introduced guidance on Notices of Motion in response to an increasing amount of time being taken dealing with Notices of Motion in the Committee process. Whilst Notices of Motion are an important part of the democratic process, they can put additional demands on limited officer resources and require re-prioritisation of Council priorities. Further training planned on this at the time of writing.

4.8 Delivered training for committee chairs and facilitated training on scrutiny.

- 4.9 Advised all Councillors - administration and non-administration- on practical application of the Council's Constitutional Documents to the committee system, including advice on notices of motion, competency of motions, written questions, political balance and suspension of Standing Orders.
- 4.10 Progressed with a review of the Council's second tier Governance arrangements in line with the Council's Improvement and Modernisation Programme. This involved a review of the Council's meeting structures to help ensure that they meet the needs of the organisation. More recently a review of senior Councillor roles has been undertaken and a Councillors Roles and Responsibilities document agreed.
- 4.11 Through the legal services section, helped manage the Council's legal risk through:
- Dealing with claims in courts and tribunals.
  - Advice, statutory processes and transactional work.
  - Promote awareness of and compliance with major pieces of new legislation.
- 4.12 Given staffing gaps with the legal services section (largely due to recruitment issues), and despite prioritisation and increased outsourcing of legal work, it is becoming increasingly challenging to ensure that the Council receives appropriate and timely legal advice. This creates a significant legal risk to the Council which could manifest itself through service or process failure, leading to financial or reputational damage.

#### **Code of Conduct Role**

- 4.13 During the period covered by the report the Monitoring Officer has:
- 4.14 Maintained the register of councillors' interests including six monthly reminders and council tax payment checks prior to budget setting. Councillors are reminded that any changes must be notified within one month of them occurring.
- 4.15 Provided regular updates to Councillors in relation to Standards Commission briefings and relevant hearings. Further training opportunities will cover the issues raised in the following paragraphs.
- 4.16 Given advice to councillors on individual circumstances including:
- the requirement to declare an interest
  - registration of interests
  - the revised rules on accepting gifts and hospitality. This area has caused some practical difficulties which have been raised at a national level to see if further clarity can be given.
- 4.17 Dealt with complaints against Councillors in terms of the Council's policy, and informally mediated in situations of conflict between Councillors. These have involved the following provisions of the Code:
- showing respect for other Councillors

- language used in social media, an area of increasing tension and conflict between councillors.
  - allegations of bullying and harassment
- 4.18 This intervention can be time consuming and, where there is no element of contrition from those complained about, often has limited success with the complainer being signposted to the complaints process of the Commissioner for Ethical Standards.
- 4.19 Communicated with the Ethical Standards Commissioner and the Standards Commissioner over complaints covering registration and declaration of interest.
- 4.20 Participated with other Monitoring Officers in workshops with the Standards Commission over issues potential amendments to the Code of Conduct.
- 4.21 Maintained close links with other Monitoring Officers to act as a sounding board for tricky and complex issues.

## **5. SUMMARY OF IMPLICATIONS**

- (a) **Corporate Plan and 10 Year Plan (Local Outcomes Improvement Plan (LOIP))**  
Effective governance is required for the delivery of the Council's stated priorities and plans.
- (b) **Policy and Legal**  
These are detailed more fully in the report.
- (c) **Financial Implications**  
None.
- (d) **Risks implications**  
Actions taken by the Monitoring Officer help to manage political and regulatory risks within the Corporate Risk Register.
- (e) **Staffing implications**  
The role is carried out by the Head of Governance Strategy and Performance, supported by the Legal Services Manager. It can be challenging to fulfil the role alongside competing workload priorities.
- (f) **Property Implications**  
None
- (g) **Equalities/Socio Economic Impact**  
There are no issues arising directly from this report.
- (h) **Climate Change and Biodiversity Impacts**  
None
- (i) **Consultations**  
The Depute Monitoring Officer has been consulted and her comments have been reflected in the report.

## **6**      **CONCLUSION**

**6.1**    **The report informs the Council on the activities undertaken by the Monitoring Officer during the period covered by this report.**

Author of Report:    Alasdair McEachan, Head of Governance, Strategy and Performance (Monitoring Officer)

Background Papers: None

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