

Leicester
City Council

WARDS AFFECTED
All Wards – corporate issue

Cabinet

2nd September 2002

**ANNUAL REPORT OF THE MONITORING OFFICER
FOR 2001/2**

REPORT OF THE TOWN CLERK

1. PURPOSE OF REPORT

To summarise the key Monitoring Officer issues which arose in 2001/2, and indicate how they were addressed.

2. SUMMARY

2.1 The Town Clerk is the Council's Monitoring Officer under the Local Government and Housing Act, 1989. The Head of Legal Services is the Deputy Monitoring Officer.

2.2 Section 5 of the 1989 Act requires the Monitoring Officer to report to the Council on any proposal, decision or omission which has given rise or is likely to give rise to:

- contravention of law, or a statutory code of practice
- maladministration, or injustice in connection with action taken by, or on behalf of, the Council in the exercise of its administrative functions.

2.3 There have been legal developments: recent regulations made under the Local Government Act 2000 have amended Section 5 of the Act which now provides for the extension of the Monitoring Officer's obligations to make a report in cases of contravention of law etc to the Authority's Executive i.e Cabinet. The Cabinet must prepare a report after considering a Monitoring Officer's report and arrange for copies to be sent to every member of the Authority, as well as to the Monitoring Officer.

2.4 As Monitoring Officer, I must ensure that there is an adequate operational framework and sufficient corporate wide awareness to enable the statutory role to be fulfilled. I aim to be pro-active, so as to avoid problems, and minimise the need to act as a reactive "whistle blower".

2.5 The supporting information outlines the key issues and how they were addressed. The robustness of our legal and ethical framework was approached more

systematically this year and widened as part of the Comprehensive Performance Assessment. The District Auditor gave the highest assessment, level 4, on all aspects.

2.6 As the Council's recently appointed Corporate Governance "Champion", I will, from next year, extend these reports into corporate governance annual reports. They will be structured around the relevant procedures and systems and provide confirmation that these are sound or identify any action needed.

3. **FINANCIAL, LEGAL AND OTHER IMPLICATIONS**

It is the duty of the Council to provide the Monitoring Officer with sufficient staff, accommodation and other resources as are needed to perform the Monitoring Officer's statutory role. This report does not refer to any financial requirements which have not already been identified.

OTHER IMPLICATIONS	YES / NO	Paragraph reference within supporting papers
Equal opportunities	NO	
Policy	YES	b, c, and g.
Sustainable and Environmental	NO	
Crime and disorder	NO	
Human Rights Act	YES	Maladministration and injustice may give rise to Human Rights implications
Elderly persons / people on low income	NO	

4. **RECOMMENDATIONS**

That the Monitoring Officer issues which arose in 2001/2 and responses made, be noted.

5. **BACKGROUND PAPERS**

Relevant correspondence with the Ombudsman, Local Government and Housing Act 1989, Local Government Act 2000, and other relevant legislation.

6. **CONSULTATIONS**

There has been consultation with all departments and the District Auditor.

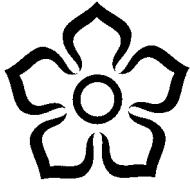
7. **REPORT AUTHORS/OFFICERS TO CONTACT**

Peter Nicholls, Head of Legal Services, x6302
Tom Stephenson, Town Clerk, x6300

PGN/JC/3570

DECISION STATUS

Key Decision	No
Reason	N/A
Appeared in Forward Plan	No
Executive or Council Decision	Executive (Cabinet)



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SUPPORTING INFORMATION

MAIN ISSUES WHICH AROSE IN 2001/2

a. Formal Monitoring Officer reports

The Town Clerk, as Monitoring Officer, has not experienced the need to make any formal, statutory report under Section 5 of the Local Government and Housing Act, 1989 to Council or Cabinet during the year 2001/2.

b. Prosecutions Policy

The Cabinet, at its meeting on 25th March 2002, agreed a policy which had been prepared following comment from the District Auditor. He felt that a revised and comprehensive prosecutions policy was necessary to link in with the action the Council was taking to combat fraud. The policy document therefore covers prosecutions undertaken by the Council and matters that are referred to the police for investigation and any subsequent prosecution.

The policy sets out the various tests to be applied to determine whether or not a prosecution should be undertaken, and deals with alternatives to prosecution. It contains specific enforcement policies, for example with regard to enforcement of legislation within the responsibility of Environment, Regeneration & Development.

c. New Political Structures

At its meeting on 29th November 2001, full Council approved a new form of Constitution which has been implemented as from the 1st January, 2002. The new Constitution complies in full with the requirements of the Local Government Act, 2000, and subsequent regulations.

The January 1st implementation date was designed to allow some training for officers and members to be completed in advance, and also to enable the full text to be available via the intranet. This has been implemented. Corporate wide training and briefings were delivered by staff, and specialist training was geared to legal and committee secretariat staff, as well as officers supporting the Scrutiny function. Members were also given the opportunity to attend full briefing sessions in January. In late February officer workshops were organised to draw out issues and problems experienced during the first couple of months under the new Constitution.

A further report was submitted to Council on 21st March recommending a range of changes and modifications which have now been implemented and a revised version can be accessed via the intranet, the latest edition being dated 12th June.

User friendly practical guides to key features of the new Constitution have been produced.

The Constitution has been implemented successfully, but I remain concerned that there are still issues to be addressed as we learn from experience; for example, some historic inconsistencies in Terms of Reference of Cabinet and Committees. A review has been initiated. There will be continuing training and development needs.

d. Comprehensive Performance Assessment

The Head of Legal Services has completed an assessment i.e. the “Comprehensive Performance Assessment Indicators – Code of Audit Practice” in respect of the Council’s legal and ethical framework. This was completed in consultation with the District Auditor. Attached shown as **Appendix 1** is a copy of the evidence which demonstrated to the satisfaction of the DA that this Authority has the attained level 4, the highest.

Appropriate legal input into decision making is essential whether decisions are being made by the Cabinet, Cabinet Lead or an officer in accordance with the Constitution. Late or inadequate consultation is still experienced some times. The DA is aware of these concerns. Directors are requested to re-emphasise to report authors the importance of legal consultation so as to avoid unnecessary problems.

e. New Whistle Blowing Powers

The Public Interest Disclosure Act 1998 came into force in July, 1999. A corporate procedure is available for use by staff. This includes a confidential “help line” to Internal Audit. This new whistle blowing procedure has been used at least once to date.

f. Health and Safety

The arrangements for the management of H&S were reviewed in May, 2001. the implementation of the recommendations of this review are continuously monitored, exceptions being reported and managed.

g. Data Protection Act

The ICT Contracts and Security Manager is currently co-ordinating a corporate survey to assess to what extent the Authority meets its statutory requirements. I think it would be prudent to acknowledge that gaps remain, but action is being taken in all cases to achieve compliance within a reasonable timescale.

h. Ombudsman issues and complaints

A summary of Local Government Ombudsman complaints received from 1st April, 2001 to 31st March, 2002 is attached as **Appendix 2**. The figures include a comparison with the previous three years.

The number of complaints received has dropped slightly, and the good news is that there has not been one case where maladministration has been found, an improvement on 2000/1 when 5% of complaints resulted in a finding of maladministration i.e 4 cases.

Appendix 3 is a comparison table of family authorities for the years 1999/2000, 2000/1 and 2001/2.

Fourteen complaints were closed as "local settlement" i.e. where a complaint does not warrant a full investigation by the Ombudsman, or where it is not necessary to bring the matter to the public attention. In such cases the Council can initiate a local settlement by taking action or agreeing to take action which the ombudsman considers to be satisfactory in the circumstances. This can take the form of compensation or provide some other benefit for that person.

Section 92 of the Local Government Act 2000 provides where the Authority considers that there may have been maladministration and that a person may have been adversely affected by that action, it may, if it thinks appropriate make a payment to, or some other benefit for that person.

The Town Clerk was authorised by the Cabinet on 4th June, 2001 to utilise this power on behalf of the Council. Adequate systems of control are in place to ensure consistency and fairness in decision-making.

There were 15 such cases in 2001/2, and a total of £2,193.64 compensation has been paid as a local settlement.

APPENDIX 1

COMPREHENSIVE PERFORMANCE ASSESSMENT

3. STANDARDS OF FINANCIAL CONDUCT AND THE PREVENTION AND DETECTION OF FRAUD AND CORRUPTION.

ISSUE	LEVEL 4 INDICATORS	EVIDENCE
<p>Ethical framework</p>	<p>The Authority has established a Standards Committee; and has either adopted a code of conduct for members incorporating the mandatory requirements of the model code or has plans to do so before 27th May, 2002.</p> <p>Members have or plans are in place for them to sign formally a declaration accepting the terms of the code.</p> <p>Information about the implications of new arrangements are disseminated to the public, partners, members and staff.</p> <p>Arrangements are in place for members to monitor and test the operation of the new framework</p>	<p>Standards Committee established on 31st July, 2001. A new Code of Conduct incorporating mandatory requirements of the new national model code under the Local Government Act 2000 was adopted in November, 2001.</p> <p>Yes, all Members have signed.</p> <p>The new Constitution can be accessed on the Internet, as can the Standards Committee business agendas, reports and minutes; a round of training and briefings have been held for members and all departments on various aspects of the Constitution including the new Code of Conduct.</p> <p>There has been specialist training for members involved in the planning regulatory function.</p> <p>In addition, user friendly leaflets are being prepared on various aspects of the Constitution e.g. scrutiny role and these can be made available to officers, members, partners and the public.</p> <p>Yes, the new Constitution was introduced as from the 1st January, with the first three months being regarded as a settling in and review period. Following this there was a full report to Council on the outcome of the three months experience following a round of officer workshops and a review by an all-party Organisation Working Party.</p>

ISSUE	LEVEL 4 INDICATORS	EVIDENCE
		<p>The Constitution is being kept under review to meet practical day to day requirements, as well as new regulations and changes in the law. The Head of Legal Services is identified as the lead officer on Constitution issues and has programmed consideration of the need for further review every quarter to identify the need for any changes to be authorised by full Council.</p> <p>The Town Clerk as reported to the Directors' Board on political management arrangements, as a basis for moving forward. There will be a half day for Cabinet and all party discussions through the Organisation Working Party. Minuted at the last Leader's Briefing.</p>
<p>Governance arrangements based on those now set up in the CIPFA Solace framework</p>	<p>The following documents and policies are in place and the need to review them has been considered within the last 12 months:</p> <ul style="list-style-type: none"> • Audit Committee (or equivalent) • Standing Orders • Standing Financial Instructions. • Scheme of Delegation. • Arrangements for whistle blowing. • Anti-fraud and corruption policy (including procedures for investigating frauds). • Complaints procedures. • Employee code of conduct. <p>The documents are made available to the public, partners, staff and members.</p> <p>Staff and members receive training and guidance on what these documents and arrangements mean for their behaviour.</p>	<p>On the 29th November, 2001 the Council approved a new Constitution in line with the requirements of the Local Government Act 2000, to be implemented as from the 1st January 2002. This provided for the following:</p> <ul style="list-style-type: none"> • Finance. Resources and Equal Opportunities Scrutiny Committee to take on the role of the Audit Committee. • Incorporation of fully reviewed Standing Orders, now known as Procedure Rules. • And the Scheme of Delegation and allocation of functions between Council and the Executive. <p>The Council has established policies for the following which are kept under review:</p> <ul style="list-style-type: none"> • Whistle blowing policy • Anti-fraud and corruption policy • Employee Code of Conduct, currently awaiting a new National Code.

ISSUE	LEVEL 4 INDICATORS	EVIDENCE
	<p>Arrangements are in place for members to monitor and test the operation of the new framework.</p>	<p>The Council has an established complaints procedure which is currently being reviewed.</p> <p>The full text of the Constitution is available to the public, members and all staff.</p> <p>There has been extensive training and briefing for members and staff on the Constitution.</p> <p>The Constitution has already been subject to a quarterly review, and will be subject to further regular review as required.</p>

5. LEGALITY OF SIGNIFICANT FINANCIAL TRANSACTIONS

ISSUE	ROLE AND RESPONSIBILITIES	EVIDENCE
<p>Roles and responsibilities</p>	<p>The roles and responsibilities of the Monitoring Officer and Section 151 officer are documented. These roles are understood by senior staff and across the authority. The officers have high status in the senior management structure, ensuring that the legality of significant financial transactions is considered. Members and other staff initiate seeking advice when developing novel or potentially unlawful courses of action.</p>	<p>Functions of the Monitoring Officer set out in the Constitution in Article 12.03. The function of Section 151 officers are set out in Article 12.04 and in the Finance Procedure Rules.</p> <p>Both officers have high status in the organisation i.e. the Monitoring Officer is the Director of Resources and Town Clerk, and the Section 151 Officer is the Chief Finance Officer, who also sits on Directors' Board. There has been very wide training / briefing for members and officers during the past six months to support the effective introduction of a new Constitution. Senior staff are made aware of their roles during induction, and are required to comply with the Constitution when performing their duties; the Constitution sets out clear the role of these two officers.</p>

ISSUE	ROLE AND RESPONSIBILITIES	EVIDENCE
		<p>Members and other staff are required to seek advice from these two officers e.g. there is a requirement to take into account financial and legal implications when reporting to Cabinet or a decision making committee; and the Council's project management guidelines require that all relevant projects have legal and financial advice input.</p> <p>The above practice is supported by the Council's Political Conventions.</p>
<p>Consideration of the legality of significant financial transactions</p>	<p>The Monitoring/Section 151 Officers are in a position to become aware of and challenge potential unlawful decisions. They act before concerns are brought to their attention by others. The legality of financial transactions is considered as part of the decision making process in a formal and structured way. Legal advice is followed.</p>	<p>Both the Monitoring Officer i.e. Town Clerk and Section 151 Officer i.e. the Chief Finance Officer attend Leader's Briefing, Cabinet and sit on the Directors' Board, which are the pivotal decision making bodies of the executive. They also support Council.</p> <p>The Monitoring Officer produces an annual Monitoring Officer report to Directors' Board and Cabinet; this has been introduced and retained as voluntary best practice, and to support a proactive rather than purely reactive approach by the Monitoring Officer. This has proved to be effective.</p> <p>All reports to Cabinet and other decision making committees have to include relevant legal and financial implications. Project management guidelines also require legal and financial input.</p> <p>The authority is supported by a strong, comprehensive legal support service with over 60 staff including approximately 20 solicitors. This Division provides a comprehensive legal service, or arranges for its procurement from external providers. The service is LEXCEL i.e. Law Society quality accredited. In the event of legal advice being ignored by officers or members, this would be reported to the Monitoring Officer who would take appropriate action. This practice is supported by the Council's Political Conventions.</p>

ISSUE	ROLE AND RESPONSIBILITIES	EVIDENCE
New legislation	The impact of new legislation is considered in a formal and structured way.	<p>Legal Services has a strong in-house legal support service. See above. This is a discipline based service with each of Legal Services teams specialising on particular aspects of local authority business e.g. one team specialises in child care work; another in commercial contract work. Each team / specialist area is required to ensure they are up to date with legal developments so as to provide advice to the Council in as proactive a way as need be. Examples are as follows:</p> <ul style="list-style-type: none"> • Legal Services initiated a programme of awareness raising and training in preparation for implementation of the Human Rights Act. • Also in preparation for new Constitution requirements of the Local Government Act 2002. • Working with specialists in other departments, Legal Services has ensure the authority is kept up to date with new developments e.g. working with the Chief Executive's Policy Team on the new well-being powers, working with ICT on data protection and freedom of information, and working with the HR health and safety unit on health and safety developments. <p>The service produces updates on various legal issues for corporate consumption e.g. employment law update and support other such proactive initiatives whereby other divisions / departments e.g. the Risk Management Team produces a regular update on risk management related legal developments which is published corporately.</p> <p>The Council is EMAS accredited. Legal Services has the role of ensuring the authority, via E,R &D is fully aware of all relevant environmental law developments.</p>

ISSUE	ROLE AND RESPONSIBILITIES	EVIDENCE
		<p>Legal Services invests annually in an extensive library, plus up to date ICT information support systems e.g. CD rom, internet link, and we have subscribed to Lawtel which ensures regular updates on legal developments to all in-house lawyers.</p> <p>Legal Services is accredited by the Law Society and the Legal Executives organisation, ILEX as an authorised in-house training venue which means that solicitors and legal executives who attend in-house training can receive the benefit of Continuing Professional Development hours. Training has been provided in subjects such as housing law developments, human rights act, code of conduct etc and many of these courses are open to all departments not just Legal Services. Certain courses e.g. Code of Conduct have been targeted at Members as well as officers.</p>

APPENDIX 2 LOCAL GOVERNMENT OMBUDSMAN COMPLAINTS

1998/99 – 2001/02

Subject to confirmation against figures to be supplied by the Local Government Ombudsman

COMPLAINTS RECEIVED				
	98/99	99/00	00/01	01/02
Complaints received	133	149	97	94
Complaints closed	112	130	87	85
Complaints closed – less premature	-	102	69	67
Complaints open at year end – 31 March	21	19	10	9

** Premature complaints – the LGO gives us the opportunity to put the complaint through our 3 stage complaints procedure. The LGO no longer include premature complaints in their published statistics for local authorities. Premature complaints have been included in these results for ease of comparison against previous years.

NUMBER OF COMPLAINTS CLOSED IN RELATION TO EACH DEPARTMENT				
	No. & % for			
	98/99	99/00	00/01	01/02
Arts & Leisure	4(3.6%)	3(2.3%)	5(6%)	1(1%)
Chief Executive's	2(1.8%)	1(0.76%)	2(2%)	1(1%)
Commercial Services	3(2.7%)	1(0.76%)	0	1(1%)
Education	7(6.2%)	16(12.3%)	7(8%)	5(5%)
Environment & Development	18(16.1%)	24(18.5%)	16(18%)	24(26%)
Housing	56(50%)	61(46.9%)	47(54%)	54(60%)
Housing & E&D	2(1.8%)	0	0	0
Housing & Social Services	3(2.7%)	1(0.76%)	0	0
Social Services	5(4.5%)	8(6.15%)	5(6%)	2(2.1%)
TC&CR	12(10.7%)	15(11.5%)	4(5%)	4(4%)
TC&CR & Housing	0	0	1(1%)	0
Total	112	130	87	94

LOCAL GOVERNMENT OMBUDSMAN COMPLAINTS

BREAKDOWN OF OUTCOMES

	No. & % for			
	98/99	99/00	00/01	01/02
No Maladministration	38(33.9%)	57(43.8%)	26(30%)	36(38%)
Local Settlement	25(22.3%)	23(17.7%)	24(27%)	15(16%)
Outside Jurisdiction	14(12.5%)	11(8.5%)	10(11%)	11(12%)
Ombudsman's Discretion	3(2.7%)	10(7.5%)	5(6%)	5(5%)
Premature	29(25.9%)	28(21.5%)	18(21%)	27(29%)
Discontinued/withdrawn	0	0	0	0
Maladministration Found	3(2.7%)	1(0.89%)	4(5%)*	0
Total	112	130	87	94

* Complaints described as Ombudsman's Discretion are those which have been terminated for reasons other than that there was no evidence of Maladministration or that the complaint was locally settled. For example a complaint might be terminated because the complainant wishes to withdraw his/her complaint

LOCAL GOVERNMENT OMBUDSMAN COMPLAINT OUTCOMES BY DEPARTMENT 2001/2002

	NM	LS	OJ	OD	MI	PREM	W	TOTAL
Arts & Leisure	0	0	0	1	0	0	0	1
Chief Executive's	1	0	0	0	0	0	0	1
Commercial Services	0	0	0	0	0	1	0	1
Education	2	2	0	1	0	0	0	5
Environment & Development	6	0	3	8	0	6	1	24
Housing	17	12	2	7	0	14	0	52
Social Services	1	0	0	1	0	1	0	3
Town Clerk's	1	0	2	0	0	1	0	4

NM No Maladministration

LS Local Settlement

OJ Outside Jurisdiction

OD Ombudsman Discretion

MI Maladministration & Injustice

Prem Premature (Opportunity to put the complaint through our 3 stage complaint procedure)
Not recorded in the Ombudsman's year end figures

W Withdrawn

APPENDIX 3
Complaints – Findings of Maladministration
Comparison Table of family Authorities

Authority	99/00		00/01		01/02	
	Findings of Maladministration	Total No. of complaints	Findings of Maladministration	Total No. of complaints	Findings of Maladministration	Total No. of complaints
Leicester	1 Housing Repairs	102	3 Housing benefit/ Repair 1 Right to Buy	97	0	
Birmingham	0	212	1	262	Figures not released by the LGO until July 2002 No cases of Maladministration found on the LGO internet within this group of authorities	Figures not released by the LGO until July 2002
Blackburn with Darwen	0	20	0	22		
Bolton	0	36	0	41		
Bradford	1 Planning	104	0	126		
Bristol	0	82	1	68		
Coventry	0	47	0	60		
Derby	0	33	2	32		
Dudley	0	41	0	53		
Kingston-upon-Hull	0	79	0	77		
Nottingham	1 Housing – Harassment/Eviction	41	2	66		
Plymouth	1 Highways	51	3	51		
Portsmouth	0	32	0	32		
Southampton	0	29	0	34		
Wolverhampton	0	38	0	30		

- **Number of complaints subject to the same LGO report**