

Public Forum

Audit Committee

20 November 2023 at 2pm



1. Members of the Audit Committee

Number	Name
1	Mike Oldreive
2	Dan Ackroyd



Statement to Audit Committee, 20 November 2023

Mike Oldreive

I'm sharing my concerns about governance failures apparent from my attendance at the Value & Ethics sub-committee of the Audit Committee.

It's clear that the Monitoring Officer (Tim O'Gara) has acted unlawfully (together with the Head of Legal Services, Nancy Rollason) in his "appointment" of Independent Persons to the members' complaints process.

My concern is that the Council appears to be attempting to cover up this unlawful activity (or "regularise" it, as Councillor Brown has suggested in his statement to the (cancelled) Full Council Meeting on 14 November. How can councillors responsible for proper governance of the authority be apparently attempting to avoid any mention of unlawful activity by the Monitoring Officer and not call for an investigation into what has gone wrong at the City Council?

There have evidently been serious failings in the Member's complaints process, that have not been subject to appropriate levels of scrutiny by members sitting on V&E:

- the actions of MO & HOLs to take upon themselves the role of selection and appointment of IPs, thereby failing to meet the requirements of s28 of the Localism Act, and usurping the role of members in appointments, since the last lawful appointment in 2013.
- Refusal to even provide dates of appointments of IPs and an absolute refusal to provide their names (this is a public appointment. What sort of country are we living in where people can make decisions with complete anonymity?).
- the lack of openness and honesty from the MO and HOLs in answering public questions (We have to date received no answers to our questions to the Monitoring Officer from V&E on 3 November (when both the MO and the Independent Member (Mr Adebayo) failed to attend)
- An insistence on imposing confidentiality on members of the public, when the LGA makes it clear that this is not practical (or ethical)
- The irony that given this insistence on confidentiality the HOLs and MO may have acted unlawfully and breached GDPR by sharing information with so-called "Independent Persons" they themselves appointed unlawfully
- Constant censoring of public questions and statements, always at the "11th hour", with no clear explanations given. Statements critical of the MO or HOLs are pulled. Statements critical of the Independent Member on V&E (Mr Adebayo) are pulled.
- Refusal to publish "public interest" test criteria, despite this being LGA best practice
- The issue of whether payments made to these unlawfully appointed "IPS" are lawful items of account.
- A process governed by secrecy on the grounds of "confidentiality". Poor quality management reports, with key information omitted. The HOLs has misled members by telling them that reports this year were in the same format as prior years. This is categorically untrue. This year she omitted the dates claims were received, thereby obscuring the length of time taken to decide on complaints
- Failing to report on key LG Ombudsman complaints findings that noted unacceptable delays in deciding complaints (over 5 months some cases) and that required a revised Member complaints Code to be prepared by the Council.

The Full Council meeting on 14 November planned to push ahead with the "ratification" of 3 IPs following what the Monitoring Officer described as a "robust" process. Members need to be clear exactly what that process was and whether it met the full requirements of the Localism Act. The public should also have a right to know the backgrounds of these individuals. These 3 IPs should not be appointed if they have had any dealings with any complaints to date.

I would ask Members of the Audit Committee, in accordance with their responsibility for governance matters, to consider:

- whether the MO and HOLs have met the standards of Honesty, Openness, Integrity, Accountability and Leadership in their management of the members complaints process, their reporting to V&E, and their responses to public scrutiny.
- what steps you need to take to restore full public confidence in the role of the Monitoring Officer, given that the current post holder Mr Tim O’Gara has acted unlawfully but refuses to take responsibility for his actions and refuses to issue a section 5 report (LGHA 1989) to report unlawful activity by a local authority
- Whether the attempt to “ratify” IP appointments at Full Council meets the legal requirements of the Localism Act 2011 in full.
- Why the scrutiny process of Audit and Vales & Ethics committees failed to pick up failings in the members’ complaints process- most significantly the unlawful appointments of IPs (possibly over the last 7 years)

It is clear that members of the public who have made complaints about Councillors already felt badly let down by the process. Now that we know the Monitoring Officer himself has acted unlawfully and still refuses to admit to this, or follow due process as set out in LGHA 1989, how can we have any trust in governance at Bristol City Council?

END

Chair,

Due to the unfortunate events that led to the Full Council meeting being postponed, Bristol City Council is still in breach of the Localism Act 2011, by not having any lawfully appointed "Independent Persons".

Since this has been the case since about 2017, another week of this situation isn't going to make a significant difference, but it is very disappointing that the Monitoring Officer is failing to provide clear information about what has happened.

Not only is he not coming forward to volunteer information, is also failing to give responses to questions asked formally.

On the 3rd of November, myself and another member of the public submitted written supplementary questions as part of the Value & Ethics committee as the Monitoring Officer didn't attend that meeting. I have not had any response and I do not believe the other member of the public has had any response either.

I was led to expect a response by the 6th November to a formal complaint (attached below) I submitted to Bristol City Council on the 16th of October about the "Independent Persons" situation. I did not receive a response.

On a separate matter, the Monitoring Officer said in full council on the 31st of October that he would give a written explanation of why the minutes Extraordinary Full Council were not recorded accurately in line with current Council policy. I have not had a response.

I do not find it acceptable that the Monitoring Officer is refusing to answer questions that have been properly submitted.

I still believe that the "Independent Persons" matter requires a 'Section 5 report' as per the Local Government and Housing Act 1989 which puts a personal public duty on a Monitoring Officer to write a report if "any proposal, decision or omission by the authority...constitutes, has given rise to or is likely to or would give rise to a contravention by the authority...of any...rule of law'.

I believe a failure to write a report is also in breach of section A13.03(b) of Bristol City Councils Constitution, which reads:

"(b) Ensuring lawfulness and fairness of decision making

After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Full Council or to the Mayor in relation to an executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered."

It is understandable that mistakes happen and things get missed.

It is not acceptable that the Officer who is meant to be promoting high standards in the rest of the Council is refusing to answer questions, and refusing to carry out the public duty imposed on him as Monitoring Officer.

Please will you write to the Monitoring Officer and tell him he does need to actually follow the law and BCC constitution, even if it's embarrassing for himself. Or he could explain why he doesn't need to do those things, which is one of the supplementary questions I asked on the 3rd of November.

Text of complaint ref: 40910847 made on 16th October 2023

I wish to make two complaints with regard to how complaints about Member Code of Conduct have been handled.

Under Section 28 of the Localism Act 2011 there is a very clear requirement that the independent persons involved in the process are required to be approved by a vote of the councillors: "a person may not be appointed under the provision required by subsection (7) unless the person's appointment has been approved by a majority of the members of the authority"

My understanding is that the last time that happened in Bristol City Council was in 2013. Further, my understanding is that unfortunately that independent person passed away in 2016.

My first complaint is that any of the independent persons who have been appointed without having been approved by the required vote, have been appointed unlawfully. By implication, that means none of the complaints that have been handled since 2016, including my own complaint, have been handled in a lawful manner.

Under Section 5 of Local Government and Housing Act 1989 which lists the duties of a Monitoring Officer: "it shall be the duty of a relevant authority's monitoring officer, if it at any time appears to him that any proposal, decision or omission by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any joint committee on which the authority are represented constitutes, has given rise to or is likely to or would give rise to ...a contravention by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any such joint committee of any enactment or rule of law or of any code of practice made or approved by or under any enactment...to prepare a report to the authority with respect to that proposal, decision or omission."

Which basically says if the council breaks the law, or are considering an action that would break the law, the Monitoring Officer is required to give a report that gives full details of that unlawfulness.

My second complaint is that this report has not been written.

I believe a failure to write this report, which is a required public duty, is by itself an unlawful act.