

Standards Committee	Agenda Item:
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Meeting Date	16th November 2010
Report Title	Monitoring Officer Annual Report
Portfolio Holder	Not applicable for this report
SMT Lead	Director of Corporate Services as Monitoring Officer
Head of Service	Not applicable
Lead Officer	Director of Corporate Services
Key Decision	Yes/No
Classification	Open

Recommendation	<p>That the Standards Committee notes this report and the following action points:</p> <ol style="list-style-type: none"> 1. The Committee to consider the implications of the Localism and Decentralisation Bill once it is published. 2. The Committee to undertake work relevant to maintaining the current regime until it is abolished or replaced and that the rest of its identified work programme be put on hold until it has considered the Bill further.
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PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1. This is my fifth report, as Monitoring Officer for Swale Borough Council. The purpose of the report is not only to provide an overview of Monitoring Officer work in the past year, but also to provide an opportunity to review and learn from experience. This report therefore sets out the Monitoring Officer's statutory responsibilities and summaries how several of these duties have been discharged since my last report and seeks to draw Members' attention to some of the more significant developments which may require attention.

THE ROLE OF THE MONITORING OFFICER

2. The role of the Monitoring Officer derives from the Local Government and Housing Act 1989. The Act requires local authorities to appoint a Monitoring Officer. The Monitoring Officer has a broad role in ensuring the lawfulness and fairness of Council decision-making, ensuring compliance with Codes and Protocols, promoting good governance and high ethical standards. A Summary of the Monitoring Officer's functions is as follows:

Description	Source
Report on contraventions or likely contraventions of any enactment or rule of law	Local Government and Housing Act 1989
Report on any maladministration or injustice where the Ombudsman has carried out an investigation	Local Government and Housing Act 1989
Appoint a Deputy.	Local Government and Housing Act 1989
Establish and maintain the Register of Members' interests, and the register of gifts and Hospitality.	Local Government Act 2000
Report on sufficiency of resources	Local Government and Housing Act 1989
Maintain the Constitution	The Constitution
Support the Standards Committee. Promote and maintain high standards of conduct.	Local Government Act 2000
Receive reports from Ethical Standards Officers and Case Tribunals.	Local Government Act 2000
Consulting with, supporting and advising the Head of Paid Service and Chief Finance Officer on issues of lawfulness and probity.	The Constitution
Undertake the local filter and assessment of complaints that a member may have breached the Code of Conduct.	The Standards Committee (England) Regulations 2008. The various Sub Committees of the Standards Committee – the Referrals Sub Committee, the Standards Appeal Sub Committee and the Hearings sub Committee
Receive referrals from Ethical Standards officers for local	Local Authorities (Code of Conduct) (Local Determination) Regulations

Investigations	2003
Advice on whether executive decisions are within the budget and policy framework	The Constitution
Provide advice on vires issues, maladministration, financial impropriety, probity Budget and Policy Framework issues to all members.	The Constitution
Legal Advisor to the Standards Committee when carrying out a local Determination Hearing	Local Authorities (Code of Conduct) (Local Determination) Regulations 2003
Issuing Dispensations to Members regarding prejudicial interests	The Standards Committee

CONSTITUTIONAL REVIEW AND REVISION

3. The Constitution sets out how the Council operates and how decisions are made. It contains the procedures which are followed to ensure that these decisions are efficient, transparent and that those who make the decisions are accountable to local people. The Monitoring Officer is the guardian of the Council's Constitution and is responsible for ensuring that the Constitution operates efficiently, is properly maintained and is adhered to.

4. A review of the Constitution has just commenced to reflect the latest legislation and best practice in anticipation of the authority moving to four yearly elections from May 2011. In addition the authority is required to have agreed new executive governance arrangements by 31st December 2010. Attached at Appendix A is the summary of amendments of the Constitution, these are currently being considered by the General Purposes Committee.

5. In my previous reports I have reminded Members of the link between the work of the Standards Committee and the Key Line of Enquiry under Use of Resources (UoR) assessment. Since the election of the Coalition Government UoR has been replaced by an approach more focused on value for money. I do not believe that this should reduce the concepts of good decision making that the Constitution is designed to promote:

- "taking informed, transparent decisions and managing risk"
- "Engaging stakeholders and making accountability real"
- "members & officers working together to achieve a common purpose with clearly defined functions and roles"
- "effective leadership throughout the council and being clear about what the executive, non-executive and scrutiny functions and the respective roles and responsibilities"

- positive relationships between members and the local community including the voluntary and community sector must be clear so each knows what to expect of each other and what to do when things go wrong"
- " the council's culture is open and outward facing with a clear focus on the needs of local communities"

LAWFULNESS AND MALADMINISTRATION

6. The Monitoring Officer is the Council's lead adviser on issues of lawfulness and the Council's powers and in consultation with the Head of Paid Service and Chief Financial Officer advises on compliance with the Budget and Policy Framework. Part of this role involves monitoring reports, agendas and decisions to ensure compliance with legislation and the Constitution. At the heart of this work is the agenda of and reports to the Executive. Executive reports and decisions are made publicly available for Councillors either electronically or by way of a paper version. Executive decisions can also be viewed by Members of the public through the Council's website: www.swale.gov.uk/dso.

7. The Executive has met on 10 occasions since November 2010. In each case the Management Team had reviewed the agenda and associated draft reports. This clearance process is an important part of ensuring corporate working in an effective Council and provides a vital opportunity to discuss aspects of reports or decisions that require 'buy-in' from, or have implications across, services. All Heads of Service receive draft agendas and Finance, HR and Legal officers have the opportunity to contribute to reports under 'Implications'. Strategic Management Team now review the Forward Plan as a standing item on its agenda and seek advice from the Head of Organisational Development, Head of Finance and the Head of Legal as appropriate. This enables Strategic Management Team to review early in the process reports to be presented to the Executive. This has enhanced earlier input and through informal working with the Executive has ensured that a clear set of recommendations are presented to the Executive for consideration.

8. Ultimately, if the Monitoring Officer considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration a report must be submitted to the Full Council or, where appropriate, the Executive after first consulting with the Head of Paid Service and Chief Financial Officer. Any proposal or decision that is subject to such a report cannot be implemented until the report has been considered.

9. The sound governance arrangements operated by the Council ensure that the power to report potentially unlawful decision-making is rarely, if ever, used. The Monitoring Officer has not had to issue such a report.

GOOD GOVERNANCE AND CODE OF CONDUCT

10. The Monitoring Officer has continued his pro-active role in ensuring good practice, good procedures and good governance. Where I have seen evidence which tests the boundary of good governance I have sought to engage both the individual

Member and Group Leaders to ensure that there is some discussion and shared ownership of where the correct threshold of acceptable or appropriate conduct or good governance lies. This dialogue will continue and I remain grateful for the support of Group Leaders in discussions on these issues. I am also pleased to record once again that the occasions where I have sought to do this have been very few.

11. There have again been a number of issues relating to planning which is not surprising given the quasi-judicial nature of the work. Matters raised tend to relate to declaration of interests. In particular, prejudicial interests and the impact this has on the member's right to speak (they are able to speak in the same way as a member of the public but must leave the meeting room having done so). The Head of Development Services, with external support, has reviewed planning committee procedures and provided updated training for planning members. I have also given individual advice to members on predisposition, predetermination or bias and the Code. I gave advice on declaring interests where members represent the council on an outside body where they have been appointed by the Council (they have a personal interest which must be registered only if they speak on the matter unless the interest relates to financial matters when their interest becomes prejudicial).

12. I have provided informal advice to parish councillors on potential conflicts of interests and the nature and extent of personal and prejudicial interests.

13. Good governance involves providing procedure notes, guidance, developing and implementing protocols and providing briefings and enabling effective support to Councillors in their different roles including Member training. The purpose of these briefing notes is to provide readily accessible reference materials for members. In addition all briefing notes received from Standards for England are sent to all members.

14. The main task for the year has been administering the local filter, where all complaints are considered by the sub- Committees of the Standards Committee.

15. There has been an increase in the number of complaints received. Details are set out in Appendix B.

REPORTS FROM THE LOCAL GOVERNMENT OMBUDSMAN AND COMPLAINTS

16. This year the Council has reviewed its approach and has prepared its first annual complaints report incorporating the annual letter for the year ended 31st March 2010 from the Local Government Ombudsman. This is attached as Appendix C

THE ETHICAL FRAMEWORK AND SUPPORT TO THE STANDARDS COMMITTEE

17. As lead Officer for the Standards Committee and the Ethical Framework the Monitoring Officer has a key role in facilitating, promoting the Council's Ethical Framework and in promoting and maintaining high standards of conduct within the authority. As well as policy development and implementation this also involves advising Members and Officers including those within the Parish/Town Councils on propriety issues, advising the Standards Committee on applications for dispensations and

advising the Standards Committee when they determine an allegation of misconduct on the part of a Member including a Member from a Parish/Town Council. The maintenance of the Registers of Interests for the District, as well as the Parish/Town Councils, is also the responsibility of the Monitoring Officer, as is the Register of Hospitality.

18. In the period to end October 2010, the Standards Committee met twice to consider the following:-

- adoption of the Local Government Association's 'Probity in Planning the role of Councillors and Officers –revised guidance note on good planning practice for Councillors and Officers dealing with planning matters'
- future work programme
- a revised framework for the granting of dispensations
- an update and review of the local referral system
- terms of reference for the local filter and determination
- appointment of independent members and parish council representation

19. In addition the various Sub Committees have met on several occasions, please refer to Para. 15 and Appendix B for details.

MAINTAINING REGISTER OF MEMBER INTERESTS

20. The Monitoring Officer is responsible for establishing and maintaining a Register of Members interests for the District, Parish/Town Councils. The District Parish/Town Council Register of Members interests are held by the Personal Assistant to the Director of Corporate Services. They are updated periodically as Members advise, and through the Parish/Town Clerks, as well as on an annual basis. The Interests of District Council members are available on the council's website.

CODE OF CONDUCT FOR EMPLOYEES

21. The Constitution includes a Code for Employees. We had been awaiting the development of a National Code following the latest consultation from the Department for Communities and Local Government. We undertook research amongst the high performing authorities to test whether our Code was 'fit for purpose'. I found that the majority had a Code similar to the Council's and were not considering revising theirs. I have decided to incorporate a new Code of Conduct for Employees as part of the constitution review to bring the register of interest in line wherever possible with that of Members.

OVERSEEING REGISTRATION OF OFFICER INTERESTS

22. The Monitoring Officer writes to Councillors, Officers of the Management Team or on certain salary grades, or appointed by statute, each year and asks them to complete and sign an annual declaration on related party transactions. This captures transactions between the individual; members of the individual's close family or the individual's

household; or partnerships, companies, trusts or any entities (e.g. charities) in which the individual or their close family of same household has a controlling interest. This declaration is asked for in accordance with FRS9 (Related Party Transactions), as contained within the Code of Practice on Local Authority Accounting in Great Britain 1998.

WHISTLE BLOWING (Protected Disclosure Policy)

23. The whistle blowing policy of the Council is publicised throughout the organisation on the internal Intranet. As a first step, concerns should be raised with the employee's immediate manager or their superior. This depends however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. If this is not practical or appropriate then they can be raised with the Monitoring Officer or the Head of Audit. Where appropriate, the matters raised maybe investigated internally, be referred to the external auditor or form the subject of an independent inquiry. The Monitoring Officer has overall responsibility for the maintenance and operation of this policy.

CORPORATE COMPLIANCE WITH LEGISLATION

24 Legal updates, including details of new legislation, are circulated to relevant officers within the organisation. Those officers then circulate legal updates including new legislation to Members when they consider this to be appropriate. All reports have a compulsory heading in which the author has to consider legal implications and if there are likely to be legal implications the author has to seek comments from the Head of Legal. The same procedure follows for any financial implications (the Head of Finance) and human resources (The Head of Organisational Development).

PROTOCOL ON COUNCILLOR/OFFICER RELATIONS

25. The Protocol on Councillor/Officer Relations is contained within the Constitution. This sets out what is expected of Officers and what is expected of Members. When the relationship between Members and Officers breaks down, or becomes strained, attempts should be made to resolve matters informally through conciliation by an appropriate senior manager or Members. Officers will have recourse to the Council's Grievance Procedure or to the Council's Monitoring Officer, as appropriate to the circumstances (as set out in the Constitution).

26. In the last period there have been no complaints of this type to the Monitoring Officer

SUPPORT TO COUNCIL, EXECUTIVE, SCRUTINY AND COMMITTEE MEETINGS

27. The distribution and publication of committee reports, agendas and decisions is central to good governance. This includes:

- Distributing and publishing all agendas within five clear working days of the meeting taking place and ensuring that all agendas are compliant with the access to information rules and exempt information is marked up accordingly.
- Advertising public meetings at least five clear days before the meeting date.
- Ensuring that papers are available to the public either through the website or from district offices and libraries.
- Publishing minutes as soon as possible after the meeting, in particular Executive Minutes are published within 3 clear days of the meeting.
- Ensuring that petitions are handled in accordance with the Council's constitution,
- Ensuring that meetings are accessible to the public.

28. One of the explicit aims of the Local Government Act 2000 was to streamline the decision making process to allow Council's to focus on service delivery.

29. From 1st November 2009 to 31st October 2010 the following meetings were serviced:

1st November 2009 - 31st October 2010

Name of Meeting	No. of times met	
	Ordinary	Extraordinary
Audit	5	
Council	7	3
Executive	10	
Faversham Local Engagement Forum	4	
General Purposes Committee	2	
Hackney Carriages & Private Hire Vehicles Committee	2	
Licensing	4	
Licensing Sub-Committee	15	
Local Development Framework Panel	5	1
Planning	14	
Planning Working Group	9	
Policy Overview Committee	7	
Rural Forum	4	
Scrutiny Committee	9	
Sheppey Local Engagement Forum	4	
Sittingbourne Local Engagement Forum	4	
South Thames Gateway Building Control Partnership	3	
Standards Appeal	3	
Standards Committee	3	

Standards Consideration	2	
Standards Hearing Sub-Committee	0	
Standards Referral	5	
Swale Joint Transportation Board	4	

Total 128 meetings.

30 This represents 128 meetings in total. – This compares with 132 in the previous year and 117 the year before, this has been accommodated within existing resources but needs to be monitored. The volume of meetings represents a substantial commitment of both Councillors' and officers' time and resources. It is of great importance that meetings constitute an effective use of time and resources; that they add value to corporate effectiveness and help in meeting the aims and objectives of the Council. Meetings are generally arranged to start at 7pm, as from research this is the preferred time for members. In addition, a timetable of meetings is set each May for the ensuing year, to ensure that members have as much notice as possible.

Attendance Statistics - 18th May to 31st August 2010

Conservative Group

Councillor	Number of Meetings	Number Attended	Number Not Attended	Percentage Attended
Mark Baldock	9	3	6	33.33
Barnicott	14	11	3	78.57
Bobbin	16	15	1	93.75
Andy Booth	19	13	6	68.42
Lloyd Bowen	12	11	1	91.67
Bowles	11	8	3	72.73
Derek Conway	12	8	4	66.67
Mike Cosgrove	9	7	2	77.78
Adrian Crowther	9	8	1	88.89
Richard Darby	7	5	2	71.43
Duncan Dewar-Whalley	9	8	1	88.89
Trevor Fentiman	12	12	0	100.00
Chris Foulds	15	14	1	93.33
Ed Gent	11	6	5	54.55
Sue Gent	9	9	0	100.00
Nicholas Hampshire	11	10	1	90.91

Lesley Ingham	17	14	3	82.35
Gerry Lewin	12	8	4	66.67
John Morris	11	9	2	81.82
Bryan Mulhern	18	11	7	61.11
Prescott	20	17	3	85.00
Ken Pugh	9	6	3	66.67
Gareth Randall	8	5	3	62.50
Patricia Sandle	19	17	2	89.47
David Simmons	10	9	1	90.00
Brenda Simpson	8	6	2	75.00
Ben Stokes	16	13	3	81.25
Paul Sturdgess	12	8	4	66.67
Anita Walker	7	5	2	71.43
Ted Wilcox	10	9	1	90.00
Alan Willicombe	12	11	1	91.67
Jean Willicombe	12	11	1	91.67
John Wright	13	10	3	76.92

Labour Group

Councillor	Number of Meetings	Number Attended	Number Not Attended	Percentage Attended
Jackie Constable	11	10	1	90.91
Mick Constable	16	14	2	87.50
Harrison	15	14	1	93.33
Mike Haywood	10	9	1	90.00
David Sargent	9	4	5	44.44
Adam Tolhurst	8	6	2	75.00
Roger Truelove	15	14	1	93.33
Ghlin Whelan	13	10	3	76.92

Nick Williams	8	8	0	100.00
Worrall	8	7	1	87.50

Liberal Democrats Group

Committee	Number of Meetings	Number Attended	Number Not Attended	Percentage Attended
Dave Banks	9	7	2	77.78
Mike Henderson	16	12	4	75.00
Elvina Lowe	10	3	7	30.00

Independent Councillor

Committee	Number of Meetings	Number Attended	Number Not Attended	Percentage Attended
Monique Bonney	8	2	6	25.00

THE FORWARD PLAN

31. The coordination and maintenance of the Forward Plan is central to meeting the requirements of good governance as it enhances open and transparent decision-making.

32 The Forward Plan sets out the key decisions that the Executive will take, on a rolling four-month programme. It is updated and published each month and its use has been extended to include 'non' key decisions also. The Forward Plan is the key agenda planning document helping Strategic Management Team to keep an overview of the decision making process. In addition, the Scrutiny Panels also use the Forward Plan to identify whether there are any areas that they wish to review, rather than wait to 'call in' a decision.

MEMBER TRAINING AND DEVELOPMENT

33. Democratic Services have been developing the training and development opportunities for members, and the Council has signed up the principles of the South East Employers Member Development Charter. A Member Development Working Group has been established, which includes representatives from the parties on the Council, which has proved invaluable in designing a programme geared to meet members' needs, developing plans to achieve the Charter and role responsibilities for councillors. **The SE Employers review took place on 20th October and I am very pleased to report that the Council was awarded the Member Development Charter and I would like to record my thanks to all members and officers involved in preparing for the assessment.**

INDEPENDENT MEMBERS ON THE STANDARDS COMMITTEE

34. Following representations by the Monitoring Officer to Standards for England there has been no change in the independent membership of the Standards Committee; Independent Member Stephen Rogers was elected Chairman for the municipal year 2010-2011.

ATTENDANCE AT STANDARDS BOARD ASSEMBLY

35. Members will be aware that I normally attend the Annual Assembly of Standards Committees arranged by the Standards for England in October at the International Convention Centre, Birmingham. However, in the light of an early announcement by the Coalition Government that it intended to abolish the Standards regime the Annual Assembly was postponed.

FUTURE OF THE STANDARDS REGIME

36. There has been some speculation over the last few months in terms of what will happen with the abolition of Standards for England - in particular there has been discussion in terms of whether the Standards regime would remain with the Standards for England being abolished. This has been clarified by a recent press release issued by Communities Minister, Andrew Stunell. He has confirmed that the Government are very unhappy with the whole Standards regime, saying it had become a "vehicle for malicious and frivolous complaints".

37. Under the new regime (to be implemented via the new Localism bill)

- the entire Standards Board regime will be abolished;
- the Councillors' Code of Conduct will be abolished;
- Standards Committees at a local level will be abolished;
- failing to register an interest, or deliberately seeking to mislead the public about an interest will become a criminal offence;
- if a complaint goes to the Local Government ombudsman, local authorities will be obliged to implement the ombudsman's findings.

38. Mr Stunell said "This Government is freeing Councillors from central prescription and top-down bureaucracy so that they can get on with their job. In the future Councillors must expect to be judged at the ballot box by an electorate with real access to their accounts and personal interests in a new transparent era".

39. Members will no doubt have their own views on whether in future Councillors are voted in or voted out because of their personal ethical standards rather than which party they belong to. **It is suggested that once the Bill is published this Committee consider the implications further**

USE OF COVERT SURVEILLANCE

40. Since April 2010, in accordance with revised Codes of Practice I am obliged to report the number of occasions the authority has used covert surveillance. The Office of the Surveillance Commissioner (OSC) advised that it was appropriate to include such information within my Annual Monitoring Officer report to members. I am currently reviewing the Regulation and Investigatory Powers Act (RIPA) policy to reflect this and other changes and recommendations of OSC. Since April 2010 there has been one authorisation in respect of a housing benefits case to establish whether individuals were living together.

CONCLUSIONS AND COMMENTS

41. The Monitoring Officer's role encompasses both proactive and reactive elements. The proactive role centres on raising standards, encouraging ethical behaviour, increasing awareness and utilisation of the elements of good governance and ensuring that robust procedures are in place across the whole of the Council.

42. The reactive role focuses on taking appropriate action to deal with issues and potential problems as they arise. The Monitoring Officer's effectiveness in this role is in turn dependent on effective systems and procedures being in place to identify problems and ensure that Members, Officers and public are aware of appropriate channels to raise concerns.

43. The work programme was agreed at the meeting held on 14th July. Given the comments in paras. 36-39 on the future of the regime, I do not feel it would be an appropriate use of resources at present to do anything other than satisfy the authority's assessment, review and determination responsibilities under the existing regime.

44. IMPLICATIONS

Issue	Implications
Corporate Plan	The role of the Monitoring officer is pivotal to good governance and the corporate priority of becoming a high performing organisation
Financial, Resource and Property	The role is part of the Corporate Services Director's duties; he has access to resources within the organisation to enable him to perform his statutory duties. The issue of costs of investigation under the local filter remains a concern and in the interim arrangements have been made to use the Local Arbitrator as a cost effective way of dealing with this
Legal and Statutory	These are set out in Para 2 of the report
Crime and Disorder	Not directly relevant to this annual report

Risk Management and Health and Safety	None directly arising from this annual report.
Equality and Diversity	The authority's governance framework is underpinned by the Corporate Equality and Diversity Policy and procedures
Sustainability	None directly arising from this annual report

APPENDICES

- 45 The following documents are to be published with this report and form part of the report
- Appendix I: summary of changes to Constitution
 - Appendix II: summary of complaints under the Code of Conduct
 - Appendix III: annual complaints report to Executive

RECOMMENDATIONS

46. That the Standards Committee notes this report and the following action points:
- The Committee to consider the implications of the Localism and Decentralisation Bill once it is published.
 - The Committee to undertake work relevant to maintaining the current regime until it is abolished or replaced and that the rest of its identified work programme be put on hold until it has considered the Bill further.

Mark Radford
Corporate Services Director & Monitoring Officer

Date: 03 November 2010

SWALE BOROUGH COUNCIL

Summary of amendments required to The Constitution

4 October 2010

General points to improve accessibility etc.: -

- Explanation and glossary of key terms including: –
- Pages numbers and referencing

Other points/themes

- Strong Leader – amend Articles and Part 3
- Involvement of Representatives s138 LGPHA 2007
- Interest parties in Licensing

PROPOSED AMENDMENTS TO THE CONSTITUTION

PART 1 – Summary And Explanation

Reference	Amendment required
Introduction	<p>Definitions</p> <p>The current Constitution uses the phrase “the Council” to refer sometimes to full Council meeting as a body, and sometimes to the legal entity of Swale Borough Council, including the Executive. It is preferable to reserve the phrase to mean exclusively full Council, and use the phrase “the authority” for the legal entity. Similarly, it is preferable to use the phrase “the Cabinet” to mean the Leader and fellow members of the Cabinet meeting as a body, and to use the phrase “the Executive” to mean any part of the authority which is discharging executive functions, including the Cabinet, individual Cabinet Members and officers.</p> <p>Reason: Best Practice/Clarity</p>
Introduction	<p>Re: Local Engagement Forums</p> <p>The present Introduction refers to these as experimental for a period of one year from 1st January 2009. It would be appropriate to update this provision. If it is agreed that Local Engagement Fora should continue, then the Terms of Reference must be updated to confirm that:</p> <ul style="list-style-type: none"> • They are advisory • Decisions are taken by the Portfolio Holder or an Officer.with

	<p>delegate authority</p> <ul style="list-style-type: none"> • They deal with executive functions only <p>Reason: Best practice</p>
ARTICLES	
Reference	Amendment required
Article 2	<p>Elections by Thirds</p> <p>At paragraph 2.2 the Constitution currently refers to the Council considering moving to all-out elections from May 2011, so this has to be updated to take into account the decision to move to all-out elections.</p> <p>Reason: Best Practice</p>
Article 2	<p>Roles and Responsibilities of Councillors</p> <p>At paragraph 2.3 Councillors are primarily elected as members of the Council, to act collectively in the best interests of the authority and its area. It is only subject to this primary objective that individual Councillors may act as representatives of their wards or electoral divisions. No Councillor should be prepared to put their constituency interests above the broader public interest of the authority as a whole and its area. This paragraph should be amended to reflect this ordering of priorities.</p> <p>Cross reference this amendment to Leader and Cabinet's terms of office introduced by Local Government and Public Involvement in Health Act 2007.</p> <p>Reason: Best practice</p>
Article 3	<p>Petitions</p> <p>The description of the rights of Citizens should be extended to include the right to sign and to submit to the authority a petition relating to any of the authority's functions or any matter which affects the authority's area, in accordance with Sections 10 to 22 of the Local Democracy, Economic Development and Construction Act 2009. Suggested that the authority's Petition Scheme be appended to the Constitution.</p> <p>If the Council allows public speaking at Planning and /or Licensing</p>

	<p>Committees, it might be appropriate to include a reference to this in this Article.</p> <p>Reason: Legislation update</p>
Article 4	<p>Functions of Council – with the aim of using Council in accordance with behaviours of high performing authorities and as a public forum, to review the list of plans and strategies in Paragraph 4.1(a) that make up the Policy Framework</p> <hr/> <p>Functions of Council</p> <p>Cross ref to Budget and Policy Procedure Rules</p> <p>Functions of Council</p> <p>At 4.2 (i) it would be appropriate to extend this section to say that the functions reserved to Council include not only confirming the appointment but also confirming the dismissal of the Head of the Paid Service.</p> <p>Consider amending arrangements for making appointments to outside bodies and whether some can be made by the Executive, and whether the nominations need to be politically balanced where there are 3 or more nominations.</p> <p>Reason: Legislation Update</p>
Article 4 - 4.4	<p>At paragraph 4.4 it might be clearer to say that, whilst certain functions are reserved to Council, the Council can delegate many of its functions to a Committee, a Sub-Committee, a Joint Committee or an officer. Where Council has so delegated any functions, this is set out in Part 3 of the Constitution.</p> <p>Reason: Best practice</p>
Article 5 Chairing the Council	<p>Consider whether any amendments are required following Mayoralty review.</p>
Article 6	<p>Functions of Overview and Scrutiny Committees</p> <p>At Paragraph 6.2, it would be better to say that, whilst the Council is required to establish at least one and as many Overview and Scrutiny Committees as it considers to be appropriate, the Local Government Act 2000, as amended, confers the following functions on such Committees.</p> <p>Reason: Best practice</p>

Article 6	<p>Overview and Scrutiny Committee</p> <p>At paragraph 6.3 (Specific Functions) it would now be appropriate to add that Overview and Scrutiny Committees have the function of considering petition organisers' appeals against the outcome of the consideration of their petition, in accordance with Section 17 of the Local Democracy, Economic Development and Construction Act 2009</p> <p>The terms of reference needs to be updated to incorporate the requirement to consider crime and disorder, and also community call for action.</p> <p>Reason: Legislation update</p>
Article 7	<p>Should now state that the Executive comprises the Cabinet, which itself comprises the Leader and the other members of Cabinet appointed by Council, and any part of the authority which is discharging executive functions. (see Introduction)</p> <p>Reason: Best practice and compliance with legislation (strong leader or elected mayor model)</p>
Article 8	<p>Composition of Standards Committee – Most of these changes have already been made following decisions by the Standards Committee –</p> <p>The changes in this area have been noted in the Procedure Rules, but should be reflected in the Articles as well.</p> <p>Since 8th May 2008, the Standards Committee has been required to set up a Referrals, a Review and a Hearings Sub-Committee. Because of the need to populate these various Sub-Committees as set out below, it may be appropriate to increase the size of the Standards Committee beyond its current 6 elected members, 3 independent members and 2 Parish representatives. Note that one, but only one, member of the Cabinet must be a member of the Standards Committee.</p> <p>Whilst there is no requirement to appoint the elected Members in accordance with political proportionality, the political independence of the Standards Committee is important and most authorities have chosen to appoint the elected Members of the Committee in accordance with political proportionality.</p>

Article 8	<p>The Chair of the Standards Committee and of each Standards Sub-Committee must be an independent member.</p> <p>The Standards Committee itself and each Sub-Committee of the Standards Committee must have at least one Parish or Town Council representative present whenever it considers any matter relating to a Parish or Town Councillor. Accordingly, the Standards Committee should include a minimum of 3 Parish or Town Council representatives.</p> <p>Reason: Legislation update</p>
	<p>Standards Sub-Committees</p> <p>From 8th May 2008, the Standards Committee was required to appoint separate Referrals, Review and Hearings Sub-Committees, to undertake the initial assessment of standards complaints against members, review such assessments, and conduct hearings where an investigation identifies evidence of failure to observe the Code of Conduct (Section 185 of the Local Government and Public Involvement in Health Act 2007).</p> <p>Complaints will no longer be referred to the Standards Committee by the Standards Board for England. Items 7 and 8 in the functions list should therefore be replaced by “appointing Sub-Committees as required for the assessment, review and determination of complaints in respect of member conduct.” These Sub-Committees have been included in Part 3 of the Constitution, but deserve mention in the Introduction and Articles.</p> <p>Reason: Legislation update</p>
	<p>The Role of Standards Committee</p> <p>Note that it is only complaints of failure to comply with the Members’ Code of Conduct that are by statute the responsibility for the Standards Committee. Any breach of a member protocol would fall to the full Council in its common law power of self-regulation. Accordingly, if Council wishes the Standards Committee to deal with complaints of failure to observe approved protocols, it would need to give a specific delegated authority to the Standards Committee for this purpose.</p> <p>As from 1st April 2008, Section 202 of the 2007 Act gave the Standards Committee the function of determining applications for senior employees for exemption from restrictions on party political activity, and this should be added to the terms of reference of the Standards Committee.</p>

	<p>From 15th June 2009, the Standards Committees (Further Provisions) Regulations extended the power of Standards Committees to grant members dispensations from prejudicial interests.</p> <p>Reason: Legislation update</p> <p>Quorum and Composition of Standards Committees and Sub-Committees</p> <p>The Standards Committee Regulations 2008 provide that the Committee must include only one member of the authority's Executive. Both Committee and Sub-Committees must include at least one Independent Co-opted Member, and at least one Parish Council Member who is not also a member of the Authority when it is considering Parish Council business, and at least 25% of its members must be Independent Co-opted Members. The quorum of the Committee or Sub-Committees requires that every meeting of the Standards Committee or of a Sub-Committee is chaired by an Independent Co-opted Member, that at least one elected member of the Council is present during any meeting, and that a Parish representative is present whenever the meeting is dealing with Parish business.</p> <p>Reason: Legislation/Regulation update</p> <p>MOST, IF NOT ALL, OF THESE AMENDMENTS HAVE BEEN AGREED BY THE STANDARDS COMMITTEE</p>
Article 8	<p>Joint Standards and Scrutiny Committees</p> <p>Joint Standards Committees can now be established for all or any of the functions of the Standards Committee. The capacity to set up such Joint Arrangements should now be reflected in the Constitution</p> <p>Reason: Legislation update</p>
Article 11	<p>The Role of the Monitoring Officer</p> <p>Following the implementation of the relevant part of the Local Government and Public Involvement in Health Act 2007, Sub-paragraph 11.03(h) should be amended to read – “Assist the Standards Committee in the assessment, review, investigation and determination of complaints in respect of the conduct of members.”</p>

	Reason: Legislation update
Article 11	<p>The Role of the Chief Finance Officer</p> <p>Following the Local Government Act 2003, the Chief Finance Officer is required to certify the robustness of the Councils estimates of expenditure and proposed Budget.</p> <p>Reason: Legislation update</p>
	<p>Ward Councillor Decision-Making</p> <p>Whilst executive functions can be delegated to an individual Cabinet Member, non-executive functions could not be delegated to an individual member. However, the Local Government and Public Involvement in Health Act 2007 gave local authorities a <i>power</i> to delegate executive and non-executive decisions to ward Councillors, provided that the decision to be taken was effective only within that member's ward (Cabinet members would have to exercise any executive functions within their wards as Cabinet members, rather than under these new delegations). Authorities had previously addressed this issue quite satisfactorily by delegating powers to an officer, who took a decision after consultation with ward Councillors.</p> <p>Where powers are so delegated, the ward Councillor is required to produce a record of, and can be subject to appropriate Scrutiny in respect of, any decisions taken. This new provision has not been implemented widely by local authorities because of the absence of safeguards and the difficulties of operating it in multi-member wards, but the availability of the power should be referred to in the Constitution.</p> <p>Need to include procedure for individual Executive decision making in the constitution</p> <p>Reason: Legislation update</p>

<p>Article 12</p>	<p>Role of the Monitoring Officer</p> <p>Note that the case tribunals have now been replaced by the First Tier Tribunal.</p> <p>You may wish to provide that:: -</p> <ul style="list-style-type: none"> • the Monitoring Officer will “arrange for” the conduct of standards investigations, rather than necessarily conduct them him/herself • the Monitoring Officer be given the specific task of advising members on matters relating to the Code of Conduct. <p>An updated Monitoring Officer Protocol should be included in Part 5. The protocol should set out the responsibilities for this statutory post and his relationships with individuals and services within the authority.</p>
	<p>Delegation to Monitoring Officer to Amend the Constitution</p> <p>The Constitution is not a primary document, but is derived from other decisions, fact and law. Currently the Monitoring Officer has delegated power to amend the Constitution to –</p> <ol style="list-style-type: none"> (a) ensure that the Constitution and the Council’s procedures meet all legal requirements; (b) reflect changes to arrangements for the distribution of responsibilities and the delegation of powers in accordance with decisions taken by the person (s) or body with authority to take such action; (c) give effect to changes explicitly approved by the Full Council; and (d) ensure that any new or amended protocols are included in the Constitution once they have been approved by the person (s) or body with the authority to do so <p>This formulation omits changes of fact and statute, and decisions of the Executive, and it is recommended that the text of the Constitution be amended to include such changes in the delegation to the Monitoring Officer.</p> <p>Reason: Best practice</p>

	<p>Deputy Monitoring Officer</p> <p>Strictly, the Deputy Monitoring Officer is appointed by the Monitoring Officer under Section 5 of the Local Government and Housing Act 1989 and not by the Council. This is already correctly set out in the Scheme of Delegations to Officers.</p> <p>Reason: Currently not compliant with legislation</p>
Article 13	Principles of Decision-Making - Update to include equality duty and consultation – cross-ref to Consultation Protocol to be added to Part 5

PART 3 – RESPONSIBILITY FOR FUNCTIONS	
Reference	Amendment required
Introduction	<p>Review layout and presentation and title.</p> <p>Set out principles or requirements when exercising delegated powers are used</p> <p>Cross reference to sections within this part of the Constitution</p>
Terms of Reference for committees	Presentation for information consider templates and include political balance requirements
Part 3.2 “Responsibility for Council Functions”	<p>Audit Committee – consider role and nature of committee – is it advisory or decision-making.</p> <p>Consider co-opted/Independent Member appointment</p>
	<p>Appointments to Outside Bodies – consider principles for making appointments to outside bodies; whether there are any appointments to outside bodies that can be agreed by the Executive; and whether we need to apply the political balance principles where the full Council appoints 3+ members to an outside body.</p>
Part 3.1	<p>Local Choice Functions</p> <p>Review list of delegations – can any be delegated to individual Executive Members?</p>
Part 3.2	Council Functions

	<p>Section 106 agreements - clarify whether any aspects fall within Executive's remit</p> <p>Planning Working Group or adjourned Planning Committee meeting for purpose of a site visit</p> <p>If the Planning Working group is to report to Planning Committee in its own name, it must be an advisory Committee or Sub-Committee, and as such is subject to proportionality. Accordingly, it can only comprise proportional members plus local members <u>either</u> as a consequence of a "nem con" vote of Council (or of Planning Committee for a Sub-Committee) or as a proportional Committee or Sub-Committee which invites the local members to attend and speak, but not to vote.</p> <p>Reason: Compliance with legislation</p>
Part 3.2	<p>Audit Committee – confirm whether decision-making or advisory</p> <p>Consider appointing a co-opted/Independent Member.</p> <hr/> <p>Functions of Appointments Committee</p> <p>It is recommended that the Appointments Committee also take on the role of Disciplinary Committee for those officers for whom it has appointment responsibility, recommending to Council in the case if dismissal of the Chief Executive. It would be useful for the Committee to have a power to appoint a Designated Independent Person where appropriate, and to determine the suspension of relevant officers during disciplinary investigation and proceedings</p> <p>Reason: Best practice</p> <hr/> <p>Standards Committee and Standards Sub Committees</p> <p>Reference to "appointing Sub-Committees as required for the assessment, review and determination of complaints in respect of member conduct" should be made</p> <p>Reason: Best practice</p>
Part 3.3	<p>"Responsibility for Executive Functions"</p> <p>Local Engagement Fora</p> <p>Terms of Reference and decision-making arrangements to be confirmed</p>

	<p>Local Development Framework Panel</p> <p>If the Local Development Framework Panel were to be authorised to take decisions regarding the Local Development Framework, it would be discharging non-executive functions. If that were to be the case, the Panel would appear in Part 3.2 as a Committee exercising functions delegated from Council, rather than as an off-shoot of the Executive. However, SBC's arrangements are that for proposed amendments to the LDF, the Panel makes recommendations to the Executive, and the Executive then makes recommendations to full Council, which means that the LDF Panel is part of the Executive arrangements.</p> <p>Reason: Compliance with legislation</p> <p>Standards Committee</p> <p>Incorporate amendments approved by the Standards Committee - Consider a Joint Standards Committee</p> <p>Swale Joint Transportation Board</p> <p>Review the terms of reference and arrangements regarding the Swale Joint Transportation Board to ensure compliance with legislation. As the terms of reference of the Board appear to be limited to executive functions, the composition would be limited to members of the Cabinet.</p> <p>Reason: Compliance with legislation</p>
Part 3.3	<p>Swale Rural Forum</p> <p>As the representatives of each of the outside bodies will change over time, it would be better not to name the current appointees in the Constitution.</p> <p>Reason: Best practice</p>
Part 3.10	<p>Scheme of Delegations</p> <p>Structure and drafting. The scheme of delegation of non-executive functions (i.e. scheme of delegation from Council to Committees) is drafted in the form of a list of specific statutory functions. The consequence is that it is lengthy and needs to be amended every time new legislation establishes a new non-</p>

executive function. The list of functions reserved to full Council will need to remain as a list, but it is possible to re-draft this Scheme rather more briefly in terms of generic functions (e.g. “the functions of the authority as local planning authority” or “the functions of the authority as highway authority”) without any loss of effect.

Delegation to Officers. The introduction could usefully set out which posts comprise Directors, and which comprise Heads of Service.

Functions of the Chief Executive. It would be useful to set out the functions of the Chief Executive in relation to staffing, stating that all appointments, discipline and dismissals of staff below Director level is delegated to the Chief Executive, and giving the Chief Executive power to appoint a Designated Independent Person in respect of disciplinary investigation or proceedings in respect of the Monitoring Officer or Chief Finance Officer.

Functions of Directors. It would be useful to state that the Chief Executive has delegated responsibility to Directors for all appointments, discipline and dismissal of staff within their Directorates. This can then be mirrored in the terms of reference of Heads of Service.

Functions of Executive Members..- clarify extent of individual decision-making.

Appointment of a Designated Independent Person. It would be sensible to give the Chief Executive specific power to appoint a DIP in respect of disciplinary investigation and proceedings in respect of the Monitoring Officer or Chief Finance Officer, and give the Head of HR (or equivalent) a power to appoint a DIP in respect of the Chief Executive, after consultation with the Chair of Council. The appointment of a DIP is required before the start of a disciplinary investigation for these statutory officers, so it may be inconvenient to have to report up to Council or Appointments Committee at that early stage in the process.

Generally. The present scheme is rather statute- specific, and as a result it is cumbersome and regularly out of date. Whilst some statutory functions need to be allocated explicitly to a particular officer, it is possible to move many of these delegations across to a generic form, while specifying requirements for consultation, or requirements to refer proposed decisions up the ladder, to Directors, Chief Executive, Cabinet Members, Cabinet, Committee or Council. Therefore, It should be recast so as to be consistent, giving very wide powers, particularly in emergencies, to the Chief Executive; somewhat more limited powers to Directors, and more limited powers to Unit Heads, and giving the Chief Executive a

	<p>members requisition an Extraordinary Meeting, they shall specify the business which they want to be transacted at the meeting, including making a positive motion, and that they may provide a report in support of their motion.</p> <p>Consider whether there could be a report from the Executive on one of the strategic themes at each Council meeting (other than AGM and budget setting) and allow opportunity for debate or questions.</p> <p>Reason: Best practice</p>
<p>Part 4.2 Executive Procedure Rules</p>	<p>Approval of Minutes (Paragraph 2.3)</p> <p>Strictly, the statement of executive decisions is effective as a correct record once it is signed by the proper officer as such. So they would normally only go back to the next meeting to note, and perhaps ask questions on progress of implementation, but not to approve as a correct record. This will be explored further.</p> <p>Order of Business (Paragraph 2.3)</p> <p>For ordinary Cabinet Meetings there should be an opportunity on the agendas for reports from statutory officers, for example under Section 5A of the LG&HA 1989.</p> <p>Reasons: Compliance with legislation</p>
<p>Part 4.3 Executive Procedure Rules</p>	<p>In Paragraph 1.1, the decision-making power would be vested in a Joint Committee, not in “Joint Arrangements.”</p> <p>Access to Meetings (Paragraph 1.7)</p> <p>This should read that meetings will be in public unless the meeting resolves to exclude press and public from that meeting or part of the meeting by reason of consideration of confidential or exempt information. At the moment it reads the wrong way round, effectively that meetings are private whenever there is the slightest excuse for doing so.</p> <p>Conduct of Executive Meetings</p> <p>It would be sensible to apply many of the conduct rules which apply to Council to Cabinet Meetings, for example on disruption, voting, rules of debate and so on.</p> <p>Reason: Best practice</p>

<p>Part 4.3 Budget and Policy Rules</p>	<p>Opposition Parties Alternative Budgets – timetable and process</p> <p>Executive Objection Process (Paragraph 2(g))</p> <p>On Budget, but not on policy, the executive objection procedure only applies if the Executive has delivered the draft budget to the Council by a specified date. Otherwise, the Council may approve an amended Budget without awaiting and considering any objections from the Leader</p> <p>“Departure Decisions” (Paragraph 3(a))</p> <p>The text currently says that the Executive must act “in line with” the approved policies and budget. Schedule 4 to the Functions and Responsibilities Regulations 2000 provide that, except in emergencies, the Executive cannot take decisions which are “contrary to the policy framework, or contrary to or not in accordance with the Budget.” This wording is important as it means that a proposal which is simply not catered for by a policy is not a departure and so can be taken by the Executive. However, a proposed decision not to spend monies which are provided for in the Budget would be a departure and so have to be approved by Council. Suggested that exact text adopted on this point.</p> <p>Virement (Paragraph 5(a))</p> <p>This paragraph is far from clear in its meaning, and as to what constitutes the formal Budget. It is possible for the Council to agree that only certain figures within the Budget constitute “the Budget”, and so are subject to the virement and departure rules, and that the remainder constitutes supporting information.</p> <p>Reasons: Compliance with legislation</p>
<p>Overview and Scrutiny Rules</p>	<p>Timescales for the Executive to respond to Scrutiny</p> <p>The Local Government and Public Involvement in Health Act 2007 provided that, where an Overview and Scrutiny Committee make a report and recommendation to the Executive, the Executive must respond within 2 months of receipt of the report and recommendation. This requirement can be incorporated into the Overview and Scrutiny Rules</p> <p>Reason: Compliance with legislation</p>

<p>Part 4.2</p> <p>Access to information Rules</p>	<p>Exempt information (Paragraph 10.2)</p> <p>Section 100B and Schedule 12A of the Local Government Act 1972 provide that a meeting may only exclude press and public by reason of exempt information where it is of the opinion that the public interest in maintaining confidentiality over-rides the public interest in disclosure. The text should reflect this provision.</p> <p>Attendance at Cabinet Meetings and Cabinet Committee Meetings (Paragraph 21)</p> <p>All meetings of Cabinet and Cabinet Committees are open to the public unless they exclude press and public for consideration of confidential or exempt information. When they are in open session, the meeting or the Chair can invite any member of the public, and any Councillor, to speak (subject to any prejudicial interests on the part of the Councillor). When the Cabinet or Cabinet Committee votes to exclude press and public, other Councillors are treated as members of the public and would normally be required to leave the meeting, unless specifically invited to remain. The most frequent reason for excluding press and public is that the Cabinet or Cabinet Committee will be considering personal information disclosure of which amounts to “processing” under the Data Protection Act, which should only be undertaken where it is “necessary” for the discharge of the Cabinet or Cabinet Committee’ statutory functions. Accordingly, unless the Cabinet or Cabinet Committee is of the opinion that there is an over-riding reason for the Councillor remaining, in terms of their contribution to the decision-making process, any Councillor who is not a member of the Cabinet or Cabinet Committee should depart with press and public.</p> <p>Access to Standards Sub-Committee reports and agenda</p> <p>The Constitution should be amended to exclude access to information provisions in respect of Standards Sub-Committees when undertaking initial assessment and review of standards complaints, as the Standards Committees Regulations 2008 abrogate the relevant provisions of Part 5 of the Local Government Act 1972.</p> <p>Reasons: Compliance with legislation</p>
<p>Part 4.2</p>	<p>Decision-making by individual Cabinet Member</p>

<p>Access to Information Rules</p>	<p>The rules on access to information for decisions by single Cabinet Members provide much less access than those for formal meetings. Whilst this is a matter for the Executive to determine (Council only has the ability to make rules for the procedure of Cabinet and Cabinet Committee meetings), many authorities have chosen to treat individual Cabinet Member decisions as if they were a formal meeting, with a formal summons specifying a time and place at which the decision is to be taken, with 5 clear days notice of intended decisions, publication of reports and rights of attendance and audience before the decision is taken. Need to add in procedure note for making individual decisions.</p> <p>Freedom of Information, Environmental Information Regulations and Data Protection Act</p> <p>It would be appropriate to add reference to other rights of access to information, including the Freedom of Information Act, Environmental Information Regulations and Data Protection Act, <u>and</u> to Councillors' common law Need to Know.</p> <p>Reason: Best practice</p>
	<p>Forward Plan and Key Decisions - Definitions</p> <p>Review local definition of Key Decision which sets the financial threshold at £100,000. Informal Briefings on matters falling within the definition of "Key Decisions" should be open to public – review wording to improve clarity.</p> <p>Reason: Best practice</p>
<p>Reference</p> <p>Part 4.9</p> <p>Officer Employment Rules (??Paragraph 4.0)</p>	<p>Disciplinary action in respect of Statutory Officers</p> <p>The current wording suggests that this is an Executive function. However, the discipline and dismissal of staff is a non-executive function, so these functions would have to be undertaken by the Council, or a Committee or officer under powers delegated by Council. For this purpose, it is recommended that the powers, including the power to suspend and to appoint an investigating officer, be vested in a Sub-Committee of the Appointments Committee (which might include the Leader) and in the Chief Executive for the Monitoring Officer (MO) and the Chief Finance Officer (CF) and in the Head of HR after consultation with the Mayor for the Chief Executive.</p> <p>As good practice, this Appointments Sub-Committee (or the Chief Executive in respect of MO or CFO) should then decide on the basis of the investigation report whether the matter should go to a</p>

	<p>formal disciplinary hearing, which would be conducted by the Appointments Committee or a Sub-Committee appointed for the purpose in the case of the Chief Executive, and by or on behalf of the Chief Executive in the case of the MO or CFO. The DIP would sit as a co-opted non-voting member of the disciplinary panel, and would make his/her formal report and recommendation in the light of the hearing. In the case of the Chief Executive, the Committee or Sub-Committee's decision to recommend to Council that the Chief Executive be dismissed would constitute the decision of intent to dismiss, giving the opportunity for the Chief Executive to appeal and be heard at full Council, which can then take a final decision whether to dismiss. This enables what can be a very protracted process to be undertaken in a reasonable timescale.</p> <p>Reason: Good practice</p>
Public Participation Procedure Rules	Review arrangements for public speaking at Council meetings – especially in light of the revised Code of Conduct for Members
Officer Employment Rules	<p>The Rules speak of “Chief Officers”, whereas the posts are titled as Directors and Heads of Service. It would be useful to have a statement that Directors are to be treated for this purpose as Chief Officers and Heads of Service are to be treated as Deputy Chief Officers. The Standing Orders Regulations provide the authority with a degree of discretion, as they allow that members may be involved for Chief and Deputy Chief Officers, but that the Council may delegate this task to a Committee or Sub-Committee or to the Chief Executive, save only that the final decision to dismiss the Chief Executive must be taken at full Council.</p> <p>Reason: Best practice</p>
Contract and Financial Standing Orders	In need of updating - especially the financial thresholds
PART 5 – PROTOCOLS AND LOCAL CODES OF GOOD PRACTICE	
Local Authority Entities	Increasingly, local authorities discharge functions through companies, partnerships and trusts, which may be wholly local authority owned, or have shared ownership with other authorities and public bodies, or with private sector partners. Although these are not part of the authority (as they are by definition separate legal entities), it would give a clearer picture if a section were included which detailed any such arrangements and set out accountabilities.

	Reason: Best practice
Statement of support facilities for Councillors	<p>The Constitution includes the scheme of members' allowances. It might be useful to include a short statement of the facilities which the authority gives to Councillors to enable them to conduct their functions. Inclusion in the Constitution helps to allay public concerns over the scale of benefits to members, assists new members to identify how to get the resources to fulfil their functions, and informs potential candidates for election as to the facilities which would be available to them.</p> <p>Reason: Best practice</p>
New/Updated Protocols to be added	<p>An updated Monitoring Officer Protocol should be included in Part 5. The protocol should set out the responsibilities for this statutory post and the relationships with individuals and services within the authority</p> <p>Use of resources</p> <p>Gifts and Hospitality</p> <p>Appointments to Outside Bodies</p>

FURTHER CHANGES REQUIRED AS A RESULT OF IMPLEMENTATION OF NEW LEGISLATION - APPENDIX 1	
Reference	Amendment
Local Government and Public Involvement in Health Act 2007	<p>“Strong Leader”</p> <p>The Local Government and Public Involvement in Health Act 2007 requires the Council to alter its current Executive Arrangements to take effect from the Council’s Annual Meeting in May 2011.</p> <p>Following the Local Government Act 2000, the Council chose to adopt a “Leader and Cabinet Executive” rather than a Directly Elected Mayor Executive.</p> <p>Within a Leader and Cabinet Executive, the Council has discretion whether to reserve to themselves the powers to determine the size of the Cabinet, elect and remove the Cabinet Members, assign portfolios and limit delegation to individual Cabinet Members.</p> <p>In practice, the Council decided to operate what is known as a</p>

	<p>“Strong Leader” model, whereby, once the Leader is elected by Council, all these discretionary functions rest with the Leader.</p> <p>Now, Sections 62 to 74 of the Local Government and Public Involvement in Health Act 2007 define a new “Leader and Cabinet Executive (England)” model of Executive, which go beyond the current “Strong Leader” model in a limited number of respects. The key differences are as follows –</p> <p>The Leader must be elected for a 4-year term of office. S/he can only be removed mid-term by ceasing to be a Councillor (death, resignation or disqualification), resignation as Leader, or by resolution of Council. Where the Leader ceases to be Leader, a new Leader must be elected from the balance of the original 4-year term;</p> <ul style="list-style-type: none"> (a) Only the Leader may determine the size of the Cabinet, and appoint and remove Cabinet Members; (b) The Leader may determine Cabinet Portfolios and determine what powers are delegated to individual Cabinet Members; (c) The Leader’s term of office no longer ends 3 days after an election, when all Councillors automatically cease to be Councillors, but extends up until the Annual Meeting of Council at which his/her successor as leader is to be elected, even if s/he has not been re-elected as Councillor; (d) There is a statutory position of Deputy Leader, Appointed by the Leader, who can exercise all the statutory powers of the Leader in the Leader’s absence but reverts to the status of an ordinary Cabinet Member if the Leader ceases to be Leader. <p>The final resolution must be made by 31st December 2010, and the changes take effect from the Annual Meeting in May 2011.</p>
<p>Local Democracy, Economic Regeneration and Construction Act 2009</p>	<p>Changes in the Role of Scrutiny</p> <p>The Local Democracy, Economic Regeneration and Construction Act 2009 changes the role of Overview and Scrutiny Committees. Whilst still able to call in and review executive and other decisions, the formal Best Value review is abolished, and Scrutiny Committees are re-focused on securing the co-ordination of the</p>

	<p>various public agencies and service providers in the authority's area. So the Overview and Scrutiny Committees will be able to request any person or body providing public services within the authority's area to attend and give evidence, and those organisations must then have regard to the reports and recommendations of the Committee. The previous Government's Total Place initiative uses Scrutiny Panel to collate all public expenditure in an authority's area, as a means of securing better co-ordination of the activities of the various public agencies. Despite the change in Government, the fundamentals of Total Place remain as important as ever.</p>
<p>Pending legislation Decentralisation and Localism Bill</p>	<p>Review of the Members' Conduct.</p> <p>The new Government has cancelled the implementation of a revised Code of Conduct and committed to "abolishing the Standards Board Regime". The exact proposals will emerge in the Decentralisation and Localism Bill in late October or early November, and any replacement regime is unlikely to be in place before April 2012</p> <p>We know that the Standards Board for England will be abolished, and the Minister has stated that the Code of Conduct for Members and Standards Committees will be abolished, and that electoral recall (the ability of a percentage of local electors to require a Councillor who has been proven to have seriously mis-conducted him/herself to go through a by-election) will be introduced. At this stage, no changes are required to the Constitution, but clearly these changes, if implemented, would require significant further change to the Constitution</p>
<p>Deferred Code Employees' Code of Conduct</p>	<p>Employees' Code of Conduct</p> <p>The Government also consulted on a proposed Employees' Code of Conduct which would be incorporated into officers' contracts of employment. However, implementation has also been deferred. If and when this Code is introduced, it would be appropriate to include this Employees' Code of conduct into the Constitution.</p>
<p>Local Government and Public Involvement in Health Act 2007</p>	<p>Duty to Promote Democracy</p> <p>Section 138 of the Local Government and Public Involvement in Health Act 2007 placed a requirement on the authority, where it considers it to be appropriate, to involve representatives of local</p>

	<p>persons in the exercise of any of its functions This can be by the provision of information, by consultation, or by other means. There is a broad power to co-opt people other than elected Councillors onto Advisory Committees and Sub-Committees, such as Scrutiny Panel, and to give them voting powers. Where the Committee or Sub-Committee takes operative decisions, rather than just making recommendations, such co-opted member cannot have voting powers except in particular limited circumstances. This power should be reflected in the Constitution.</p>
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Appendix II

Complaints received under the Code of Conduct 2009

Compliant no.	Decision Notice – No further action	Appeal – No further action	Reference to Monitoring Officer	Decision – No breach of Code
1	√	√		
2	√	√		
3	√	√		
4			√	√
5	√			
6			√	√
7	√			
8	√			
9	√	√		
Total	7	4	2	2

Complaints received under the Code 2010

Compliant no.	Decision Notice – No further action	Appeal – No further action	Reference to Monitoring Officer	Decision – No breach of Code
1	√			
2	√	√		
3	√	√		
4	√	√		
5			√	
6			√	
7			√	
8	√	√		
9	√	√		
10			√	
Total	6	5	4	*

***Note Complaints 5-7 and 10 currently under investigation**

Executive	Agenda Item: 6
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Meeting Date	6 th October 2010
Report Title	Complaints 2009/10
Portfolio Holder	Executive Member for Performance
SMT Lead	Dave Thomas
Head of Service	Dave Thomas
Lead Officer	Dave Thomas
Key Decision	No
Classification	Open
Forward Plan	

Recommendations to Council	<ol style="list-style-type: none"> 3. A fully documented set of procedure notes relating to the Complaints procedures and systems and a revision of the "How to Complain" documentation be produced and published by December 2010. 4. Compulsory training sessions are arranged for all Heads of Service and delegated Third Tier Managers on the complaints handling procedures and systems by December 2010. 5. Monthly reports be provided for Heads of Service listing complaints (and compliments and comments) relating to their service areas, together with response times, highlighting those having exceeded the stated target of ten working days. 6. A quarterly update report on complaints handling be added to the Performance report to Executive and an Annual report on complaints be presented to Executive. 7. Heads of Service are tasked with providing summaries, and where appropriate, case studies on where customer complaints, comments and compliments have been used to directly improve service delivery.
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1 Purpose of Report and Executive Summary

- 1.1 This report presents the first annual summary of complaints and complements received by Swale Borough Council and presents proposals for improving the administration of the complaints system.

2 Background

- 2.1 Following the departure of the former PA to the Chief Executive, the responsibility for managing the Council's Complaints system was passed to the Head of Commissioning and Customer Contact.
- 2.2 Whilst there have been complaints systems in place for a number of years, there have not been formal analysis or reports produced to monitor their processing, nor an annual summary, though in recent months, summaries of complaints received and their response rates have been reported as part of the monthly performance reporting process
- 2.3 There are currently three types of complaints which are all held in a common database in the Northgate Front Office system:
 - (i) Local complaints are those which are received directly by the specific service areas and contain very specific issues pertinent to the appropriate service (e.g. complaints relating to Housing Benefit assessment outcomes). These are entered onto the system by the relevant service areas.
 - (ii) Complaints, Compliments and Comments (CCCs) are those which are reported directly to the customer service centre. They are entered onto the system on receipt by the Customer Service Team, email alerts are sent to the nominated service representatives and Head of Service for progression. The service area is responsible for entering a resolution date onto the system.
 - (iii) Corporate Complaints are those which have been escalated to the Chief Executive, Leader or ultimately, the Ombudsman.
- 2.4 The system is currently being revamped and will be enhanced to ensure that links to previous complaints on the same matter are made, and that any complaints that are deemed to be unjustified are recorded with the reason and notification sent to the complainant. There will be much improved monitoring and reporting facilities built into the system too.
- 2.5 During 2009/10 the total number of recorded complaints, compliments and comments (covering all of the above categories) was 561. Of these, 393 were complaints, 126 compliments and 42 comments.
- 2.6 Of the 393 complaints received, 80 were found to be justified. The remainder were found to be unjustified on the basis of the service having been delivered within the stated standards, or inaccurate or insufficient information having been provided by the complainant.
- 2.7 Of the 80 justified complaints, 12 were not resolved within the stated 10 day target. This represents an overall performance level of 85% of valid complaints being resolved within our target of 10 working days.
- 2.8 Eleven complaints were escalated to the Chief Executive and 5 were recorded as having been escalated to the Ombudsman. There appears to be a discrepancy however in that the Ombudsman's Annual Report for Swale advises that he made

decisions on 12 complaints relating to the Council. This may have been as a result of the changes to the recording system during the year, or that not all cases that the Ombudsman decided upon were recorded on our own system.

- 2.9 The Ombudsman reported that of the 12 complaints he handled, he found no evidence to support 5 of the complaints, one was outside of his jurisdiction, in three cases he exercised his discretion not to pursue the investigation, and in the remaining three cases, local settlements were agreed with the Council, which is in line with the national average for Ombudsman referred complaints.
- 2.10 Seven cases which were passed to the Ombudsman were done so prematurely, before having been through the SBC complaints process; possibly indicative of the lack of clarity of the process for people using it. Greater publicity will therefore be given to the way to access the system and what levels of response are to be expected following the submission of a complaint.

3 Proposals

- 3.1 A fully documented set of procedure notes relating to the Complaints procedures and systems and a revision of the "How to Complain" documentation be produced and published by December 2010.
- 3.2 Compulsory training sessions are arranged for all Heads of Service and delegated Third Tier Managers on the complaints handling procedures and systems by December 2010.
- 3.3 Monthly reports be provided for Heads of Service listing complaints (and compliments and comments) relating to their service areas, together with response times, highlighting those having exceeded the stated target of ten working days.
- 3.4 An update on complaints handling be added to the quarterly Performance report to Executive and an Annual report on complaints be presented to Executive.
- 3.5 Heads of Service are tasked with providing summaries, and where appropriate, case studies on where customer complaints, comments and compliments have been used to directly improve service delivery.

4 Alternative Options

- 4.1 None

5 Consultation Undertaken or Proposed

- 5.1 None at this stage, though consultation with people who have submitted complaints will be undertaken to seek levels of customer satisfaction with the complaints process.

6 Implications

Issue	Implications
Corporate Plan	Supporting the <i>“Becoming a high performing organisation”</i> priority
Financial, Resource and Property	None
Legal and Statutory	None
Crime and Disorder	None
Risk Management and Health and Safety	None
Equality and Diversity	Responding to complaints in a positive and effective manner demonstrates the Council’s commitment to ensuring that access to Council services is available to all.
Sustainability	None

7 Appendices

7.1 The Local Government Ombudsman’s Annual Review for Swale Borough Council for the year ended 31st March 2010.

8 Background Papers

8.1 Reports extracted from the complaints system database.

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