

Standards Committee	Agenda Item: 4
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Meeting Date	22 November 2012
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 point:</p> <ol style="list-style-type: none"> 1. The Committee to consider the implications of the introduction of the revised standards regime at a future date, once arrangements have had time to settle down.
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PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1. This is my sixth 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.

2. It is fair to say that this year has marked something of a watershed in relation to the approach to the Code of Conduct and the registration of members' interests. The Standards Provisions contained within the Localism Act 2011 became effective. The Government's intention was that the regime would be a lighter touch and my report this has been used as an opportunity to report on those matters of direct concern to the Committee.

3. Members will also be aware of the late drafting changes to the Localism Act 2011 and late publication of regulations which have had a significant impact on the Monitoring officer's workload.

THE ROLE OF THE MONITORING OFFICER

4. 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, publish and maintain the Register of Members' interests, and the register of gifts and Hospitality.	Localism Act 2011
Report on sufficiency of resources	Local Government and Housing Act 1989
Maintain the Constitution	The Constitution
Promote and maintain high standards of conduct.	Localism Act 2011
Consulting with, supporting and advising the Head of Paid Service and Chief Finance Officer on issues of lawfulness and probity.	The Constitution
Undertake the assessment of complaints that a member may have breached the Code of Conduct.	Localism Act 2011
Advice on whether executive decisions are within the budget and policy framework	The Constitution
Provide advice on vices 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	Localism Act 2011
Issuing Dispensations to Members regarding disclosable pecuniary interests	Localism Act 2011

CONSTITUTIONAL REVIEW AND REVISION

5 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.

6. A review of the Constitution was concluded and the new version of the Constitution was published in July 2012. Nothing in local government stays the same for long and already a number of issues have been identified for the next 'care and maintenance' review of the Constitution. This work is currently being scoped but it is anticipated that it will cover:

- Updating the standards Committee procedure rules including any amendments to public participation rules.
- Update of the terms of Reference of the Audit Committee
- Consideration of the Community Right to Challenge provisions
- Council procedure rules including process for themed debates at council, handling of and number of questions
- Updating Terms of Reference for the Licensing Committees – in particular the extent of delegations
- Aligning the Terms of Reference of the Appointments Sub Committee with the Head of Paid Services delegation
- Considering splitting Officer delegations between Council and Executive functions
- Considering adding Proper officer functions to Officer Delegations
- Outside body appointments - considering whether we need to formally appoint councillors to organisations that are set up in parishes for neighbourhood plans.
- Reviewing the delegations re conference attendance
- Reviewing substitution rules
- Reviewing latest guidance on e petitions
- Reviewing the delegations around changes to the Constitution

I anticipate that this work will commence early in the New Year.

7. I would remind Members that in terms of good governance the following concepts remain valid in making sure 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

8. Equally it is important for there to be some external validation of the governance arrangements. I would draw attention to two reports.

9. In January 2102 the Council was subject to a corporate peer challenge through the Local Government Association and made the following positive comments around governance and decision making:

- Full Council decision to move to all out elections every four years has been welcomed
- Overview and scrutiny has improved with further scope for it to become more effective
- Officers provide appropriate support to all elected members
- The council has moved forward in recent years and elected member can have greater confidence in officers – what was necessary then in terms of respective roles and responsibilities of officers and members is different to what is required now
- Importance of clarity and consistency in member officer relationships

10. In September 2012, the Audit Commission provided its annual governance report, this was considered in detail by the Audit Committee. The Council again received an unqualified audit opinion. The Audit Commission commented

“ the Council’s previous accounts demonstrated an improvement and were prepared to a high standard and I am pleased to report that the Council demonstrated a continued commitment to improve the quality of accounts preparation, with better working papers and significantly fewer amendments to the draft statements compared to last year”

and

“The Council has good financial governance and sound arrangements for financial control. It continues to strengthen is financial planning to ensure it is well placed to address the financial pressures it faces over the medium term. The Council takes a strategic approach to setting and achieving cost cuts through improved efficiency and productivity.”

LAWFULNESS AND MALADMINISTRATION

11. 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 Cabinet. Cabinet 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.

12. The Cabinet has met on 9 occasions since November 2010. In each case the Strategic Management Team has 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.

13. 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 reviews the Forward Plan as a standing item on its agenda and seeks 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 Cabinet. This has enhanced earlier input and through informal working with the Cabinet has ensured that a clear set of recommendations are presented to the Cabinet for consideration and decision.

14. 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 Cabinet 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.

15. The sound governance arrangements, processes and procedures 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

16 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.

17 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).

18. 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). Under the new regime the position on disclosable pecuniary interests is clearer – a member must declare and leave the room. They do not have the same rights as members of the public to speak.

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

20. 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. I have issued general advice to members on declaring interest under the new Code of Conduct and issued further guidance on parish matters including: register of spouses etc. interest, the extent of declaration required, declaration of other interests, publication of registers and the role of the Monitoring Officer.

21. There have been two main tasks for the year. The first has been administering the local filter under the Old Code, where all complaints are considered by the sub- Committees of the Standards Committee. It has been necessary to resolve outstanding ones under transitional arrangements. In future local arrangements will apply.

22. The second task has been to introduce the new arrangements for standards required under the Localism Act 2011. It is fair to say that this has been a steep learning curve and there is still more to learn as we work through the implications and some unforeseen consequences of the new framework. I am on record of stating that the House of Lords intervened late in the legislative process to introduce a minimum framework for standards going forward. I think it is fair to say that this has meant that what government originally intended is not as simple or straightforward as they had hoped. Indeed it was not until the last minute of the passage of the legislation was it confirmed that District Councils continued to be responsible for parish and town councils in their area.

23. The Council adopted its new Code of Conduct in May 2012, effective from 1 July 2012 and this includes revised arrangements for the Standards Committee, registration and disclosure of interests and dispensations. I would like to touch on these issues in the following paragraphs to illustrate some of the matters that we have to deal, some of which were not expected.

24. Whilst the legislation does not require there to be a Standards Committee, (the previous legislation made it a statutory requirement), it was difficult to see how the Council could comply with its duty to “promote and maintain high standards of conduct by members and co-opted members of the authority”. The Council agreed to establish a Standards Committee and its role will I am sure evolve as the new framework beds in. As stated above there is a presumption from government that the regime will be a much lighter touch and not so ‘gold-plated’. I am not in a position to confirm whether this will be the case and I will need to have greater experience of the issues before concluding whether to review the recently introduced system.

25. As members will appreciate, the composition of the Standards Committee has changed radically: there are no longer any Independent members and the Parish Council representatives are non-voting. I do understand the comments made at the time by Parish Council representatives; however, the most important issue for parish and town councils is about influencing. I have presented to the Swale KALC Committee and reinforced that I believe that because of the relationship we have that we should be able to get across this message that they will be acting in an advisory capacity to the Standards Committee on parish matters. I believe this to be a very important role within the new regime.

26. Within the spirit of the lighter touch approach, the Council has sought to have as consistent and proportionate approach across the Borough’s parish and town councils as possible. The lateness of the publication of the regulations covering the declaration of

disposable pecuniary interests meant some councils choose to adopt a Code prepared by the National Association of Local Councils.

27. From an administrative point of view this is manageable within the resources available to me; however, I do appreciate that each authority can agree its own code and what other interests to be included in the register as well as Disclosable pecuniary Interests. Following representations on this I have issued further to parish Clerks but sounded a considerable note of caution of having to deal with a multitude of different Codes. There are some interesting tensions between complying with the statutory principles contained in Section 28, in particular, integrity, accountability and openness in seeking not to declare other interests which could impact on the Member's exercise of their judgment.

28. The Registers of Interests required are being established and maintained. This includes all parish or town councils within the authority's area. The lack of a standard definition of 'interests other than pecuniary interests' and the degree of local discretion if not confusion creates scope for considerable local variation. In introducing the new arrangements I have sought to minimise variation but this has not always proved possible. One of the key issues raised has been the requirements for publication of the registers on the Councils website.

29. For information during the period 1 January 2012 – end October 2012 –there have been 9 complaints received. All of these are to be concluded under the transitional arrangements as they relate to complaints initially received under the old Code of Conduct. There is currently one case that has been passed for investigation. The type of alleged breach included: bringing office/ authority into disrepute, failing to declare interests, treating others with respect, compromising the impartiality of those working for the parish council and seeking to improperly influence a decision.

CODE OF CONDUCT FOR EMPLOYEES

30 The Constitution includes a Code for Employees, which has been recently updated and aligns closely with the register of interest requirements under the old members Code of Conduct. Our arrangements were recently subject to an internal audit which received a substantial level of assurance and I do not propose to take any further action on this subject at the present time.

OVERSEEING REGISTRATION OF OFFICER INTERESTS

31 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)

32 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

33. 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

34. 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).

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

SUPPORT TO COUNCIL, EXECUTIVE, SCRUTINY AND COMMITTEE MEETINGS

36. 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.

37. 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.

38. From 1 November 2011 to 30 October 2012 the following meetings were serviced:

1st November 2011 - 30 October 2012

Name of Meeting	No. of times met	
	Ordinary	Extraordinary
Audit	5	
Cabinet	9	
Cabinet Delegated Decisions	5	
Council	8	1
General Licensing Committee	2	
General Purposes Committee	3	
Licensing Act 2003 Committee	1	
Licensing Sub-Committee	5	
Local Development Framework Panel	5	
Member Development Working Group	7	
Planning	14	1
Planning Working Group	6	
Policy Overview Committee	12	
Rural Forum	5	
Scrutiny Committee	11	
South Thames Gateway Building Control Joint Committee	2	
Standards Appeals	0	
Standards Committee	2	
Standards Consideration	2	
Standards Hearings Sub-Committee	0	
Standards Referrals	5	
Swale Joint Transportation Board	4	
Total	113	2

39. This represents 115 meetings in total. This compares with 128 in the previous year and 132 the year before. The reduction in meetings is due to the decision that the Local Engagement Forum meetings would be serviced by the Economy and Communities Team. These figures do not, however, reflect the additional meetings administered by the Democratic Services Team including four external charities and the Youth Forum as well as pre meetings and agenda planning meetings. 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.

MEMBER TRAINING AND DEVELOPMENT

40. It is essential to good governance that Members are supported in their roles to make good decisions which underpin our corporate governance and reputation. The Council has established a cross-party Member Development Working Group with support from Democratic Services to develop the Member Training provision. Further information is provided in the annual report on Member Training and Development submitted to the Standards Committee.

USE OF COVERT SURVEILLANCE

41. 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 and guidance note to reflect this and other changes and recommendations of the OSC, in particular, from 1 November 2012, the need to obtain judicial approval to carry out covert surveillance together with the restriction on the type of offence for which directed surveillance authorisations can be made; namely criminal conduct which would attract on conviction a maximum term of at least six months. I am aware that locally Magistrates have not necessarily been made aware of this requirement and we will continue to discuss. Since my last report there has been one authorisation for directed surveillance in respect of benefit fraud offences.

CONCLUSIONS AND COMMENTS

42. 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.

43. 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.

44. Given the changed role of the Committee I do not intend to set out a formal work programme. Clearly, there will be a need to review the experience of the new standards framework but I am reluctant to do so quickly as it will need time to settle in.

45. IMPLICATIONS

Issue	Implications
Corporate Plan	The role of the Monitoring officer is pivotal to good governance
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 any investigation under the local arrangements remains a concern.
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

RECOMMENDATIONS

46. That the Standards Committee notes this report and the following action points:
- The Committee to consider the implications of the introduction of the revised standards regime at a future date, once arrangements have had time to settle down.

Mark Radford
Corporate Services Director & Monitoring Officer

Date: November 2012