

**TO:** Standards Committee  
**DATE:** 28<sup>th</sup> February 2007  
**SUBJECT:** Monitoring Officer report  
**BY:** Director of Corporate Services, Governance and Scrutiny  
**Classification:** Unrestricted

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**Summary:** This is my first annual report of activities relating to my role as Monitoring Officer. This is considered to be good practice by the Audit Commission and was requested by them following their annual governance report.

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**Implications:**

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**Decision Required:** To review aspects of the Monitoring Officer role carried out in 2005/06 and to consider areas for attention in 2006/07

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**Introduction and Background**

1. This is the first Annual Report of the Monitoring Officer for Swale Borough Council. The purpose of the report is not only to provide an overview of Monitoring work in the past year, but also to provide an opportunity to review and learn from experience. The production of such a report is now considered to be good practice by the Audit Commission. This report therefore sets out the Monitoring Officer's statutory responsibilities and summaries how several of these duties have been discharged during 2005/06 in accordance with the Council's Constitution and legislative requirements and seeks to draw Members' attention to some of the more significant issues that 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:

<b>Description</b>	<b>Source</b>
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
Receive referrals from Ethical Standards officers for local Investigations	Local Authorities (Code of Conduct) (Local Determination) Regulations 2003
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	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 sets out 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 took place in September 2005 and pages have been updated and reissued as and when necessary (for example, when a Scrutiny Panel was disbanded and when the Executive portfolios were reviewed). As a result, the Constitution now reflects the revised Executive Portfolios and is more closely aligned to Member arrangements. The second major area of update was the Scheme of Approved Delegations. This was a very important piece of work, representing as it does the formal framework by which the Council authorises officers to act on its behalf. It is important for the Council that this is current and up-to-date, as there can be occasions when the Council may be called on to evidence that officers were in fact empowered to act on a range of regulatory and operational matters.

## **LAWFULNESS AND MALADMINISTRATION**

5. 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](http://www.swale.gov.uk/dso)

6. The Executive met on 13 occasions during 2005/06. 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'. Management Team undertook a review of this process during the summer and has introduced revised arrangements. A Management Board has been established from September 2006 comprising Management Team, Head of Human Resources, Head of Finance and the Borough Solicitor to review early in the process reports to be presented to the executive. It is anticipated that this will enhance reporting through earlier input and discussion, including value for money considerations and ensure that a clear set of recommendations are presented to the Executive for consideration.

7. The report template asks officers to consider the following implications: -

- Human resources
- Financial
- Legal
- Crime and disorder (section 17)
- Sustainability
- Risk

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 throughout 2005/2006 or indeed during the last 10 years.

## **GOOD GOVERNANCE AND CODE OF CONDUCT**

10. The Monitoring Officer has a pro-active role in ensuring good practice, good procedures and good governance. During the year I have sought to advise a number of Members who have approached me, and a few who have not. 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 in the coming year and I remain grateful for the support of Group Leaders in discussions on these issues. I am also pleased to record that the occasions where I have sought to this have been very few.

11. Where I feel there is a wider issue involved I always seek to keep members informed. In September 2006 I issued additional advice to members of the Licensing Committee.

12. Good governance further 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.

13. During the autumn of 2005 I circulated detailed briefings on the following subjects, containing extracts from the Standards Board for England publications:

- Considering Complaints
- Confidentiality and the Public Interest
- Local Determinations
- High Court Appeals under the Code of Conduct
- Significant other case decisions

14. The purpose of these briefing notes is to provide readily accessible reference materials for members. In addition all briefing notes received from the Standards Board are sent to all members.

15. A comprehensive induction session was arranged for new and re-elected members in May 2006. This welcomed members to the Council, introduced Management Team and the different areas covered by the Council, as well as emphasising where to go for advice and the dates of subsequent training sessions.

16. I also arranged two member training sessions as follows: -

- March 23<sup>rd</sup> 2006 – Something's come up.... Members in the firing line which explored ethical standards in an informative, interactive and informal way and presented members with scenarios and real cases on the difficult issues that can arise on the Code of Conduct
- June 8<sup>th</sup> 2006 –Your rules...Your Constitution - designed with new members in mind but a timely refresher for existing members it covered, decision making, standing orders, The Code of Conduct, member and officer roles and relationships.
- A follow up training session on the constitution was held on 3rd October specifically for new Members.

17. The main tasks for the year have been to:

- Continue to promote and increase an understanding of the Code of Conduct.
- Review the success of the recent amendments to the Constitution and to consider the implications of the Local Government White Paper. This includes the proposed revision to the Code of Conduct which is subject to a separate report.
- Promote and encourage joined up working and better governance arrangements.

18. The Standards Committee considered in August 2005 its first request for a dispensation from members of a Parish Council and agreed to a dispensation to councillors to enable them to comment on a planning application in their parish.

## **REPORTS FROM THE LOCAL GOVERNMENT OMBUDSMAN**

19. The annual letter for 2005/2006 from the Local Government Ombudsman sets out his reflections on the complaints received against this authority and dealt with by his office over the last year. These were as follows:

20. He received 21 complaints in 2005/06, a slight decrease on the previous year, with the majority about planning. Complaints about planning now constitute the largest group although the number remains small. Complaints about housing benefits fell to just one, reflecting the Council's success in improving its service.

21. The Ombudsman made 15 decisions during the year – with 3 referred back as 'premature', a further 3 were outside his jurisdiction. When he completes an investigation he must issue a report. There are a significant proportion of investigations that do not reach this stage. This is because these are settled during the course of the investigation. These are known as 'local determinations' No reports were issued against the council last year and three complaints were settled, two of which related to delays the same planning application and the third related to a housing benefit case which originated at a time when the service has having its well publicised difficulties.

22. The Ombudsman was disappointed to note that the average time for responding to complaints lodged with him had been skewed by the response to two planning complainants which meant the average response time was 33.9 days. Without these two the average would have been comfortably within the target average of 28 days.

## **THE ETHICAL FRAMEWORK AND SUPPORT TO THE STANDARDS COMMITTEE**

23. 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. Investigations may also be referred to the Monitoring Officer from an Ethical Standards Officer for the Standards Board for England. 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.

**24. In 2005/06, the Standards Committee met twice to consider the following:-**

- **Application for dispensation from Graveney and Goodnestone Parish Council;**
- **Consultation on the review of the Code of Conduct for Members**

25. As yet no complaint under the new revised working arrangements has been referred to the Council's Monitoring Officer by an Ethical Standards Officer. During the year I was made aware of 7 cases relating to Swale that were referred to the Standards Board for England. Two were investigated and no action taken, the remaining five were not investigated.

## **MAINTAINING REGISTER OF MEMBER INTERESTS**

26. 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, Governance and Scrutiny. They are updated periodically as Members advise, and through the Parish/Town Clerk, as well as on an annual basis. An Audit of Register of Interests has been conducted and is due to be published soon. **This matter should be looked at again in the light of any observations made.**

## **CODE OF CONDUCT FOR EMPLOYEES**

27. The Constitution does not at present include a Code for Employees, although there is one in existence. We have been awaiting the development of a national Code. **This matter should be further investigated but in the meantime the existing Code for Employers will be added.**

## **OVERSEEING REGISTRATION OF OFFICER INTERESTS**

28. 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.

29. 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.

30. 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)**

31. The whistle blowing policy of the Council is publicised throughout the organisation on the internal Intranet.

32. 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 and Performance.

33. Where appropriate, the matters raised maybe investigated internally, be referred to the external auditor or form the subject of an independent inquiry.

34. The Monitoring officer has overall responsibility for the maintenance and operation of this policy. To date, there have not been any reports made under the whistle blowing policy.

## **CORPORATE COMPLIANCE WITH LEGISLATION**

35. 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.

36. 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 Borough Solicitor. The same procedure follows for any financial implications (the Head of Finance) and human resources (The Head of Human Resources). As referred to

earlier in this paper, a Management Board meets to consider draft reports to ensure that Management Team and relevant officers approve all reports before being submitted to the Executive.

## **PROTOCOL ON COUNCILLOR/OFFICER RELATIONS**

37. 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.

38. 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).

39. In the last calendar year there have been no complaints to the Monitoring Officer

## **SUPPORT TO COUNCIL, EXECUTIVE, SCRUTINY AND COMMITTEE MEETINGS**

40. 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.

41. 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.

42. In 2005/06 the following were serviced:

Name of Meeting	No. of times met	
	Ordinary	Extraordinary
Council	6	5
Executive	11	2
Planning	13	
Faversham & Swale East Area Forum	3	
Sheppey Area Forum	3	
Sittingbourne & Swale West Area Forum	2	
Rural Forum	3	
Halfway Unparished Area Grant Committee	3	
Sheerness Unparished Area Grant Committee	3	
Sitt., MR & Kemsley Unparished Area Grant Committee	3	
Audit	2	

Licensing	1	
Hackney Carriages	2	
Co-ordinating Scrutiny	2	
Community Scrutiny	(Plan - 7) (Safety - 7) = 14	
Economy Scrutiny	6	1
Environment Scrutiny	8	
Assets & Disposals	4	
Swale Joint Transportation Board	4	
LSP meetings	1	
All Scrutiny Panel	1	

43. This represents 102 meetings in total. 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.

### **The Forward Plan**

44. 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.

45. 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. This assists in forward planning for Executive agenda, and it has proved useful in the revised Management Board arrangements referred to earlier in this report. 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**

46. The Monitoring Officer is responsible to the Standards Committee for the provision of training to Councillors within the District.

47. 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. It is hoped that this will be achieved in August 2007.

48. 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.

49. Planning has commenced for the new intake of Members that will, inevitably, join the Council from May 2007. In addition to this, work is being carried out to prepare a prospective candidates guide, which will include information about what being a councillor involves, and how to apply to be a councillor.

### **INDEPENDENT MEMBERS ON THE STANDARDS COMMITTEE**

50. The term of the Independent Member Andrew Osbourne expired at the end of April 2006. As required by the regulations governing appointment of independent members, we advertised locally for applicants for this position.



51. I am pleased to report that we received a good response and were able to interview six candidates. We conducted the interviews on Monday 10<sup>th</sup> July and are pleased to recommend Robert Nunn as the new Independent Member of the Standards Committee.

52. During his time in office Mr Osbourne served as the Chairman of the Standards Committee and I would like to record my personal thanks for his significant contribution in setting up the Standards Committee and for his enthusiasm to promote ethical standards.

## **CONCLUSIONS AND COMMENTS**

53. 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.

54. 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.

56. The work programme aims to expand on the work carried out this year and to consolidate on and embed the systems, policies and procedures that are at present in place, as well as making them more explicit. Work to build capacity, skills and good teamwork will also be a priority in the coming year.

## **RECOMMENDATIONS**

57. That the Standards Committee notes this report and the following action points:

- Review and monitor arrangements in respect of the register of members interest and any matters arising from the audit report.
- Review arrangements for the Officer Code of Conduct

**Mark Radford**

**Director of Corporate Services, Governance and Scrutiny & Monitoring Officer**

Date: 30/01/2007

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