

**TO:** Standards Committee  
**DATE:** 17<sup>th</sup> November 2009  
**SUBJECT:** Monitoring Officer Annual Report  
**BY:** Corporate Services Director  
**Classification:** Unrestricted

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**Summary:** This is an update of my annual report of activities relating to my role as Monitoring Officer. This is considered to be good practice by the Audit Commission.

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**Implications:** There have been resource implications arising from the change in the standards regime introduced in April 2008. However, it has difficult to estimate the demands that have been placed on the Council, as it is not possible to anticipate the number of complaints referred. Based on numbers to date in 2008 and previous year's trends I had expected to be able to accommodate this workload within existing resources however there has been an increase in the number of complaints that have been referred. I have kept the situation under close review in 2009 and have requested additional resources of £20,000 to cover investigations as part of the forthcoming budget round. This will depend upon the number of cases that are referred to investigation following the exercise of the local filter. Estimates of costs of single investigations vary between £4000 and £ 8000 dependent upon the complexities of the issues raised

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**Decision Required:** To review aspects of the Monitoring Officer role carried out between October 2008 and October 2009 and to consider areas for future attention

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### **Introduction and Background**

1. This is my fourth report, as 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. 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 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
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 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 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 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 has been carried out during 2008/09 and was concluded in March. As a result, the Constitution now reflects greater flexibility for individual Executive member decision making and greater concentration on the role of the Executive as the strategic decision making body on key policies and strategies. The second major area of update was the Scheme of Approved Delegations. 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. The third area was the revised arrangements for local area based forums operated by Swale Borough Council and the Local Board run by the County Council into neighbourhood forums representing both bodies. It also includes parish council representation.

5. A further review has commenced in November 2009, the terms of reference are as follows:-

- To ensure that the decision making process follows best practice and is fit for purpose, balancing efficiency with probity
- To review arrangements for appointments to external bodies to minimise potential conflicts of interest
- To identify best practice and areas for development
- To review arrangements for staff terms and conditions, including appointments
- To clarify separation of responsibilities and functions and delegations to committees, panels and officers and provide guidance on role descriptions for members
- To consider ways of promoting active citizenship within the decision making process and current public participation rules
- To suggest improvements to the role of full Council as the forum for political debate on key issues

6. Members will appreciate from their recent consideration of the Key Line of Enquiry it is important from a Use of Resources (UoR) point of view, that the Constitution Review promotes concepts such as:

- "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 3rd 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"

7. The UoR also requires the council to publish a document which clearly describes the individual roles & responsibilities of the leader; executive and individual exec members; other council members; the scrutiny function; and the chief executive and senior officers. This constitution review is in line with UoR to review this and delegated powers.

## **LAWFULNESS AND MALADMINISTRATION**

8 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).

9. The Executive has met on twelve occasions since November 2008. 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 recently and has introduced revised arrangements. Management Team now formally 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 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.

10. 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.

11. 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**

12. 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 that the occasions where I have sought to this have been very few.

13. 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, is shortly commencing a review of planning committee procedures and this will include revised 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). In October 2009 I reported on the position of members in relation to Licensing matters to speak (they can only do so where asked by an "interested party" to do so).

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

15. 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 the Standards Board are sent to all members.

16. The main task for the year has been introducing the local filter, where all complaints are considered by the sub- Committees of the Standards Committee. There were a number of implications arising from this change:

- Processes needed to be amended to ensure that all allegations are referred through the Monitoring Officer
- Procedures to review the allegations and to suggest an appropriate course of action had to be put in place
- A Referrals Sub Committee was established to enable quick decision making on complaints
- There was also a need for an Appeals Sub Committee to enable a complainant to appeal against any decision of the Referrals Sub Committee not to investigate a particular complaint.
- A Hearings Sub Committee was required to consider cases passed for investigation.

17 There has been an increase in the number of complaints received. Since May 2009 there have been 10 complaints received, two of which have been referred for investigation although the hearings have yet to be heard.

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

18. The annual letter for the year ended 31<sup>st</sup> March 2009 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. A change in the way he operates means that the statistics for 2008/09 are not directly comparable with 2007/08 and so the following information focuses mainly on 2008/09 statistics without drawing those comparisons.

19. He received 26 enquiries in 2008/09, of which nine related to premature complaints which were referred to the Council for investigation. Advice was given in seven other cases and ten passed to the investigative team. The issue which prompted most enquiries was planning and building control.

20. The Ombudsman made 14 decisions during the year – with a finding of no maladministration in 6, 1 was closed using discretion without further action from the Council

and 4 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 settlements'. No reports were issued against the council last year and three complaints were settled, two of which related to planning applications and one to a housing benefit case. The Ombudsman does not normally consider a complaint unless the council has had an opportunity to deal with that complaint itself.

21. The Council has an established complaints procedure with three stages. The first stage is based in the service department about which the complaint is made. A complaint at the second stage is made to the Chief Executive's office, acting independently of the service complained of. A complaint at the third stage may be made to the "Swale Arbitrator". During the past year the Ombudsman referred nine 'premature complaints' for consideration to allow the council the fullest opportunity to deal with them through our own procedures.

22. The Ombudsman has expressed the view that the average time for responding to complaints lodged with him is just outside target but that the council's responses to first enquiries are generally helpful. He confirms that the council manages its complaints procedure well. Although it is hard to make comparisons with last year it appears that he has received rather fewer complaints against the council for investigation during 2008/09 than in the previous year. This suggests that the council's procedures have been successful in encouraging early resolution of complaints.

## **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. 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. The register of District members interests is now available on the website.

24. In the period to end October 2009, the Standards Committee met twice to consider the following:-

- The Use of Resources guidance governance Key Line of Enquiry. It was noted that there was a need to ensure that Parish Council members and independent members were involved as this relates to the overriding principle of good governance. As part of this it is essential that a regular review of the constitution take place to ensure governance procedures were fit for purpose. Ongoing training needs to be provided.
- Ways to improve communication of the work of the Committee with staff and stakeholders ( note this is work that is being progressed)
- A revised framework for the granting of dispensations
- Provision of guidance to town and parish councils through the Parish Council Governance toolkit
- Learning from best practice –several recommendations were made which will inform the constitution review referred to above.

25. In addition the Referrals Sub Committee has met on three occasions and the Appeal Sub Committee on one occasion. Two of the complaints received have been referred to the Monitoring Officer for investigation.

## **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. The Interests of District Council members are available on the council's website.

## **CODE OF CONDUCT FOR EMPLOYEES**

27. 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 hold this matter in abeyance for the time being depending on the outcome from the consultation **This matter should be kept under review.**

## **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. 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)**

29. 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**

30. 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**

31. 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).

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

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

33. 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.

34. 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.

35. From 1<sup>st</sup> November 2008 to 31st October 2009 the following meetings were serviced:

#### **1st November 2008 - 31st October 2009**

Name of Meeting	No. of times met	
	Ordinary	Extraordinary
Audit	4	
Community Scrutiny (disbanded July 2009)	6	2
Council	8	1
Environment Scrutiny (disbanded July 2009)	4	
Executive	11	2
Faversham Local Engagement Forum	4	
Hackney Carriages & Private Hire Vehicles Committee	2	
Halfway Unparished Area Grant Committee	2	
Licensing	1	
Licensing Sub-Committee	8	
Local Development Framework Panel	6	1
Local Strategic Partnership meetings	6	
Performance Scrutiny (disbanded July 2009)	5	
Planning	14	
Planning Working Group	8	
Policy Overview Committee	2	
Regeneration Scrutiny (disbanded July 2009)	5	
Rural Forum	4	
Scrutiny Committee	2	



Sheerness Unparished Area Grant Committee	2	1
Sheppey Local Engagement Forum	4	
Sitt., MR & Kemsley Unparished Area Grant Committee	1	
Sittingbourne Local Engagement Forum	4	
South Thames Gateway Building Control Partnership	1	
Standards Appeal	1	
Standards Committee	3	
Standards Hearing Sub-Committee	1	
Standards Referral	2	
Swale Joint Transportation Board	4	

Total 132 meetings.

36 This represents 132 meetings in total. – this compares with 117 in the previous year, 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 1st April 2009 - 1st October 2009**

Please note that this includes all meetings, working groups and member training sessions, except Licensing Sub-Committees, Standard Sub-Committees and Executive Delegated Decision meetings as these do not include all Members on that Committee.

<b>Councillor</b>	<b>Number of Meetings</b>	<b>Number Attended</b>	<b>Number Not Attended</b>	<b>Percentage Attended</b>
Mark Baldock	21	10	11	47.62
Barnicott	33	22	11	66.66
Bobbin	33	26	7	78.78
Andy Booth	26	20	6	76.92
Bowles	27	20	7	74.07
Derek Conway	30	21	9	70.00
Mike Cosgrove	25	13	12	52.00
Adrian Crowther	17	11	6	64.71
Cindy Davis	27	18	13	66.66
Duncan Dewar-Whalley	29	20	9	68.97
Trevor Fentiman	23	17	6	73.91
David Garside	30	16	14	53.33
Sue Gent	19	15	4	78.95
Nicholas Hampshire	19	6	13	31.58
Paul Hayes	18	13	5	72.22
Lesley Ingham	21	18	3	85.71
Lewin	32	19	13	59.37

John Morris	31	21	10	67.74
Bryan Mulhern	36	20	16	55.55
Prescott	36	21	15	58.33
Kenneth Pugh	23	11	12	47.83
Gareth Randall	16	7	9	43.75
David Simmons	23	15	8	65.22
Brenda Simpson	14	12	2	85.71
Ben Stokes	26	20	6	76.92
Anita Walker	20	14	6	70.00
Alan Willicombe	21	17	4	80.95
Jean Willicombe	13	9	4	69.23
John Wright	33	23	10	69.69
Simon Clark	24	11	13	45.83
Mick Constable	22	13	9	59.09
Mark Ellen	29	14	15	48.28
Harrison	20	10	10	50.00
Mike Haywood	19	10	9	52.63
David Sargent	16	7	9	43.75
Adam Tolhurst	18	9	9	50.00
Roger Truelove	26	15	11	57.69
Ghlin Whelan	27	21	6	77.77
Nick Williams	15	10	5	66.67
Worrall	16	9	7	56.25
Dave Banks	15	4	9	26.66
Mike Henderson	34	26	8	76.47
Elvina Lowe	33	22	11	66.67
Manuella Tomes	16	6	10	37.5
Monique Bonney	19	12	7	63.16
Pat Sandle	31	20	11	64.52
Paul Sturdgess	23	13	10	56.52

## THE FORWARD PLAN

37. 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.

38 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 Management Team to keep a strategic view 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**

39. 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.

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

40 There has been no change in the independent membership of the Standards Committee; Independent Member Stephen Rogers was elected Chairman for the municipal year 2009-2010

## **ATTENDANCE AT STANDARDS BOARD ASSEMBLY**

41. I attended the seventh Annual Assembly of Standards Committees arranged by the Standards for England on 12-13<sup>th</sup> October at the International Convention Centre, Birmingham. The Conference was titled 'bringing standards into focus'. The emphasis was on providing a perspective on how Standards Committees and Standards for England build the local standards framework together. The key areas that have been progressed and have been reflected to some extent in the work of the Standards Committee were:

- Best Practice –identifying notable practice through the Annual review and awards
- Communications –how best to put across the good work of standards committees
- Other action – information on how to get the best out of other action and when to use it.
- Parishes – practical ways of dealing with difficult parishes, in particular where there are serial complaints and a high level of tit-for-tat complaints
- Standards in Local Partnerships – the need to ensure that good governance arrangements exist.

42. In looking ahead it is anticipated that the revised Code of Conduct will be published end November/ early December and will be effective from May 2010. Standards for England will also be looking further at issues of risk, quality, cost, timeliness, sanctions relating to the local framework. Standards for England are also beginning to consider what their role might be post the next general election.

43. Rosie Winterton MP, the responsible Minister at Communities and Local Government said that the local investigation had been a success. She made it clear that the public should have trust in their elected representatives and talked of the need to promote the role of standards, the need to educate, the critical importance of ethical well being to governance and the need for independence, impartiality and trust at the centre of the framework.

44. As at the previous Assembly, one of the recurring themes was the issue of alternative action. This is where, rather than take the matter through a formal referral and investigation, the initial assessment Sub Committee asks that alternative action such as conciliation, mediation or training is undertaken to resolve the issue. Whilst it is an important tool it needs to be used wisely as it precludes any further investigation of the complaint.

**Suggested action: To undertake a review in early 2010 of the complaints received to see whether alternative action would be appropriate.**

45. Other key messages from the Assembly were:

### **High standards**

- Standards of behaviour among members of English local authorities are generally high. There are relatively low numbers of complaints overall – one for approximately every 25 members on average each year. A small number of these are found to be sufficiently serious to require the most severe sanctions available under the local standards framework – disqualification and suspension. During 2008-09, 15 members were suspended or disqualified, and in a further ten cases members were suspended pending some action on their part, often writing an apology.

### **The local standards framework 2008-09 in numbers:**

- 2,863 complaints were received. (2,693 of them had been assessed by the end of the financial year).
- 345 local authorities dealt with at least one complaint about member conduct.
- The average number of complaints received by these authorities was 8
- 3 local authorities received more than 50 complaints.
- 128 local authorities received no complaints.
- More than half of all complaints were made by the public, and over a third by council members.
- Standards committees decided to take no further action on over half of all complaints received and to refer almost a third for investigation.
- In almost 40% of cases where the standards committee decided to take no action, the person making the complaint asked for the decision to be reviewed. In 93% of reviews, the original decision was upheld.
- 12% of complaints were referred to the monitoring officer for other action.
- 6% of complaints were referred to Standards for England.
- Standards committees took an average of 20 working days to make initial assessment decisions about complaints.

### **Framework established**

- Authorities have given good commitment to their duties to establish and operate a local standards framework. They have received enthusiastic support from independent chairs and members of standards committees. Standards committees are established and functioning across the country.

### **Local assessment**

- Numbers of complaints are broadly consistent with previous years when they were all received by the Standards Board. More than half come from members of the public, more than a third from members of the authority concerned. While half of complaints are dismissed at initial assessment, significantly more than under the previous regime are being investigated and more than two thirds of all investigations are revealing no breach of the Code. A balance has to be struck: an open and robust complaints process supports the public's confidence in local democracy while we need to ensure that public funds are used appropriately. This is a picture Standards for England wants to understand more fully as the local framework matures during 2009-10.

### **Local investigations: A summary**

- 780 complaints were referred to the monitoring officer for investigation; this is 29% of those assessed.

- 233 of these had been completed by the end of the year.
- The investigation of complaints took an average 100 working days to complete, and
- 29% of investigations found that the Code of Conduct for members had been breached.
- The most common breaches of the Code involved failure to treat others with respect and behaving in a manner that could bring the authority into disrepute.

**The parts of the Code of Conduct breached were:**

<b>Description</b>	<b>Number of breaches</b>	<b>Part of the Code</b>
You must treat others with respect	37	Part 1 3(1)
You must not conduct yourself in a manner which could bring your authority into disrepute	28	Part 1 5
Personal interest– failure to declare	16	Part 2 9(1)
You must not disclose confidential information	11	Part 1 4(a)
Prejudicial interest – failure to withdraw	11	Part 2 12(1)(a)
You must not bully any person	7	Part 1 3(2)(b)
You must not intimidate or threaten to intimidate any person who is likely to be involved in a complaint	5	Part 1 3(2)(c)
You must only use the authority’s resources in accordance with its requirements and must not use the authority’s resources for political purposes	5	Part 1 6(b)
You must not use your position to improperly confer an advantage or disadvantage for yourself or any other person	3	Part 1 6(a)
You must not compromise or attempt to compromise the impartiality of anyone who works for the authority	2	Part 1 3(2)(d)
You must not do anything which could cause your authority to breach equality laws	1	Part 1 3(2)(a)
Prejudicial interest – seeking to improperly influence	1	Part 2 12(1)(c)
Prejudicial interest – attended meeting for purposes not available to the public	1	Part 2 12(2)
Failure to register interests	1	Part 3 13(1)

**The sanctions imposed were:**

<b>Description</b>	<b>Number of times used</b>
Training	22
Censure	18
Apology	16
Suspend	11
Suspend pending action	10
Refer to Adjudication Panel for England	6
Conciliation	2
Partly suspend pending action	1

## Parish challenge

- In a small but not insignificant number of authorities, taking on the role of overseeing standards for local parish and town councils has been onerous. The medium-term solution to such issues is for principal authorities to provide leadership in the good governance of the local councils in their area. Standards for England are working with representative groups active in this sector to find ways of facilitating this. At the same time they are advising a number of authorities on practical steps they can take to deal with difficult parish issues.

## Proportionality

- A key responsibility for Standards for England in 2009-10 will be to reach judgements over the proportionality of the local standards framework, with regard to issues such as effort expended, timeliness, cost, and sanctions. They will do this in the context of maintaining the public's confidence in ethical standards in local government. They will also be making recommendations to government regarding how the framework might be optimised to meet their objectives. Views of all stakeholders and the public will be important in forming these judgements.

## Public confidence

- While there is considerable officer and member confidence in the Code of Conduct and in the local standards framework's ability to uncover and deal with poor standards, the framework has made little impact on the public. Standards for England would like to see local authorities use this framework to engage their communities and to raise public trust in local democracy.

## Members are asked to consider these key messages and suggest actions it might wish to undertake.

46. Under the banner of Notable practice the following were raised in various sessions:

### Publicising the process for making complaints

- **Bolton Metropolitan Borough Council** has a dedicated website for standards issues.
- **Bristol City Council** places an advert detailing the complaints process on employee payslips.
- **Dorset County Council's** monitoring officer was interviewed on local radio station, Ivel FM.
- Some members of the **Epping Forest District Council** standards committee were interviewed by the local press on conduct issues.
- **Harborough District Council** placed an article in a publication circulated to all households with their council tax bills.
- The chair of **Plymouth City Council's** standards committee gave an interview to the local press.
- **Taunton Deane Borough Council** distributed leaflets in post offices.

### Communicating information to members

- **South Cambridgeshire District Council** ensures parish councils are kept informed via the Standards Committee Parish Council Newsletter.
- At **South Holland District Council**, complaint outcomes are used in training sessions.
- Officers and members at **South Kesteven District Council** are provided with weekly information detailing decisions and findings that have been made.

- Taunton Deane Borough Council and Three Rivers District Council both send copies of press releases to all members.

### **Communicating information to the public**

- At **Taunton Deane Borough Council** hearings are held in public and are webcast.
- **South Cambridgeshire District Council's** panel chairmen have received media training and advice on how to handle media enquiries.
- **South Tyneside Metropolitan District Council** has a media protocol that sets out the publicity issued at the various stages of dealing with complaints.
- At **Stratford on Avon District Council** the outcome of a hearing was sent to the clerk of the parish council, who arranged for the councillor's apology to be published in the parish council's newsletter.

### **Identifying and assessing member training needs**

- At **Leicester City Council** all members have undertaken a skills audit designed to test knowledge and understanding of constitutional and ethical issues. Also, bitesized learning is available on a number of topics in this area – training on the Code of Conduct is mandatory.
- The standards committee of the **London Borough of Islington** agrees the member training and development programme each year. It is based on feedback from the previous year's programme, discussions with the party whips, and from responses to an annual members' survey. The programme is split into specific skills training, knowledge based events, 1:1 support and group support.

### **Standards in partnerships**

- **Suffolk County Council** organised a seminar on ethical governance, which included a focus on 'What is good ethical behaviour in partnership working?'
- **Swindon Borough Council** invited partners to a 'standards in partnerships master class'.

### **Other ways of promoting standards**

- **Buckinghamshire County Council** holds annual officer quizzes that include questions on standards.

### **Helping members to follow the Code of Conduct**

- **The City of Bradford Metropolitan District Council** circulates guidance notes to groups and parish councils. Contact details for the monitoring officer have been provided to the parish councils through the parish council liaison committee.
- **Leicester City Council** recently produced a guide to declaring interests at ward community meetings that is being used by members.
- **Redcar and Cleveland Borough Council** periodically print messages from the standards committee on the reverse side of members' Declaration of Interest forms.

### **The role of the standards committee in reviewing the constitution**

- The standards committee of **Rotherham Metropolitan Borough Council** considers whether proposed amendments to the constitution will promote high standards in public life.
- The standards committee of **Mid Suffolk District Council** provided challenge from a probity viewpoint.
- At **Havant Borough Council** no changes to the constitution can be made without prior consideration by the standards committee with advice from the monitoring officer.

- The standards committee at **Calderdale Metropolitan Borough Council** has a standing sub-committee named the Review of Constitution Working Party which deals with issues as they arise.

#### **Authorities whose monitoring officer and standards committee work closely with leaders**

- The chief executive officer, chair of the standards committee, and monitoring officer at **Guildford Borough Council** have a pre-meeting to discuss the agenda items before each standards committee meeting.
- A similar activity takes place at **Shropshire and Wrekin Fire Authority**, where the chair of the standards committee and the chief fire officer, or his deputy, meet before each standards committee meeting.
- At the **London Borough of Bexley**, the chief executive attends a standards committee meeting once a year to discuss ethical issues. They also welcome invitations to meet with the chair of the standards committee if or when specific
- ethical issues are identified.

#### **Members have considered a number of these issues at their previous meeting when an various actions were identified to take forward within available resources.**

47. There were a number of significant cases on the Code during 2008-09 and these were highlighted.

##### **a) Three-year ban for Dartmouth councillor**

#### **Dartmouth town councillor Brian Boughton was disqualified for three years following a hearing by the Adjudication Panel for England.**

The ban came after an investigation by a Standards for England ethical standards officer, which found that the councillor had breached the Code of Conduct by bullying a council officer, treating a council officer and several councillors with disrespect, and bringing his office and the council into disrepute.

It was alleged that Councillor Boughton bullied and undermined the Dartmouth town clerk over a long period of time. He subjected the clerk at one stage to almost daily visits in the council's offices, during which he would frequently become aggressive, angry and intimidating in front of officers and members. He also repeatedly accused the clerk of incompetence, to his face and to others.

The councillor was also disrespectful to other members. He referred to the mayor as a "bl\*\*dy hypocritical b\*tch" and claimed in a letter to a new member that two of their fellow councillors were showing "serious signs of dementia".

##### **b) Ethical standards officer recommends new protocol and guidance**

#### **In North Lincolnshire, 15 Conservative councillors were alleged to have breached the Code of Conduct. This prompted a Standards for England ethical standards officer (ESO) to recommend that the council adopt a protocol for members on the proper use of council resources for party political purposes.**

The complainant alleged that the Conservative members misused North Lincolnshire Council resources to convene a public meeting as an "Extraordinary Council Meeting". It was also alleged that they misused the council's logo on an unauthorised publication and failed to declare a personal or prejudicial interest in relation to the publication at the meeting.

The members were alleged to have misused council resources in order to call a public meeting and that the council's logo was used without prior authorisation.



However, the ESO found that there was no council business under consideration in which any of the 15 councillors could have declared a personal or prejudicial interest. Therefore there was no breach of the Code of Conduct.

The ESO did take into account the complainant's concerns about the potential for public confusion over the use of the council's logo for political group publications. The ESO also recognised the need for clarity for all members over the proper or improper use of council resources for party political purposes. Given this, the ESO recommended that the council adopt a protocol on the proper use of council resources by political groups. They also recommended that guidance be published on the appropriate use of the council's logo with reference to the Code and the code of recommended practice on publicity.

**c) 'Aggressive' behaviour leads to 12-month disqualification**

**A husband and wife who were members of a Cornwall parish council were disqualified from office for a year after their 'aggressive' behaviour saw the parish clerk and their three fellow councillors resign.**

The ban, imposed at a hearing of the Adjudication Panel for England, followed an investigation by Standards for England into allegations that Peter and Sheila Montague failed to treat others with respect and brought their office into disrepute.

It was alleged that Peter and Sheila Montague behaved in an aggressive, intimidating and disrespectful way to fellow parish councillors and a member of the public in council meetings between May and June 2007. It was also alleged they made verbal and written attacks on the character and integrity of the ex-clerk to the council.

The Adjudication Panel concluded that the language in emails written by Mr Montague and approved by Mrs Montague was rude and unjustified.

It also found that Mrs Montague's shouting when other councillors disagreed with her was beyond what was acceptable in a council meeting, as was the Montagues' behaviour at a meeting on 29 June 2007. They shouted at, talked over and interrupted other councillors, were aggressive, overbearing and rude, and without justification, questioned the clerk's integrity.

The Adjudication Panel was satisfied that Mr and Mrs Montague's conduct brought their office into disrepute. This was because their behaviour seriously affected the wellbeing of several individuals and damaged the normal running of the council.

**d) Sought to influence planning decisions**

**A former member of Wycombe District Council was disqualified from office for a year for his conduct in relation to two planning applications.**

Following an investigation by Standards for England, Councillor Anthony Dunn's case was referred to the Adjudication Panel for England for determination.

The complaint alleged that he had used his position improperly to influence the outcome of planning applications.

The ethical standards officer (ESO) concluded that Councillor Dunn had sought to influence the council's decisions on planning applications made by a company of which he is secretary. His brother was also acting as a consultant on the applications.

The ESO's view was that Councillor Dunn had used his position improperly, sought to compromise council officers' impartiality, sought to influence decisions in which he had a prejudicial interest, and brought his office into disrepute.

The ESO also noted with concern that Councillor Dunn's breaches of the Code came after he was suspended for a month in December 2006 for similar conduct.

**e) Found to be innocent of tampering with a petition**

**It was alleged that a councillor falsely claimed to act on behalf of her local MP by removing the MP's petition from a local post office and putting it forward as her own. The petition was part of a campaign opposing the closure of 12 post offices in the constituency.**

It was also alleged that the intended recipient, Post Office Limited, did not receive the petition and that as a result of the councillor's actions, over 300 of the MP's constituents were in effect denied representation.

The councillor stated that the petition did not refer to the MP and that, had it done so, she would not have taken it. She removed it because she knew the closing date for the post office closure consultation was imminent and she felt partly responsible, as a district ward and parish councillor, for ensuring the petition reached its destination.

The ethical standards officer (ESO) found that the evidence confirmed the councillor's account that Post Office Limited had received the petition in time and that it was given due consideration as part of its consultation.

During the investigation, the ESO also obtained independent evidence showing that the petition the MP placed in the post office had all references to the MP removed from it by an unknown person. The ESO concluded that when the councillor removed it she did not know that the MP was involved and did not claim to be acting on the MP's behalf.

The ESO noted that four of the 12 of the MP's petitions were not received by Post Office Limited and one of those received had been forwarded by the National Federation of Women's Institutes.

The ESO found that the councillor had not attempted to represent the petition falsely as her own work and had not brought her office or authority into disrepute. She concluded that she had not failed to comply with the Code of Conduct.

**f) Planning case referred to Standards for England**

**Standards for England engaged with Harrow standards committee after a high profile member of the London Borough was alleged to have breached the Code of Conduct.**

The case was one of the first considered under local assessment by its standards committee – and the subject member was considered high profile as she was a senior member and married to the council's leader.

In the case, the complainants alleged that the subject member breached three paragraphs of the Code in relation to a planning application – namely that:

1. she failed to treat others with respect
2. brought her office or authority into disrepute
3. failed to withdraw from a meeting in which she had a prejudicial interest

As the case was considered to be of high profile, the monitoring officer sought independent legal advice through an external consultant. The case was referred to the council's assessment sub-committee, and in a report the independent consultant said that the subject member appeared to show a failure to comply with the authority's Code. As a result, the standards committee referred the case to Standards for England for investigation.

Having considered the case, the ethical standards officer found no evidence of any breach of the Code of Conduct.

Some members were critical of the standards committee's decision to refer the allegations to us for investigation. This was because it involved a high profile subject member but eventually resulted in no evidence of any failure to comply with the Code.

Once the case was completed, Harrow's monitoring officer invited the ethical standard officer to attend the standards committee and to provide information about their work.

The committee was reassured that despite the finding, the assessment sub-committee had been justified in referring the case for investigation by Standards for England. This was because the committee had identified two issues that would make the case unsuitable for local resolution:

1. the seniority of the subject member and her relationship to the leader
2. the perception that the council had a stake in the outcome (the background was a key planning development)

The standards committee was given a briefing on topics including the investigations process and the sort of cases the ethical standards officer sends to the standards committee for determination.

## **CONCLUSIONS AND COMMENTS**

48. 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.

49. 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.

50. 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.

## **RECOMMENDATIONS**

51. That the Standards Committee notes this report and the following action points:
- To undertake a review in early 2010 of the complaints received to see whether alternative action would be appropriate.
  - to consider these key messages in paragraph 45 and suggest actions it might wish to undertake.

- to consider Notable practice issue set out in paragraph 46 and suggest actions it might wish to take forward in the light of resources available..

**Mark Radford**  
**Corporate Services Director & Monitoring Officer**

Date:30/10/2009

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