

Standards Committee	Agenda Item:
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Meeting Date	12 November 2013
Report Title	Monitoring Officer Annual Report
Cabinet Member	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	No
Classification	Open
Forward Plan	Not applicable

Recommendations	1. That the Standards Committee notes this report.
	2. That there be no further action to review the regime at the present time.

Purpose of Report and Executive Summary

1. This is my seventh 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. It draws Members' attention to some of the more significant developments.
2. The report reflects upon a further year of the operation of the new standards provisions since the Localism Act 2011 became effective.

THE ROLE OF THE MONITORING OFFICER

3. 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
Report on sufficiency of resources	Local Government and Housing Act 1989
Maintain the Constitution	The Constitution
Consulting with, supporting and advising the Head of Paid Service and Chief Finance Officer on issues of lawfulness and probity.	The Constitution
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
Establish, publish and maintain the Register of Members' interests.	Localism Act 2011
Promote and maintain high standards of conduct.	Localism Act 2011
Undertake the assessment of complaints that a member may have breached the Code of Conduct.	Localism Act 2011
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

4 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.

5. A review of the Constitution was concluded and the updates to the Constitution were issued in March and May 2013. 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 overview and scrutiny procedure rules
- Update of the treatment of minutes from quasi-judicial Committees to ensure they are dealt with consistently.
- Meeting procedure rules including process for recording of meetings.
- Updating the casting vote procedure, particularly in regard to the Planning Committee.
- Providing detailed procedure note for conduct of planning Committee and Planning Working Group meetings.
- Clarification of voting entitlement at Rural Forum.

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

6. 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 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

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

8. In September 2013, the Council's external auditors Grant Thornton provided its Audit Findings for Swale Borough Council. This was considered in detail by the Audit Committee. The Council again received an unqualified audit and value for money opinion. The external auditors commented:

“the quality of the financial statements and working papers provided to support them was of a very high standard this year. There were no amendments arising from the audit which impacted on the Council's reported financial performance.”

and

“In all significant respects, Swale Borough Council put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources for the year end 31 March 2013.”

9. In the Overview of Audit Findings Appendix the external auditors use a red, amber, green categorisation, in every aspect of this analysis it was scored green. This reflects extremely well on the organisation's governance procedures.

LAWFULNESS AND MALADMINISTRATION

10. 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. Cabinet decisions can also be viewed by Members of the public through the Council's website: www.swale.gov.uk/dso.

11. The Cabinet has met on 11 occasions since November 2012. 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.

12. 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 Human Resources, 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.

13. 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.

14. 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

15. 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.

16. 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 by Members tend to relate to declaration of interests.

17. 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 and the implications of the Localism Act. 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 disclosable non-pecuniary interest which must be registered but they can speak on the matter unless the interest relates to financial matters when their interest becomes a disclosable pecuniary interest). 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.

18. I have provided informal advice to parish councillors on potential conflicts of interests and the nature and extent of disclosable and non-disclosable pecuniary interests.

19. 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 and registering interests under the new Code of Conduct and issued further guidance on parish matters including: register of spouse's etc. interest, the extent of declaration required, declaration of other interests, publication of registers and the role of the Monitoring Officer. There is still a need for parishes to understand the extent of the role of the Monitoring Officer. Often matters are raised which relate to how the parish council conducts its business as opposed to individual behaviour and conduct of members.

20. The final complaint under the 'old' regime was resolved in May 2013 when the Standards Consideration Sub-Committee met to consider a complaint that a councillor's behaviour at a planning site meeting was unacceptable. Having considered the Investigator's Report and findings, it was decided that there was no case to answer. However, the Sub-Committee was of the view that planning site meetings were, due to their nature, sometimes difficult to control and that it may be helpful to therefore produce a protocol setting out the procedures for such meetings. A draft protocol has been discussed with members and officers (see Para. 6 above).

21. The second task has been to introduce the new arrangements for standards required under the Localism Act 2011. I am on record 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.

22. 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 with, some of which were not expected.

23. 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 parish councils choose to adopt a Code prepared by the National Association of Local Councils (NALC). 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.

24. The Registers of Interests required have been 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 confusing, created scope for considerable local variation. In introducing the new arrangements, I sought to minimise variation but this did not always prove possible. One of the key issues raised has been the requirements for publication of the registers on the Councils website.

25. The Department for Communities and Local Government issued guidance on openness and transparency on personal interests in March 2013. Key points for noting were:

- Councillors should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- The registration of personal interests by a councillor should be guided by this principle.
- Confirmation that spouse's or civil partner's name does not need to appear on the register of Interests – for the purposes of the register, an interest of a spouse or civil partner is the councillor's disclosable and non-disclosable pecuniary interest.

26. Further guidance was issued in September 2013. The guidance was revised to make it clear that councillors should treat Trade Union membership as a disclosable non-pecuniary interest. For Swale Borough Council and those parish councils which adopted the Swale Code or the NALC Code, this merely reflected the existing position. For one parish council, which adopted a 'passive' approach to the registration of such interests, I have drawn the new guidance to their attention and asked that they consider amending their code to reflect the new guidance.

27. During the period end October 2012- October 2013, there have been a number of matters that have been considered that could potentially have come within the standards framework.

28. This is the first analysis of matters under the new regime and so I have included anonymous details in the Table below.

Nature of Complaint	Action	Commentary
Conduct of Chair of meeting	Monitoring Officer filter applied.	No breach. Meeting conducted in accordance with Council procedure rules. Error on timing of public speaking corrected immediately.

Conduct of parish council meetings	Monitoring Officer filter applied	No breach. Complaint not within remit of Standards regime: related to parish council as a whole and how it dealt with its administrative functions.
Conduct of councillor at a public exhibition	Discussed with Independent Person	<p>No breach of Code of Conduct.</p> <p>The matter involved a sensitive issue in the locality with a number of various interest groups promoting views. It is to be anticipated that there would be a robust exchange of views as potentially they could be diametrically opposed.</p> <p>A follow up email sent by the councillor of his personal reflection of the event could have been better worded although it was clear that there was no personal attack.</p>
Alleged failure by parish councillor to declare donation which could have impacted on consideration of planning matter (Parish Council, consultee only)	Monitoring Officer filter applied.	No Breach. By using Monitoring Officer discretion, it was possible to seek clarification which showed that, due to the length of time that had elapsed between the donation being made and consideration of the planning by the parish council, the connection was far too remote to be considered a pecuniary or other significant interest.
Questioning decision relating to co-option of parish councillor	Monitoring Officer filter applied	Complaint not within remit of Standards regime: related to parish council as a whole and how it dealt with its administrative functions.

Parish Councillor alleged to have defamed individual	Discussed with Independent Person – referred for investigation	Investigating Officer report awaited
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CODE OF CONDUCT FOR EMPLOYEES

29 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

30 The Monitoring Officer writes to Councillors, Officers of the Management Team or officers 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)

31 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

32. 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

33. 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).

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

SUPPORT TO COUNCIL, CABINET, SCRUTINY AND COMMITTEE MEETINGS

35. 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 Cabinet 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.

36. 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.

37. From 1 November 2012 to 30 October 2013 the following meetings were serviced:

1st November 2012 - 30 October 2013

Name of Meeting	No. of meetings
Annual Council	2
Audit	4
Cabinet	11
Cabinet Delegated Decisions	5
Council	8
General Licensing Committee	4
General Purposes Committee	1
Licensing Act 2003 Committee	2
Licensing Sub-Committee	3
Local Development Framework Panel	4
Member Development Working Group	8
Planning	16
Planning Working Group	11
Policy Overview Committee	9
Rural Forum	3
Scrutiny Committee	8
South Thames Gateway Building Control Joint Committee	3
Standards Committee	2
Standards Consideration	2
Standards Hearings Sub-Committee	0
Swale Joint Transportation Board	4
Total	110

38. This represents 110 meetings in total. This compares with 115 in the previous year and 128 the year before. The most notable difference for this period, compared to the same period last year, is the reduction in Standards Sub-Committee meetings, from 7 to 2. The meeting numbers do not 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. From June 2013 the administration of the South Thames Gateway Building Control Joint Committee passed to Medway Council; it will next be administered by Swale in the 2015/16 civic year. 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.

MEMBER TRAINING AND DEVELOPMENT

39. 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 this Standards Committee.

USE OF COVERT SURVEILLANCE

40. Since April 2010, in accordance with revised Codes of Practice I am obliged to report the number of occasions the authority has used covert surveillance. The Office of the Surveillance Commissioner (OSC) advised that it was appropriate to include such information within my Annual Monitoring Officer report to members. The Regulation and Investigatory Powers Act (RIPA) policy and guidance note has been updated to reflect recommendations of the OSC and the amendments occasioned by the Protection of Freedom Act 2012, in particular, 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. The Policy is due for review in January 2014.

41. The Council were inspected by the OSC in June 2013 at which it was recognised that all previous recommendations had been discharged and that no further recommendations were needed. Since my last report no applications for directed surveillance have been authorised.

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 there is no need 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. The table at Para.29 still does not provide sufficient or compelling experience of the new

regime to warrant a review but I anticipate reviewing this before I present my next Annual Report.

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 although reciprocal arrangements exist between the MKIP partners.
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

RECOMMENDATIONS

46. That:
- the Standards Committee notes this report.
 - there be no further action to review the regime at the present time.

Mark Radford
Corporate Services Director & Monitoring Officer

Date: November 2013