



AGENDA

STANDARDS COMMITTEE MEETING

Date: Tuesday, 20 November 2018

Time: 7.00pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, Kent, ME10 3HT

Membership:

Councillors Tina Booth, Lloyd Bowen (Vice-Chairman), Derek Conway, Duncan Dewar-Whalley (Chairman), Paul Fleming, Sue Gent, Alan Horton, Ken Ingleton, Padmini Nissanga, Ben Stokes and Tony Winckless.

Quorum = 3

Independent Persons (non-voting): Patricia Richards and Christopher Webb.

Kent Association of Local Councils representatives (non-voting): Graham Addicott OBE, Dave Austin and Jeff Tutt.

	Pages
1. Emergency Evacuation Procedure	
<p>The Chairman will advise the meeting of the evacuation procedures to follow in the event of an emergency. This is particularly important for visitors and members of the public who will be unfamiliar with the building and procedures.</p> <p>The Chairman will inform the meeting whether there is a planned evacuation drill due to take place, what the alarm sounds like (i.e. ringing bells), where the closest emergency exit route is, and where the second closest emergency exit route is, in the event that the closest exit or route is blocked.</p> <p>The Chairman will inform the meeting that:</p> <p>(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park; and</p> <p>(b) the lifts must not be used in the event of an evacuation.</p> <p>Any officers present at the meeting will aid with the evacuation.</p> <p>It is important that the Chairman is informed of any person attending who</p>	

is disabled or unable to use the stairs, so that suitable arrangements may be made in the event of an emergency.

2. Apologies for Absence and Confirmation of Substitutes

3. Minutes

To approve the [Minutes](#) of the Meeting held on 14 November 2017 (Minute Nos. 321 - 326) as a correct record.

4. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the room while that item is considered.

Advice to Members: If any Councillor has any doubt about the existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

Part B Reports for the Standards Committee to decide

- | | | |
|----|--|---------|
| 5. | Annual Monitoring Officer Report | 1 - 22 |
| 6. | Annual Report on Member Training and Development | 23 - 26 |

Issued on Monday, 12 November 2018

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEMOCRATIC SERVICES on 01795 417330**. To find out more about the work of the Standards Committee, please visit www.swale.gov.uk

Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

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Standards Committee	
Meeting Date	20 November 2018
Report Title	Annual Monitoring Officer Report
Cabinet Member	Not applicable for this report
SMT Lead	David Clifford, as monitoring officer
Head of Service	Not applicable for this report
Lead Officer	David Clifford, as monitoring officer
Key Decision	No
Classification	Open
Recommendations	Standards committee is recommended to: <ol style="list-style-type: none"> 1. Note this report. 2. Agree that there be no further action to review the code of conduct at the present time.

1 Introduction

- 1.1 This report provides an overview of the work of the monitoring officer during the period 1 November 2017 to 31 October 2018. It includes a summary of the main mechanisms in place at Swale to ensure sound governance and lawful decision-making, together with an indication of how well these have operated during the period. It provides a summary of cases dealt with under the code of conduct, and finally offers a brief update to the standards committee on relevant developments in the wider legal and policy context over the course of the year.
- 1.2 This is my first annual report as monitoring officer for Swale Borough Council, having been appointed to the position from 1 October 2018. I am very much indebted to the previous holder of the office, Donna Price, for her generous assistance both in inducting me into the role and in compiling this report. Since becoming monitoring officer I have re-appointed Robin Harris as my deputy, and I am no less grateful to him for his help and patience in inducting me into the role.
- 1.3 The two independent persons appointed in September 2017 following a competitive application process, Patricia Richards and Christopher Webb, have remained in the roles and are expected to do so until September 2021 when their contracts expire.

1.4 Overall, I believe this report shows that the year to the end of October 2018 has seen a consistent level of work in terms of complaints and issues, and that these issues have generally been dealt with appropriately and proportionately.

2 The role of the monitoring officer

2.1 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, who has a broad role in ensuring the lawfulness and fairness of council decision-making, ensuring compliance with codes and protocols, and promoting good governance and high ethical standards.

2.2 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.	Council constitution
Consult with, support and advise the head of paid service and chief finance officer on issues of lawfulness and probity.	Council constitution
Advise on whether executive decisions fall within the budget and policy framework.	Council constitution
Provide advice to members on vires issues, maladministration, financial impropriety, probity, and budget and policy framework issues.	Council constitution
Establish, publish and maintain the register of members' interests.	Localism Act 2011

Description	Source
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
Act as legal advisor to the standards committee when carrying out a local determination hearing.	Localism Act 2011
Issue dispensations to members regarding disclosable pecuniary interests.	Localism Act 2011

3 Maintenance and review of the constitution

- 3.1 The constitution sets out how the council operates, including most essentially how authority is gained, delegated and exercised, and how decisions are made. It describes the procedures which are followed to ensure that decision-making is lawful, reasonable and fair, and that those who make decisions are accountable to local people.
- 3.2 The monitoring officer is the ‘guardian’ of the council’s constitution, and is responsible for ensuring that the constitution is properly maintained and is adhered to in practice.
- 3.3 In terms of good governance, the following objectives remain central to an effective council constitution:
- Ensuring that the council’s culture is open and outward-facing with a clear focus on the needs of communities, enabling it to take informed, transparent decisions and to manage risk effectively.
 - Encouraging positive relationships between elected representatives and the local community, including the voluntary and community sector, so that members are properly accountable to the community and local stakeholders are engaged in the council’s work.
 - Providing clarity on roles and responsibilities, including the executive, non-executive and scrutiny functions, as well as ensuring effective relationships between members and officers so that everyone is able to work productively in pursuit of common objectives.
 - Ensuring decisions are always taken fairly, transparently, and on merit, and are never influenced by personal or private interests.

3.4 It is important for there to be some external validation of the council's governance arrangements. In September 2018, the external auditor Grant Thornton provided its audit findings, which were considered in detail by the audit committee. The council again received an unqualified audit and value-for-money opinion, with the auditors commenting that:

“On the basis of our work, having regard to the guidance on the specified criterion issued by the Comptroller and Auditor General in November 2017, we are satisfied that the Authority put in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources for the year ended 31 March 2018.”

This reflects well on the organisation's governance procedures and the work of the finance team, supported by all managers.

3.5 The constitution has been reviewed twice during the period covered by this report. The following amendments were agreed by full council in March 2018:

- Review of delegations to officers.
- Review of standards committee procedure rules.
- Review of member and officer access to exempt reports.
- Review of contract standing orders.
- Renaming of the local development framework panel to the local plan panel.
- Review of officer employment procedure rules.
- Adoption of the code of conduct assessment criteria.

The following amendments to the council's constitution were agreed by full council in October 2018:

- Addition of delegated functions to officers under the Criminal Justice and Police Act 2001.
- Review of planning committee procedure rules.

4 Lawful decision-making and good governance

- 4.1 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.
- 4.2 At the heart of this work is the agenda of, and reports and recommendations 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.
- 4.3 The Cabinet has met on eight occasions since the beginning of November 2017. In each case the strategic management team (SMT) has reviewed the agenda and associated draft reports. This clearance process is an important part of ensuring corporate working in an effective council, providing a vital opportunity to discuss aspects of reports or decisions that require 'buy-in' from, or have implications across, multiple services.
- 4.4 All heads of service receive draft agendas, and senior finance, HR and legal officers have the opportunity to comment on reports in the 'Implications' section. SMT reviews the council's 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 a corporate approach to be taken to reports being drafted, and ensures that a clear set of recommendations are presented to cabinet for consideration and decision.
- 4.5 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 full council (or where appropriate 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.
- 4.6 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 issued no such reports during the year to 31 October 2018.

5 Ethical standards and the members' code of conduct

5.1 While robust and well-understood constitutional processes and procedures are an essential component of good governance, the importance of high standards of ethical conduct on the part of individuals involved in decision-making on behalf of their communities cannot be overstated.

National developments

5.2 In July this year the deputy monitoring officer attended the annual standards conference, at which it was once again apparent that nationally the same frustrations are shared by all monitoring officers in that the Localism Act does not provide councils with sufficient tools to be able to uphold the code of conduct effectively.

5.3 This is especially the case in relation to parish councils, which can choose to ignore any recommendations made by the monitoring officer or the standards hearing sub-committee. The argument that the ballot box will decide is clearly flawed in this case, as elections to the majority of parish council seats are uncontested and the same councillors thus continue in their roles unchallenged.

5.4 The conference noted with interest that the committee on standards in public life was undertaking a review of local government ethical standards. The terms of reference for the review are as follows:

- Examine the structures, processes and practices in local government in England for:
 - Maintaining codes of conduct for local councillors;
 - Investigating alleged breaches fairly and with due process;
 - Enforcing codes and imposing sanctions for misconduct;
 - Declaring interests and managing conflicts of interest; and
 - Whistleblowing.
- Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government.
- Make any recommendations for how they can be improved.

- Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation.

5.5 The review will consider all levels of local government in England, including town and parish councils, principal authorities, combined authorities and the Greater London Authority, and will report by the end of 2018. Swale Borough Council responded to a consultation to inform the review which was run during the spring, reiterating our and others' concerns regarding the lack of ability to uphold the code of conduct.

5.6 There was a session providing an update on current law and emerging case law which is of particular interest to monitoring officers, a summary of which is set out below:

R (Harvey) v Ledbury Town Council (2018)
<p>Facts: Following complaints that Cllr H had bullied, intimidated and harassed staff, the town council's grievance panel met to discuss the allegations. Cllr H did not attend, stating that she did not recognise the authority of the panel, and she requested that the matter be properly investigated under the standards procedure. The panel upheld the accusations, and the town council then resolved to impose a number of prohibitions on Cllr H, including that she should not sit on any committees, sub-committees, panels or working groups nor represent the council on any outside body, and that all communications between her and its clerk and deputy clerk should go through the mayor. Cllr H applied for judicial review of the town council's decision to impose sanctions under its grievance procedures.</p>
<p>Findings: The High Court considered local authority staff grievance procedures and their relationship with the code of conduct regime under the Localism Act 2011. The court held that a council cannot run a grievance procedure alongside, or as an alternative to, a standards regime procedure, and that complaints regarding a councillor's conduct have to be dealt with under the authority's standards arrangements.</p>
<p>Decision: The court granted the application, and ruled that the town council's decision to continue and enlarge the prohibitions must be quashed and that Cllr H was entitled to declaratory relief. Mrs Justice Cockerill found that there was no general power to run a grievance procedure process in tandem with or as an alternative to the code-of-conduct process envisaged by the Localism Act, as</p>

that would be contrary to the intention of Parliament.

Comment: This case provides a useful analysis of the standards regime under the Localism Act 2011, making clear that it overrides the previous statutory procedures, as well as local authorities' inherent powers under the 1972 Act. It also highlights that councils cannot try to obviate the 2011 Act's lack of effective sanctions by dealing with complaints under their staff grievance procedures. The judgment provides a reminder that any process must be fair and in accordance with the principles of natural justice; however, notwithstanding this judgment, local authorities must continue to be mindful of their responsibilities to protect their employees from bullying, intimidation and harassment, since the authority may be liable for the actions of its councillors. The proper course for the investigation of alleged behaviour of this type by councillors is now under the code of conduct adopted under the Localism Act, and following investigation it is for the monitoring officer to discuss the outcome with the independent person(s), ensuring that any hearing or informal action is proportionate in all the circumstances of the case.

Hussain v Sandwell Metropolitan Borough Council (2017)

Facts: The claimant was alleged to have procured the sale of council assets to family friends at a substantial undervalue. He was also alleged to have used his power and influence as a senior politician within the council to have parking tickets issued to his family expunged. The council's audit committee conducted a 'pre-formal investigation' under the Local Government Act 1972 to determine whether the allegations had substance and if so to decide on next steps. Counsel was appointed and they advised that there was a serious case to be met and that the Localism Act processes for breach of the code of conduct should be initiated. The claimant challenged the power of the council to conduct both formal and informal investigations of alleged wrongdoing by councillors, arguing that the investigation was ultra vires since there was no power to investigate alleged misconduct before the Localism Act took effect and that the investigating officer had predetermined the outcome and usurped the adjudicatory functions of the standards committee. The Court of Appeal granted leave for judicial review to stay the investigation.

Findings: The court's view was that there is ample power under both the Local Government Act 1972 and the Localism Act 2011 to carry out pre-formal investigations, and that a council is entitled both to investigate in order to establish whether a prima facie case exists and to receive advice as to the appropriate next steps. In addition, it was found that the current standards

framework could be used to investigate historic allegations and that the report of the independent person could not predetermine findings as the author of the report was not a decision-maker.

Decision: The court concluded that there was a powerful public interest in the allegations being fully and fairly investigated, and the stay in proceedings was therefore lifted.

Dedman v Information Commissioner's Office (2016)

Facts: C, then chair of Hickling Parish Council, was quoted in a local newspaper as saying a local charity had shown no desire to negotiate a new constitution and *"they don't want to make changes to the constitution to protect the village asset and it's very sad."* A resident then complained to North Norfolk's monitoring officer that C had made factually inaccurate comments and deliberately misled readers, amounting to a breach or breaches of the councillors' code of conduct. North Norfolk's monitoring officer appointed an external solicitor to investigate the complaint. She submitted a draft final report for North Norfolk's standards committee after C had ceased to be a councillor, having lost her seat in the election of May 2015. The monitoring officer decided that there was 'no public benefit' in taking the matter further because C was no longer a serving councillor. When another resident requested a copy of the draft report, North Norfolk refused, relying on s40(2) of the Freedom of Information Act, on the grounds that the draft contained personal data about C who no longer held a public position. The dispute then reached the Information Commissioner's Office, which accepted C would have had a legitimate expectation that the details of the investigation would remain confidential. North Norfolk's policy was that draft standards investigation reports were not shared with persons who were not parties to the complaint, and the prejudice to C's interests outweighed any legitimate public interest in disclosure. The complainant then appealed to the Information Rights Tribunal.

Findings: The Tribunal agreed that there was no doubt that the report contained the personal data of C and that there was no practical possibility of editing it so as to avoid the disclosure of such data. However, the tribunal added:

"There is plainly a strong public interest in the disclosure of findings as to the conduct of the chair of a parish council when performing her public duties. That is especially the case where a complaint has been made that she misled a newspaper and its readers, including her local parishioners, as to important matters relating to a controversial local issue. There is a danger that the withholding of a report may encourage the suspicion that its findings are adverse

to the subject, whether or not that is, in fact, the case.”

The tribunal stated that such transparency is essential to the maintenance of proper standards in public life, whether or not the subject of the complaint remains in office and if this were this not so “*a delinquent public officer, faced with a draft report containing serious criticism of his/her conduct, could simply prevent disclosure by timely resignation*”. In addition, there was a realistic possibility that C would again seek election to the parish council or another public authority in the future.

Decision: The tribunal concluded that disclosure of the draft report was not unfair and North Norfolk was not entitled to rely on the s40(2) exemption.

Taylor v Honiton Town Council and East Devon District Council (2016)

Facts: Cllr Taylor published comments concerning a loan extension from the Public Loan Works Board and accusing the town clerk of illegality in connection with the loan and investment in a conspiracy to use the money for an improper purpose. East Devon District Council, as the principal authority, determined that Cllr Taylor had failed to treat the town clerk with respect and imposed sanctions, namely censuring Cllr Taylor, publishing its findings, and requiring Cllr Taylor to undergo training on the code of conduct. Honiton Town Council imposed the sanctions recommended by East Devon, however, they also applied additional measures until the training requirement had been fulfilled. Cllr Taylor challenged Honiton’s decision for illegality and procedural unfairness.

Findings: It was held that the Localism Act gives decision making power to the principal authority and requires it to have arrangements for the exercise of that power in place to investigate and determine any breach of parish council codes of conduct. It would therefore be a nonsense of that scheme if the parish council were able to take its own decisions without having those in place. The whole point of the scheme is to remove decision-making powers and duties from very small authorities which do not have the resources to manage them effectively and who may be so small that any real independence is unattainable.

Decision: East Devon’s decision both as to breach and sanction was lawful, however the parish council cannot impose sanctions over and above those recommended by the principal authority.

- 5.7 The lack of any real sanction or appetite for prosecution in the Localism Act 2011 is evidenced by the fact that since its implementation there has been only one prosecution in relation to an elected member participating in a discussion and

vote without reasonable excuse despite having a disclosable pecuniary interest (DPI), details of which are set out below:

R v Flower
<p>Facts: Cllr Flower listed as a pecuniary interest a non-executive directorship of a housing charity, for which he received remuneration payments. He was present at a meeting about the proposed East Dorset core strategy and voted at the meeting. The housing charity had responded to a consultation about the core strategy and owned land which was being considered for development through the strategy. Cllr Flower had previously attended a meeting of the charity at which the long-term future of the land had been considered. He was charged with an offence under the Localism Act 2011 for participating in a discussion and vote without reasonable excuse despite having a DPI in a matter being considered.</p>
<p>Findings: Cllr Flower was guilty of the offence. His defence that the matters discussed at the meeting were of a broad nature and did not concern detailed issues of planning and ownership did not amount to 'reasonable excuse'. It was not right that the core strategy had no relevance to pecuniary matters, and it was not a defence that he did not obtain any direct benefit from the vote. The judge held that it would have been reasonable for him to have consulted the monitoring officer and could have gained a dispensation. He was under a duty not to participate and vote. The judge noted that Cllr Flower was of good character and the court received a number of character references speaking highly of his abilities, his conscientiousness and his years of public service.</p>
<p>Decision: Conditional discharge for six months and an order to pay £930 in costs.</p>

- 5.8 The use of social media has continued to raise issues throughout the country, and there is continuing debate on the extent to which these issues fall within the code of conduct. Guidance on this has previously been given to councillors, and in common with previous monitoring officers my view is that each case would need to be considered on its own merits, particularly in terms of the capacity in which social media was being used.
- 5.9 The following two cases have previously been provided as part of the monitoring officer's annual report, and I reproduce them here by way of an illustration of the need to consider very carefully what is said in electronic communications and how an appropriate level of caution needs to be balanced against the importance of freedom of political expression.

R (Benjamin Dennehy) v London Borough of Ealing

Facts: Cllr Dennehy posted on a blog which he maintained comments about residents of Southall in which he stated:

“It is a largely Indian community who say they deplore this behaviour but yet it is that very same community that harbours and exploits their own people in squalid third world living conditions... the exploding population of illegal immigrants is a constant on the public purse. Illegal immigrants don't pay tax. The legitimate immigrants exploiting them in the squalid bed sheds don't pay tax on their rental income. If these are the sorts of people who exploit the desperate what other scams are they perpetrating I ask? Criminality is endemic in Southall.”

He declined to issue an apology when a number of Southall residents complained because they were offended by the statements.

Findings: Cllr Dennehy failed to treat others with respect and brought the council into disrepute because the tone and much of the content was inappropriately and unnecessarily provocative, and the comments about Southall residents were in a different part of the blog from that which raised legitimate topics of political debate. The comments were not the expression of a political view, but a personal and generic attack on a section of the public. The subjects of the speech were not politicians but ordinary members of the public, so the comments did not attract the higher level of protection applicable to political expressions. Accordingly, sanctioning Cllr Dennehy was justified and proportionate under article 10 (2) of the convention.

Decision: The standards committee's decision that Cllr Dennehy breached the code and should issue an appropriate apology was upheld.

Cllr John Copeland v West Lindsey District Council Standards

Facts: Cllr Copeland was a parish councillor. He was found by the standards committee to have breached the parish council's code of conduct by referring, in a number of emails, to a member of the public as a grumbler and a geriatric, which had failed to show respect to that person and had brought his office or authority into disrepute. Cllr Copeland's appeal was successful.

Findings: it was not 'necessary' within the meaning of article 10(2) of the European convention on human rights to interfere with Cllr Copeland's freedom of expression by sanctioning him for his comments. The unidentified individual had a remedy in defamation, if there was damage to his reputation, which was doubted. Proceedings before the standards committee were a 'wholly disproportionate response'.

Decision: The standards committee's decision to censure was set aside.

Local developments

- 5.10 Previous monitoring officers at Swale Borough Council have taken a proactive, pragmatic and proportionate approach to facilitating good governance and high ethical standards within the resource available, and I intend to continue this tradition.
- 5.11 In the past year, where evidence of behaviour which could test the boundary of appropriate conduct has come to the attention of the monitoring officer, there has been engagement of both the individual member and group leaders to ensure that there is a full discussion resulting in a shared understanding of where the threshold of acceptable conduct lies. This is not always an easy task, with levels of engagement differing between members, but the occasions on which it has been necessary are fairly few in number.
- 5.12 In addition to code-of-conduct matters, the monitoring officer has also regularly given advice to individual members on:
- the declaration of pecuniary and non-pecuniary interests, including representation on outside bodies;
 - predisposition, predetermination and bias; and
 - the use of social media.
- 5.13 The monitoring officer has also continued to provide informal advice to parish councillors on potential conflicts of interests and the nature and extent of disclosable and non-disclosable pecuniary interests, bias and predetermination.
- 5.14 In order for governance procedures and the code of conduct to be effective, everyone involved needs to be clear on what they consist of, how they work, and why they are important. Following the election in May, I intend to offer a comprehensive programme of training to newly elected and returning members,

covering the constitution, the code of conduct, and related issues including predetermination, bias and social media. My belief is that this is an essential component of member development, and it is very much to be hoped that members will engage fully with it.

- 5.15 The council adopted its current code of conduct in 2012, along with revised arrangements for the standards committee and the registration and disclosure of interests and dispensations. These continue to work well, and overall it is fair to say that the council's processes for complying with the standards provisions of the Localism Act continue to demonstrate their effectiveness notwithstanding the widely-shared concerns over the lack of sanctions outlined above.
- 5.16 The legally mandated registers of interests are available on the council's website, and both borough councillors and parish clerks are now familiar with how these work. As highlighted by the guidance issued by the Department for Communities and Local Government (as was) in 2013, the key requirement is that councillors should not act or take decisions in order to gain financial or other material benefits for themselves, their families or their friends, and the declaration and resolution of personal interests should be guided by this principle.

Code of conduct cases 1 November 2017 to 31 October 2018

- 5.17 During the period covered by this report a total of eight formal complaints were received, five against borough councillors and three against parish councillors.
- 5.18 Of these complaints, three were considered by the monitoring officer and immediately rejected as failing at least one of the tests set out in the assessment criteria which are included in the constitution, namely that the complaint is about a named member of a relevant council who was in office at the time of the alleged conduct, and that the complaint, if proven, would constitute a breach of the code of conduct which was in force at that time.
- 5.19 An anonymised summary of the five complaints which were not immediately rejected by the monitoring officer is provided below.

Allegation that a parish councillor used the position for personal gain, and that another parish councillor verbally attacked complainant at a parish council meeting.

Action: Monitoring officer discussed with independent person.

Outcome: With regard to the first allegation, the councillor was not acting in an official capacity. This was therefore a private matter which did not fall within the monitoring officer's remit. With regard to the second allegation, the conduct of this councillor was appropriate to that of a robust chairman and did not amount to a breach of the parish council's code of conduct.

Allegation that a parish councillor failed to treat an enquiry in an accountable and open way, and alleging discrimination based on ethnic origin. Further complaint against another parish councillor alleging inappropriate expression of personal views.

Action: Monitoring officer discussed with independent person.

Outcome: Whilst complaints were against named individuals, they were more about parish processes and how the council conducts its business, and therefore not within the monitoring officer's remit. The parish council appeared to have tried its best to resolve the original issue and obtained legal advice and set out its position. The more appropriate way to challenge the decision would therefore be to obtain independent legal advice. There was no evidence of any discrimination based on ethnic origin. It was clarified that the expression of a personal view, so long as it was not defamatory, would not be a breach of the relevant code of conduct.

Allegation that a parish councillor refused to respond to a request.

Action: Monitoring officer discussed with independent person.

Outcome: The complaint was about internal parish processes and therefore not an issue for the monitoring officer. The conduct did not amount to a breach of the relevant code of conduct, but the councillor did subsequently provide the requested response to the original issue raised.

Complaints about a borough councillor's social media posts (two cases).

Action: Monitoring officer discussed with independent person.

Outcome: The councillor was not acting in his capacity as a councillor when making the posts. However, the councillor did remove the posts and supplied a letter of apology to the complainant.

5.20 In addition to these formal complaints, during the period 1 November 2017 to 31 October 2018 seven informal allegations or enquiries were received which did not progress to formal complaints. Four of these related to borough councillors and

three to parish councillors. A number of these are fairly recent, and it is of course still possible that they will progress to become formal complaints.

Historic cases of interest

- 5.21 There are a number of cases dealt with by the Swale monitoring officer before November 2017 which remain of interest because they included more serious allegations than is typical and/or because they reached a further stage of investigation. These are therefore summarised for information below.

Conduct of parish councilor in dealing with parish clerk (two complaints).

Action: Monitoring officer discussed with independent person and the complaint was referred for investigation.

Outcome: Two separate hearings were held. No breach of paragraph 8 of the relevant code of conduct, but breach of paragraphs 5, 7, 9, 10 and 11. Recommendations made to parish council that the subject member attend training on the role of the parish clerk and refresher training on role of chairman, and that the entire parish council undertake training on the role of the clerk and other matters including closed sessions and employment issues, policies and procedures. It was further recommended that any new parish clerk should attend appropriate training as part of their induction, and that a review of standing orders should be carried out to ensure that they incorporate the outcomes of any training. Following receipt of the report, the parish council wrote to say that whilst they would comply with the recommendations where possible they did not accept the report.

Parish councillor alleged not to have dealt with representations fairly, appropriately and impartially and not to have treated people with respect, including allegedly making racist remarks.

Action: Monitoring officer discussed with independent person and the complaint was referred for investigation.

Outcome: Hearing held. Breach of paragraphs 2, 8, 10 and 11. Recommendations made to the parish council that the subject member should attend equalities training and be removed from all outside appointments until such training is undertaken, and that the entire parish council should attend equalities training and review its policies and procedures governing equalities and the conduct of meetings. Note that the subject member resigned from the parish council prior to the hearing and did not attend.

Parish councillor alleged not to have dealt with representations fairly, appropriately and impartially, and not to have treated people with respect.

Action: Monitoring officer discussed with independent person and the complaint was referred for investigation.

Outcome: Hearing held. Breach of paragraphs 2, 10 and 11. The findings were reported to the parish council with a recommendation that the entire council undertake training on the code of conduct and adopt a more formal approach to meetings.

Borough councillor, having borrowed an officer's unnumbered copy of a confidential paper, returned a numbered copy at the end of the meeting but failed to return the unnumbered copy, contrary to advice provided.

Action: Monitoring officer discussed with independent person and the complaint was referred for investigation.

Outcome: Hearing held. No breach of paragraph 5, but breach of paragraph 8 and the principle of leadership. Reported to full council with a recommendation to remove the subject member from scrutiny committee, as either a member or a substitute member, for a period of three months. This was agreed and implemented by council.

6 Officers' code of conduct

- 6.1 The constitution includes a code for employees, which includes a requirement to register interests. I do not propose to take any further action on this at the present time, other than the usual annual refresh of the register of interests.

7 Related party transactions

- 7.1 In accordance with the code of practice on local authority accounting in Great Britain 1998, councillors and senior officers (those above a certain salary grade and those appointed by statute) are requested on an annual basis to complete and sign a declaration on related party transactions.
- 7.2 The declaration captures transactions between the council on the one hand and the individual, members of the individual's close family or household, or entities in which the individual or their close family or household has a controlling interest on the other. All declarations were satisfactorily completed and recorded

during March 2018.

8 Protected disclosures – the whistleblowing policy

- 8.1 The purpose of a whistleblowing policy is to enable an organisation's employees to feel confident in making disclosures about potential wrongdoing by individual(s) in a position of authority within the organisation. The council's whistleblowing policy is therefore published and publicised throughout the organisation via the intranet.
- 8.2 The policy's general approach is that, as a first step in making a disclosure, 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 wrongdoing. If a route through line management is not practical or appropriate then issues can be raised with the monitoring officer or the head of audit. Any matters raised may, as appropriate, be investigated internally, referred to the external auditor, or become the subject of an independent inquiry.
- 8.3 The monitoring officer has overall responsibility for the maintenance and operation of the whistleblowing policy. It is intended that a review of the policy will take place over the next twelve months to ensure that it remains up to date and broadly aligned with the equivalent policies of our Mid-Kent partners.

9 Corporate compliance with legislation

- 9.1 As the council continues to respond to ongoing changes in the funding regime for local government, there continues to be a heightened requirement for robust legal and financial scrutiny of the implications of recommendations, and for general due diligence on novel proposals for savings and/or income generation as they come forward.
- 9.2 The council's standard report template includes an implications section, which itself includes space for legal implications. Wherever a report author considers that recommendations in the report could have significant legal implications, s/he is obliged to seek comments from the monitoring officer and/or the head of legal partnership. There are similar procedures in respect of other implications, including financial implications, for which comments are sought from the chief financial (s151) officer.

- 9.3 Legal updates, including details of new legislation, are circulated to relevant officers within the organisation, and forwarded to members whenever those officers consider that this would be beneficial.

10 Protocol on councillor/officer relations

- 10.1 The constitution includes a protocol on councillor/officer relations, setting out what is expected of officers and what of members. In the event of relationships between members and officers breaking down or becoming strained, the protocol first attempts to resolve matters informally by conciliation through the appropriate senior manager(s) and/or member(s).
- 10.2 Officers in these situations will have recourse to the council's grievance procedure or to the monitoring officer, as appropriate to the circumstances (this is set out in the constitution, but see also the summary of R (Harvey) v Ledbury Town Council (2018) in paragraph 5.6 above). I am pleased to report that there have been no complaints of this type to the monitoring officer over the past year.

11 Support to council, cabinet, scrutiny and committee meetings

- 11.1 Ensuring that meetings are run efficiently, transparently and lawfully is central to good governance. In practice, this includes:
- Advertising public meetings at least five clear days before the meeting date, and ensuring that agendas are published and distributed in a timely manner;
 - Ensuring that agendas are compliant with regulations on access to information, and that exempt information is properly marked up;
 - Ensuring that papers are available to the public either through the website or from district offices and libraries;
 - Ensuring that meetings are accessible to the public;
 - Publishing minutes as soon as possible after the meeting, in particular ensuring that cabinet minutes are published within three days of the meeting; and
 - Ensuring that petitions are handled in accordance with the council's constitution.
- 11.2 From 1 November 2017 to 30 October 2018 the following meetings were serviced by the democratic services team:

Name of meeting	Number
Annual Council	2
Audit Committee	4
Cabinet	8
Cabinet Delegated Decisions	4
Council	8
General Licensing Committee	3
General Purposes Committee	3
Licensing Act 2003 Committee	0
Licensing Sub-Committee	14
Local Plan Panel (formerly LDF panel)	4
Member Development Working Group	3
Planning Committee	13
Planning Working Group	6
Policy Development and Review Committee	6
Scrutiny Committee	9
South Thames Gateway Building Control Joint Committee	1
Standards Committee	1
Standards Hearings Sub-Committee	0
Swale Joint Transportation Board	3
Total	92

11.4 These figures do not reflect the additional meetings administered by the democratic services team, including two external charities and the WW1 meetings, as well as pre-meetings and agenda-planning meetings. The overall volume of meetings represents a substantial commitment of both members' and officers' time and resources, and it remains of great importance that meetings constitute an effective and productive use of these.

12 Member training and development

12.1 It is essential to good governance that members are supported in their roles to make robust, transparent and well-informed decisions for the good of the borough and its communities. The council has established a cross-party

member development working group (MDWG) with support from democratic services to oversee and develop the provision of appropriate training for members. Further information is provided in the annual report on member training and development which will be considered by the standards committee in tandem with this report.

13 Use of covert surveillance

- 13.1 Since April 2010, in accordance with the relevant codes of practice, the monitoring officer has been obliged to report the number of occasions on which the authority has used covert surveillance. During the period 1 November 2017 to 31 October 2018, the council made one application for directed surveillance. This originated with the planning enforcement team and received judicial approval, but for operational reasons was ultimately never actioned.

14 Comments and conclusions

- 14.1 The monitoring officer's role encompasses both proactive and reactive elements. The proactive function centres on raising standards, encouraging ethical behaviour, ensuring that robust procedures are in place across the council, and raising awareness of these procedures and their importance in facilitating lawful and effective decision-making.
- 14.2 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 robust systems and procedures being in place to identify problems and ensure that members, officers and the public are aware of how concerns can be raised.
- 14.3 I believe this annual report demonstrates that good progress has been made on both of these elements over the past year. The reviews of the constitution (section 3 above) have helped to ensure that it remains an effective basis for decision-making, while allegations of breaches of the codes of conduct of both the borough and parish councils (section 5 above) have been dealt with fairly, efficiently and in accordance with the law.
- 14.4 As a new monitoring officer it is my hope that in a year's time I will be able to report on a similarly productive year, and I will use my best endeavours to ensure that this is the case. Given that I am new to the role I do not believe it

would be appropriate for me to recommend a review of the code of conduct at this stage.

15 Recommendations, appendices and background papers

15.1 Standards committee is now *recommended* to:

1. Note this report.
2. Agree that there be no further action to review the code of conduct at the present time.

15.2 There are no appendices or background papers.

Standards Committee Meeting

Meeting Date	21 November 2018
Report Title	Annual Report on Member Training and Development
Portfolio Holder	Cabinet Member for Finance and Performance
SMT Lead	Mark Radford, Chief Executive
Lead Officer	Jo Millard, Senior Democratic Services Officer
Key Decision	No
Classification	Open

Recommendation	1. To note the Annual Report on Member Training and Development.
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1 Purpose of Report and Executive Summary

- 1.1 The annual report is submitted to the Standards Committee in accordance with the Member Training and Development Strategy. The report provides an update on progress with Member Training and Development since November 2017, outlining actions taken by the Member Development Working Group to-date and their future work programme.

2 Background

2.1 Member Training and Development

2.1.1 The Council's cross-party Member Development Working Group (MDWG) monitors and develops the Council's Member Training and Development Programme. The Working Group is supported by the Senior Democratic Services Officer and the Chief Executive. All Members are encouraged to feedback through their Councillor representative on the Working Group.

2.1.2 Since the last annual report the Member Development Working Group's work programme has included:

- Providing opportunities for Members to receive training in the Elms learning programme accessed by staff to carry out statutory training such as Health and Safety and Safeguarding
- Setting the 2018/19 Member Training Programme
- Evaluating the training provided in 2017/18
- Discussions on training needs for potential new Members and re-elected Members after the 2019 elections

2.2 Member Training Sessions and Attendance

2.2.1 A Member training programme is developed at the start of each civic year and reviewed during the year. Ideas of future training sessions are sought from Members and Officers, and Members of the Member Development Working Group agree relevant topics. The MDWG regularly review the training programme to ensure it is deliverable and within budget. It also strongly recommends that Members take up shadowing opportunities as a way to learn more about the services that the Council provides.

2.2.4 The table below sets out Councillor attendance at training and briefing sessions which have been arranged through the Democratic Services Team from **November 2017 – October 2018**. Parish Councillors are invited to planning briefings. Members will note that there have been 16 briefings covering a variety of topics. In response to Members' feedback previously, sessions were now held mostly on Tuesdays and Thursdays.

Title of Training/Briefing session	Date	Number of Councillors in attendance
MKS	2 November 2017	12
Universal Credit	23 November 2017	26
Local Plan Workshop	11 December 2017	21
Regeneration Projects in Sheppey and Faversham	9 January 2018	19
Transformation Project	13 March 2018	17
GDPR Update	5 April 2018	13
Police Briefing	17 April 2018	24
Compulsory Planning Refresher	21 May/23 May 2018	8
Elms e-learning Training	22 May/24 May 2018	7
Sittingbourne Town Centre Regeneration Scheme	14 June 2018	16
Compulsory Licensing Refresher	20 June/17 July 2018	6
Planning Enforcement	26 July 2018	30 (inc Parish Council)
Housing Numbers, Land Supply and Delivery Test	18 September 2018	14
Sports Facilities and the SERO Contract	4 October 2018	9
New Garden Communities	16 October 2018	24
Housing Assistance Policy/Universal Credit/Stay Put	18 October 2018	13

2.3 Future Work

2.3.1 The main focus over the coming months will be preparation for the post-election induction programme. The 'Becoming a Councillor Guide: Information for Prospective Candidates' will be updated as necessary and work will be undertaken on agreeing a programme of induction events and training sessions. The current

induction guide for new and re-elected Members will also be updated. Councillors will be reminded of their statutory duties and encouraged to attend appropriate training in relation to these duties through their term of office.

- 2.3.2 The MDWG are keen to increase the number and variety of learning opportunities available to Members, and will be sharing training dates in the future with Maidstone and Tunbridge Wells Borough Councils. Members have already attended compulsory Licensing refresher training hosted by Maidstone Borough Council.

3 Proposal

- 3.1 The Standards Committee is asked to review and comment on the annual report.
- 3.2 The Member Development Working Group is keen to reinforce the need for Members to understand their statutory responsibilities; such as Health and Safety, Equality and Diversity, Safeguarding and GDPR. These sessions will be covered within the training programme, after May 2019, and information is also available on the Elms Learning programme. It is recognised that some Members may receive relevant training through their paid or voluntary work, or their involvement in other organisations. However past sessions have often shown that attendance figures at sessions related to statutory duties are often lower than average and the report therefore welcomes the Standards Committee's support and the support of Group Leaders in promoting the importance of these sessions to Councillors.

4 Alternative Options

- 4.1 N/A

5 Consultation Undertaken or Proposed

- 5.1 The report is submitted on behalf of the Member Development Working Group, who have approved the content and recommendations.

6 Implications

Issue	Implications
Corporate Plan	The Council's Corporate Plan has three priorities: A Borough To Be Proud Of, A Community To Be Proud Of and A Council To Be Proud Of. Members need to be equipped with the skills and knowledge to help deliver these priorities and to effectively represent their ward constituents.
Financial, Resource and Property	Provision of £8,000 is made within the budget for Member Training and Development for 2018/19.
Legal and Statutory	Local authorities are complicated organisations that are heavily regulated and must act lawfully when discharging their functions. They can only act where there is a legal power or duty and decisions taken by them must comply with

	<p>administrative law principles. Members are often required to take complex decisions or to follow prescribed procedures and they can be challenged by individuals or organisations who disagree with decisions taken.</p> <p>Knowledge of the relevant legal frameworks is vital to support them in their roles as community leaders, advocates and policy makers. It also protects the Council from the costs and bad publicity that is likely to result from legal challenges.</p> <p>Members of the Planning and Licensing Committees sit in a quasi-judicial capacity and training is therefore a mandatory requirement. All Members should be fully aware of their statutory duties and the requirement to have sufficient knowledge on these matters to properly exercise their responsibilities in-line with legislation.</p>
Crime and Disorder	None specific to this report.
Sustainability	None specific to this report.
Health and Wellbeing	None specific to this report.
Risk Management & Health and Safety	None specific to this report.
Equality & Diversity	Each individual Member will have differing backgrounds, and a differing range of knowledge and experience that they bring to the role of Councillor. Members as Community Leaders have a role to help identify equality and diversity barriers that prevent the Council from building more cohesive communities.

7 Appendices

7.1 None

8 Background Papers

8.1 None