

AGENDA

STANDARDS COMMITTEE MEETING

Date: Tuesday, 16 November 2021

Time: 7.00 pm

Venue: Virtual Meeting Via Skype*

Membership:

Councillors Lloyd Bowen, Steve Davey (Vice-Chairman), Alastair Gould, Nicholas Hampshire, James Hunt, Ken Ingleton, Elliott Jayes, Lee McCall, Hannah Perkin (Chairman) and Ken Rowles.

Quorum = 3

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

Kent Association of Local Councils representatives (non-voting): Mr Graham Addicott OBE.

Pages

Recording Notice

Please note: this meeting may be recorded and the recording may be published on the Council's website.

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Therefore by attending the meeting and speaking at Committee you are consenting to being recorded and to the possible use of those sound records for training purposes.

If you have any queries regarding this please contact Democratic Services.

Information for the Public

*Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added to the website on Monday 15 November 2021.

Meeting Link: To be added.

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1. Apologies for Absence and Confirmation of Substitutes
2. Minutes

To approve the [Minutes](#) of the Meeting held on 17 November 2020 (Minute Nos. 254 - 257) as a correct record.

3. 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 Interests (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 Decision by the Standards Committee

- | | | |
|----|----------------------------------|---------|
| 4. | Review of the Standards regime | 5 - 26 |
| 5. | Annual Monitoring Officer Report | 27 - 50 |

Issued on Monday, 8 November 2021

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 this 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 – 16 NOVEMBER 2021

DISCUSSION PAPER: REVIEW OF THE SWALE MEMBERS' CODE OF CONDUCT

1. Section 27 of the Localism Act 2011 confers a duty on local authorities to promote and maintain high standards of conduct by their members. Both the standards committee and the monitoring officer play a central role in ensuring that Swale lives up to this obligation. In discharging the duty, authorities are required to adopt a code of conduct applicable to all members when they are acting in that capacity.
2. The code of conduct is the primary instrument by which the standards committee and the monitoring officer can fulfil their obligations under the 2011 Act. It sets out the minimum standards of behaviour which the council at large expects from individual members, and functions as the measuring stick by which allegations that a member's conduct has fallen below the required standard can be judged.
3. Swale's current code of conduct was adopted shortly after the 2011 Act came into force, with Swale being one of the first Kent councils to adopt a code. (The elements of this code which are bespoke to Swale rather than being reproductions of the seven principles of public life or the secondary legislation on interests are provided at Appendix I.) Subsequent to this, KCC and most other Kent districts worked together to produce a 'model' code for the county, which was ultimately adopted in some form or another by almost all the other councils, including KCC. The approach of the ten-year anniversary of the Swale code provides an opportunity to reflect on how it has worked and whether it remains fit for purpose.
4. The standards committee has previously discussed the report on local government ethical standards published in 2019 by the committee on standards in public life (CSPL, the so-called Nolan committee). The relatively few recommendations aimed at councils in that report have been implemented in Swale, but there has been no progress on the government's part in implementing the more than 20 recommendations requiring amendments to existing legislation.
5. The Swale standards committee has expressed disappointment at this given the importance of some of the recommendations. These include, for example, recommendations aimed at clarifying and broadening the circumstances in which a councillor can be regarded as acting in that capacity for the purposes of the standards regime, and at giving the regime more teeth in the form of more meaningful sanctions for serious misconduct.
6. The absence of these necessary reforms does arguably inhibit the Swale standards committee from taking a tougher approach to member conduct issues, but this should not mean that we must wait for government action before reviewing how well the standards regime in Swale is working to promote a healthy political culture. As has been highlighted recently by the appalling murder of Sir David Amess, there is a level of toxicity in contemporary political discourse which was not present only a few years ago, and this is a phenomenon which to some extent makes itself felt on the local as well as the national stage.

7. A recommendation in the CSPL report for the LGA was to produce a model code of conduct which could be adapted and adopted by councils right across the sector. Standards committee members have previously responded to a consultation on an early draft of this work. A final draft was published in May of this year, and is attached at Appendix II. This does not, unfortunately, incorporate any of the suggestions made by Swale, but it is likely to be a model which will gain widespread acceptance across local government in the years to come.
8. The LGA's proposals around a national model code also inspired work by Kent monitoring officers and heads of legal to review and update the Kent model code. This work is also now complete, and a final draft of the revised Kent code is attached at Appendix III. This has taken a number of cues from the LGA work, but it does remain a different code to the LGA model.
9. A question now for the Swale standards committee is whether the adoption of one of these model codes would be an improvement on the current Swale code, and/or whether there are further, more informal measures which could be taken, in addition to the adoption of a new formal code of conduct, to improve the council's political culture and ensure respectful relationships and an atmosphere free of intimidation for all members.
10. An arena in which member's conduct towards each other is particularly susceptible to falling below ideal standards is social media. Clearly this is an issue affecting political discourse in much of the world, not only in Swale, but as in other councils it does generate a high number of conduct complaints. Case law based on the interpretation of Article 10 of the Human Rights Act 1998 guarantees extremely broad rights of free expression to political actors, meaning that complaints frequently fall below the high threshold which they would need to meet in order lawfully to engage the standards regime.
11. Given the contribution made by this perennial issue to the overall level of toxicity in local political discourse, the standards committee may nevertheless be of the view that a more rigorous or systematic approach to the problem would be beneficial. Given the legal constraints, a clearly structured but essentially informal mechanism would probably be the most appropriate. This could involve either a subgroup of standards committee members and/or group leaders (or whips) working together to arrive at informal resolution of complaints and reminders to the member(s) concerned about expected standards.
12. Adopting and embedding a new code of conduct, and/or introducing new processes to deal with low-level issues that can have a disproportionate effect on the political culture, are potentially quite large pieces of work. The fact that the whole Swale constitution needs to be rewritten to implement the decision to move to a committee system means that this is a good time to look at the code of conduct, but it also means that there is very limited officer resource that can be allocated to the work.
13. It may therefore be that the 'softer' elements of the work – primarily the important conversations around what members want from the code of conduct and how that

could be achieved – can take place over the winter and spring, with the more ‘technical’ tasks of implementing changes and ensuring all members are familiar with the new expectations taking place in the new civic year.

14. As a means of kick-starting the necessary conversations, there are some questions which it might be useful at this stage for the committee to discuss:

- What is the standards committee’s role in ensuring that members remain focused on the effective oversight of council services for the good of their residents?
- How can the committee ensure that the standards regime plays its part in creating and sustaining the healthy political culture which will be necessary to make the committee system work?
- Does the committee agree that there is a need for it to play a more proactive role in developing a culture of respect between Swale members?
 - If so, how does it want to do that?
 - Would the adoption of a new code of conduct help with this, either because it would be a better code, and/or because it would act as a catalyst for the necessary conversations? If so, is there a preference between the two models in the appendices?
 - Should the committee look to involve the wider membership in the conversation about what members think are appropriate standards of member conduct?
- What mechanisms could we put in place to deal with lower-level issues that don’t (and shouldn’t) reach the threshold of the code of conduct?
 - Should group leaders or whips play a greater role here?
 - Is there a need for clearer protocols and guidance? Could this be linked to the comms and social media training for members which the scrutiny committee recently requested from the member development working group?
 - Is there a need for other training? On mental health? Inclusivity and diversity?
- What work needs to take place to move from the current situation to one in which the standards committee is better placed to be the ‘guardian’ of a healthy political culture, and what are the timescales for enabling this to happen in an orderly way?

Cllr Hannah Perkin
Chairman, Standards Committee

David Clifford
Monitoring Officer

Robin Harris
Deputy Monitoring Officer

November 2021

BESPOKE ELEMENTS OF SWALE'S CURRENT CODE OF CONDUCT

As a Member of Swale Borough Council, my conduct will in particular address the statutory principles of the Code of Conduct by:

1. Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me – and putting their interests first.
2. Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
3. Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of [Swale] or the good governance of the Authority in a proper manner.
4. Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a Member/co-opted Member of this authority.
5. Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
6. Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
7. Contributing to making this Authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other Members to account but restricting access to information when the wider public interest or the law requires it
8. Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
9. Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
10. Always treating people with respect, including the organisations and public I engage with and those I work alongside.
11. Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

LGA MODEL CODE OF CONDUCT

Joint statement

The role of councillor across all tiers of local government is a vital part of our country's system of democracy. It is important that as councillors we can be held accountable and all adopt the behaviours and responsibilities associated with the role. Our conduct as an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to. We also want individuals from a range of backgrounds and circumstances to be putting themselves forward to become councillors.

As councillors, we represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent our local area, taking decisions fairly, openly, and transparently. We have both an individual and collective responsibility to meet these expectations by maintaining high standards and demonstrating good conduct, and by challenging behaviour which falls below expectations.

Importantly, we should be able to undertake our role as a councillor without being intimidated, abused, bullied, or threatened by anyone, including the general public.

This Code has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.

Introduction

[...]

Definitions

[...]

Purpose of the Code of Conduct

The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct. The LGA encourages the use of support, training and mediation prior to action being taken using the Code. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.

General principles of councillor conduct

Everyone in public office at all levels; all who serve the public or deliver public services, including ministers, civil servants, councillors and local authority officers; should uphold the Seven Principles of Public Life, also known as the Nolan Principles.

Building on these principles, the following general principles have been developed specifically for the role of councillor.

In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest.

Application of the Code of Conduct

This Code of Conduct applies to you as soon as you sign your declaration of acceptance of the office of councillor or attend your first meeting as a co-opted member and continues to apply to you until you cease to be a councillor.

This Code of Conduct applies to you when you are acting in your capacity as a councillor which may include when:

- you misuse your position as a councillor
- Your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

The Code applies to all forms of communication and interaction, including:

- at face-to-face meetings
- at online or telephone meetings
- in written communication
- in verbal communication
- in non-verbal communication
- in electronic and social media communication, posts, statements and comments.

You are also expected to uphold high standards of conduct and show leadership at all times when acting as a councillor.

Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct, and you are encouraged to seek advice from your Monitoring Officer on any matters that may relate to the Code of Conduct. Town and parish councillors are encouraged to seek advice from their Clerk, who may refer matters to the Monitoring Officer.

Standards of councillor conduct

This section sets out your obligations, which are the minimum standards of conduct required of you as a councillor. Should your conduct fall short of these standards, a complaint may be made against you, which may result in action being taken.

Guidance is included to help explain the reasons for the obligations and how they should be followed.

General Conduct

The general conduct guidance follows below:

1. Respect

As a councillor:

1.1 I treat other councillors and members of the public with respect.

1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack.

In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor- officer protocol.

2. Bullying, harassment and discrimination

As a councillor:

2.1 I do not bully any person.

2.2 I do not harass any person.

2.3 I promote equalities and do not discriminate unlawfully against any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims, and that there is a strong vision and public commitment to equality across public services.

3. Impartiality of officers of the council

As a councillor:

3.1 I do not compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of, the local authority.

Officers work for the local authority as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. You can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written. However, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

4. Confidentiality and access to information

As a councillor:

- **4.1 I do not disclose information:**
 - **a. given to me in confidence by anyone**
 - **b. acquired by me which I believe, or ought reasonably to be aware, is of a confidential nature, unless**
 - **i. I have received the consent of a person authorised to give it;**
 - **ii. I am required by law to do so;**
 - **iii. the disclosure is made to a third party for the purpose of obtaining professional legal advice provided that the third party agrees not to disclose the information to any other person; or**
 - **iv. the disclosure is:**
 - **1. reasonable and in the public interest; and**
 - **2. made in good faith and in compliance with the reasonable requirements of the local authority; and**
 - **3. I have consulted the Monitoring Officer prior to its release.**

4.2 I do not improperly use knowledge gained solely as a result of my role as a councillor for the advancement of myself, my friends, my family members, my employer or my business interests.

4.3 I do not prevent anyone from getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public, except in certain legally defined circumstances. You should work on this basis, but there will be times when it is required by law that discussions, documents and other information relating to or held by the local authority must be treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

5. Disrepute

As a councillor:

5.1 I do not bring my role or local authority into disrepute.

As a Councillor, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other councillors and/or your local authority and may lower the public's confidence in you or your local authority's ability to discharge your/its functions. For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.

You are able to hold the local authority and fellow councillors to account and are able to constructively challenge and express concern about decisions and processes undertaken by the council whilst continuing to adhere to other aspects of this Code of Conduct.

6. Use of position

As a councillor:

6.1 I do not use, or attempt to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the local authority provides you with certain opportunities, responsibilities, and privileges, and you make choices all the time that will impact others. However, you should not take advantage of these opportunities to further your own or others' private interests or to disadvantage anyone unfairly.

7. Use of local authority resources and facilities

As a councillor:

7.1 I do not misuse council resources.

7.2 I will, when using the resources of the local authority or authorising their use by others:

- a. act in accordance with the local authority's requirements; and**
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the local authority or of the office to which I have been elected or appointed.**

You may be provided with resources and facilities by the local authority to assist you in carrying out your duties as a councillor.

Examples include:

- office support
- stationery
- equipment such as phones, and computers
- transport
- access and use of local authority buildings and rooms.

These are given to you to help you carry out your role as a councillor more effectively and are not to be used for business or personal gain. They should be used in accordance with the purpose for which they have been provided and the local authority's own policies regarding their use.

8. Complying with the Code of Conduct

As a Councillor:

8.1 I undertake Code of Conduct training provided by my local authority.

8.2 I cooperate with any Code of Conduct investigation and/or determination.

8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.

8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.

It is extremely important for you as a councillor to demonstrate high standards, for you to have your actions open to scrutiny and for you not to undermine public trust in the local authority or its governance. If you do not understand or are concerned about the local authority's processes in handling a complaint you should raise this with your Monitoring Officer.

9. Protecting your reputation and the reputation of the local authority

9. Interests

As a councillor:

9.1 I register and disclose my interests.

Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority .

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained.

You should note that failure to register or disclose a disclosable pecuniary interest as set out in **Table 1**, is a criminal offence under the Localism Act 2011.

Appendix B sets out the detailed provisions on registering and disclosing interests. If in doubt, you should always seek advice from your Monitoring Officer.

10. Gifts and hospitality

As a councillor:

10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.

10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.

10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

Appendix A – The Seven Principles of Public Life

[...]

Appendix B Registering Interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in **Table 1 (Disclosable Pecuniary Interests)** which are as described in “The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”. You should also register details of your other personal interests which fall within the categories set out in **Table 2 (Other Registerable Interests)**.

“**Disclosable Pecuniary Interest**” means an interest of yourself, or of your partner if you are aware of your partner's interest, within the descriptions set out in Table 1 below.

“**Partner**” means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A ‘sensitive interest’ is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a ‘sensitive interest’ you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non participation in case of disclosable pecuniary interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in **Table 1**, you must disclose the interest, not participate in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.
5. [Where you have a disclosable pecuniary interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it]

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which *directly relates* to the financial interest or wellbeing of one of your Other Registerable Interests (as set out in **Table 2**), you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest.

Disclosure of Non-Registerable Interests

7. Where a matter arises at a meeting which *directly relates* to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest.
8. Where a matter arises at a meeting which *affects* –

- a. your own financial interest or well-being;
- b. a financial interest or well-being of a relative or close associate; or
- c. a financial interest or wellbeing of a body included under Other Registrable Interests as set out in **Table 2**

you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied

9. Where a matter (referred to in paragraph 8 above) *affects* the financial interest or well-being:

- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a ‘sensitive interest’, you do not have to disclose the nature of the interest.

10. [Where you have an Other Registerable Interest or Non-Registerable Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it]

[Table 1 is a standard table of disclosable pecuniary interests as set out in law and in Swale’s current code of conduct.]

Table 2: Other Registrable Interests

You must register as an Other Registerable Interest :

- a) any unpaid directorships
- b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority
- c) any body
 - (i) exercising functions of a public nature
 - (ii) directed to charitable purposes or

(iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union) of which you are a member or in a position of general control or management

Appendix III [Blue text for ease of differentiation]

UPDATED KENT CODE OF CONDUCT

Preamble

- (A) The Code of Conduct that follows is adopted under section 27(2) of the Localism Act 2011.
- (B) The Code is based on the Seven Principles of Public Life under section 28(1) of the Localism Act 2011, which are set out in Annex 1.
- (C) This Preamble and Annex 1 do not form part of the Code, but you should have regard to them as they will help you to comply with the Code.
- (D) If you need guidance on any matter under the Code, you should seek it from the Monitoring Officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.
- (E) In accordance with section 34 of the Localism Act 2011, where you have a Disclosable Pecuniary Interest it is a criminal offence if, without reasonable excuse, you:
 - (a) Fail to notify the authority's Monitoring Officer of the interest before the end of 28 days beginning with the day on which you became a member
 - (b) Fail to disclose the interest at meetings where the interest is not entered in the authority's register
 - (c) Fail to notify the authority's Monitoring Officer of the interest before the end of 28 days beginning with the date of disclosure at a meeting, if the interest is not entered in the authority's register and is not the subject of a pending notification
 - (d) Take part in discussion or votes, or further discussions or votes, at meetings on matters in which you have the interest which are being considered at the meeting.
 - (e) Fail to notify the authority's Monitoring Officer of the interest before the end of 28 days beginning with the date when you become aware that you have such an interest in a matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the authority.
 - (f) Take any step in relation to a matter being dealt with by you acting alone in the course of discharging a function of the Authority, except a step for the purpose of enabling the matter to be dealt with otherwise than by you.
 - (g) knowingly or recklessly provide false or misleading information in any of the above disclosures or notifications.
- (F) Any written allegation received by the Authority that you have failed to comply with the Code will be dealt with under the arrangements adopted by the Authority for such purposes. If it is found that you have failed to comply with the Code, the Authority may have regard to this failure in deciding whether to take action and, if so, what action to take in relation to you.

THE CODE

1. Interpretation

In this Code:

"Associated Person" means (either in the singular or in the plural):

- (a) a family member or any other person with whom you have a close association, including your spouse, civil partner, or somebody with whom you are living as a husband or wife, or as if you are civil partners; or
- (b) any person or body who employs or has appointed you or such persons, any firm in which you or they are a partner, or any company of which you or they are directors; or
- (c) any person or body in whom you or such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of which you are in a position of general control or management and to which you are appointed or nominated by the Authority; or
- (e) any body in respect of which you are in a position of general control or management:
 - (i) exercising functions of a public nature; or
 - (ii) directed to charitable purposes; or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

"Authority" means *{insert name}* Council.

"Authority Function" means any one or more of the following interests that relate to the functions of the Authority:

- (a) housing - where you are a tenant of the Authority provided that those functions do not relate particularly to your tenancy or lease; or
- (b) school meals or school transport and travelling expenses - where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which your child attends;
- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 - where you are in receipt of, or are entitled to the receipt of, such pay;
- (d) an allowance, payment or indemnity given to members of the Authority;
- (e) any ceremonial honour given to members of the Authority;
- (f) setting council tax or a precept under the Local Government Finance Act 1992.

"Code" means this Code of Conduct.

"Co-opted Member" means a person who is not an elected member of the Authority but who is a member of:

- (a) any committee or sub-committee of the Authority, or
- (b) and represents the Authority on, any joint committee or joint sub-committee of the Authority; and
- (c) who is entitled to vote on any question that falls to be decided at any Meeting.

"Disclosable Pecuniary Interest" means those interests of a description specified in regulations made by the Secretary of State (as amended from time to time) as set out in Annex 2 and where either it is:

- (a) your interest or
- (b) an interest of your spouse or civil partner, a person with whom you are living as husband and wife, or a person with whom you are living as if you were civil partners and provided you are aware that the other person has the interest.

"Interests" means Disclosable Pecuniary Interests and Other Significant Interests.

"Meeting" means any meeting of:

- (a) the Authority;
- (b) the executive of the Authority;
- (c) any of the Authority's or its executive's committees, sub-committees, joint committees and/or joint sub-committees.

"Member" means a person who is a member of the Authority and includes a Co-opted Member.

"Other Significant Interest" means an interest (other than a Disclosable Pecuniary Interest or an interest in an Authority Function) in any business of the Authority which:

- (a) may reasonably be regarded as affecting the financial position of yourself and/or an Associated Person to a greater extent than the majority of:
 - (i) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
 - (ii) (in other cases) other council tax payers, ratepayers or inhabitants of the Authority's area; or
- (b) relates to the determination of your application (whether made by you alone or jointly or on your behalf) for any approval, consent, licence, permission or registration or that of an Associated Person;

and where, in either case, a member of the public with knowledge of the relevant facts would reasonably regard the interest as being so significant that it is likely to prejudice your judgment of the public interest.

"Register of Members' Interests" means the Authority's register of Disclosable Pecuniary Interests established and maintained by the Monitoring Officer under section 29 of the Localism Act 2011.

"Sensitive Interest" means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

Scope

2. (1) You must comply with this Code whenever you act in your official capacity as a Member or Co-opted Member of the Authority.
- (2) This code applies to all forms of communication and interaction.

General obligations

3. (1) You must, when using or authorising the use by others of the resources of the Authority:
 - (a) act in accordance with the Authority's reasonable requirements; and
 - (b) ensure that such resources are not used improperly for political purposes (including party political purposes).

- (2) You must not:
 - (a) bully any person or carry out any act of harassment; to support you in this duty:
 - (i) the Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. Their website contains examples;
 - (ii) harassment will be defined as set out in The Protection from Harassment Act 1997 and other relevant legislation.
 - (b) intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings, in relation to an allegation that a Member (including yourself) has failed to comply with this Code;
 - (c) do anything that compromises, or is likely to compromise, the impartiality or integrity of those who work for, or on behalf of, the Authority;
 - (d) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the written consent of a person authorised to give it; or
 - (ii) you are required by law to do so; or
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:
 - reasonable and in the public interest; and
 - made in good faith and in compliance with the reasonable requirements of the Authority;
 - (e) prevent another person from gaining access to information to which that person is entitled by law;
 - (f) conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;
 - (g) use or attempt to use your position as a Member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.

- (3) Where you have not undertaken training relating to conduct matters, you shall not be able to use this as a defence where a complaint has been made.

Registering Disclosable Pecuniary Interests

4. (1) You must, before the end of 28 days beginning with the day you become a Member or Co-opted Member of the Authority, or before the end of 28 days beginning with the day on which this Code takes effect (whichever is the later), notify the Monitoring Officer of any Disclosable Pecuniary Interest.
- (2) In addition, you must, before the end of 28 days beginning with the day you become aware of any new Disclosable Pecuniary Interest or change to any interest already registered, register details of that new interest or change, by providing written notification to the Monitoring Officer.
- (3) Where you have a Disclosable Pecuniary Interest in any matter to be dealt with, or being dealt with, by you acting alone in the course of discharging a function of the Authority (including making a decision in relation to the matter), then if the interest is not registered in the Register of Members' Interests and is not the subject of a pending notification, you must notify the Monitoring Officer before the end of 28 days beginning with the day you become aware of the existence of the interest.

Declaring Interests

5. (1) Whether or not a Disclosable Pecuniary Interest has been entered onto the Register of Members' Interests or is the subject of a pending notification, you must comply with the disclosure procedures set out below.
- (2) Where you are present at a Meeting and have a Disclosable Pecuniary Interest or Other Significant Interest in any matter to be considered, or being considered, at the Meeting, you must:
 - (a) disclose the Interest; and
 - (b) explain the nature of that Interest at the commencement of that consideration or when the Interest becomes apparent (subject to paragraph 6, below); and unless you have been granted a dispensation or are acting under paragraph 5(4):
 - (c) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
 - (d) withdraw from the Meeting room in accordance with the Authority's Procedure Rules whenever it becomes apparent that the business is being considered; and
 - (e) not seek improperly to influence a decision about that business.
- (3) Where you have a Disclosable Pecuniary Interest or Other Significant Interest in any business of the Authority where you are acting alone in the course of discharging a function of the Authority (including making an executive decision), you must:
 - (a) notify the Monitoring Officer of the interest and its nature as soon as it becomes apparent; and
 - (b) not take any steps, or any further steps, in relation to the matter except for the purpose of enabling the matter to be dealt with otherwise than by you; and
 - (c) not seek improperly to influence a decision about the matter.

- (4) Where you have an Other Significant Interest in any business of the Authority, you may attend a Meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the Meeting for the same purpose. Having made your representations, given evidence or answered questions you must:
 - (a) not participate in any discussion of, or vote taken on, the matter at the Meeting; and
 - (b) withdraw from the Meeting room in accordance with the Authority's Procedure Rules.

Sensitive Interests

6.
 - (1) Where you consider that the information relating to any of your Disclosable Pecuniary Interests is a Sensitive Interest, and the Monitoring Officer agrees, the Monitoring Officer will not include details of the Sensitive Interest on any copies of the Register of Members' Interests which are made available for inspection or any published version of the Register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.
 - (2) You must, before the end of 28 days beginning with the day you become aware of any change of circumstances which means that information excluded under paragraph 6(1) is no longer a Sensitive Interest, notify the Monitoring Officer asking that the information be included in the Register of Members' Interests.
 - (3) The rules relating to disclosure of Interests in paragraphs 5(2) and (3) will apply, save that you will not be required to disclose the nature of the Sensitive Interest, but merely the fact that you hold an interest in the matter under discussion.

Gifts and Hospitality

7.
 - (1) You must, before the end of 28 days beginning with the day of receipt/acceptance, notify the Monitoring Officer of any gift, benefit or hospitality with an estimated value of £100 or more, or a series of gifts, benefits and hospitality from the same or an associated source, with an estimated cumulative value of £100 or more, which are received and accepted by you (in any one calendar year) in the conduct of the business of the Authority, the business of the office to which you have been elected or appointed or when you are acting as representative of the Authority. You must also register the source of the gift, benefit or hospitality.
 - (2) Where any gift, benefit or hospitality you have received or accepted relates to any matter to be considered, or being considered at a Meeting, you must disclose at the commencement of the Meeting or when the interest becomes apparent, the existence and nature of the gift, benefit or hospitality, the person or body who gave it to you and how the business under consideration relates to that person or body. You may participate in the discussion of the matter and in any vote taken on the matter, unless you have an Other Significant Interest, in which case the procedure in paragraph 5 above will apply.
 - (3) You must continue to disclose the existence and nature of the gift, benefit or hospitality at a relevant Meeting, for 3 years from the date you first registered the gift, benefit or hospitality.

- (4) The duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

Dispensations

- 8. (1) The [Standards] Committee, or any sub-committee of the [Standards] Committee, or the Monitoring Officer (where authorised) may, on a written request made to the Monitoring Officer (as appointed Proper Officer for the receipt of applications for dispensation) by a Member with an Interest, grant a dispensation relieving the Member from either or both of the restrictions on participating in discussions and in voting (referred to in paragraph 5 above).
- (2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the [Standards] Committee, its sub-committee, or the Monitoring Officer (where authorised) considers that:
 - (a) without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business; or
 - (b) without the dispensation, the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business; or
 - (c) granting the dispensation is in the interests of persons living in the Authority's area; or
 - (d) without the dispensation each member of the Authority's executive would be prohibited from participating in any particular business to be transacted by the Authority's executive; or
 - (e) it is otherwise appropriate to grant a dispensation.
- (3) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.
- (4) Paragraph 5 above does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph 8.

Standards Committee	
Meeting Date	16 November 2021
Report Title	Annual Monitoring Officer Report
Cabinet Member	Not applicable for this report
SMT Lead	David Clifford, as monitoring officer
Head of Service	
Lead Officer	
Key Decision	No
Classification	Open
Recommendations	The report is for information only.

1 Introduction

- 1.1 This report provides an overview of the work of the monitoring officer during the period 1 November 2020 to 31 October 2021. 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 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 has been a year in which the council has continued to cope well with the exigencies of the pandemic, but also one in which the outlines of a new post-pandemic normality have begun to emerge. This has been evident, for example, in the ‘new ways of working’ programme intended to give a more permanent footing to some of the flexibilities around officers’ working patterns which were initially introduced as a temporary emergency measure.
- 1.3 Members’ own ways of working also changed as a result of the pandemic, but with the government’s failure to replace the temporary regulations on remote meetings when these expired in May, some of the changes which many members would have preferred to make permanent have had to be given up. Nonetheless, officers have worked hard to make hybrid meetings possible for as many committee meetings as possible, meaning that only members who are actually making decisions need to be present in the chamber.

- 1.4 The technology we have used to achieve this is not flawless, and some members (and to a lesser extent officers) have experienced problems, but on the whole the period since May has demonstrated the fundamental viability of hybrid meetings, even if there remain some technical issues to iron out. Given the physical constraints of the council chamber and its consequent inappropriateness as a venue for large meetings, several full council meetings have been successfully held in, and livestreamed from, larger and better-ventilated venues in Faversham and on Sheppey.
- 1.5 A new chief executive took up her post in January, and has now implemented a senior management restructure. This has involved the creation of two new director posts, together with some changes to the head of service tier. The new director of resources has also been appointed the s151 officer. Collectively these changes bring Swale more into line with a ‘typical’ district council structure, and configure the senior management resource in a way which should prove sustainable going forwards.
- 1.6 It has been another busy year in terms of complaints against borough and parish councillors under the code of conduct, with 26 formal complaint cases¹ and 41 individual complaints dealt with in the year to 31 October. These complaints are reviewed in detail in Section 5 of this report.

2 The role of the monitoring officer

- 2.1 The Local Government and Housing Act 1989 requires local authorities to appoint a monitoring officer, giving that officer a broad role in ensuring the lawfulness of council decision-making and 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
Report on sufficiency of resources.	Local Government and Housing Act 1989

¹ By ‘complaint cases’ I refer to incidents or alleged incidents each giving rise to one or more complaints.

Description	Source
Maintain the constitution.	Council constitution
Provide advice to members on governance, probity, vires issues, and questions concerning the budget and policy frameworks.	Council constitution
Consult with, support and advise the chief executive and chief financial officer on issues of lawfulness and probity.	Council constitution
Advise on whether executive decisions fall within the budget and policy framework.	Council constitution
Establish, publish and maintain the register of members' interests.	Localism Act 2011
Issue dispensations to members regarding disclosable pecuniary 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
Act as legal advisor to the standards committee when carrying out a local determination hearing.	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. It provides clarity on the respective roles of members and officers, as well as on the split between executive and non-executive matters.
- 3.2 Objective 4.1 of the current corporate plan is to 'Review the council's constitution to diffuse decision-making power more widely among elected members and improve the transparency, responsiveness and public accountability of that decision-making'. This has already resulted in significant changes to the constitution, and will continue to do so over the coming months.
- 3.3 The focus this year has been on cabinet advisory committees, which replaced

the policy development and review committee (PDRC) from May. There are three politically-balanced committees, each covering a number of cabinet portfolios. The committees meet quarterly, receiving updates on significant pieces of work in their portfolios by cabinet members, and providing advice and informal pre-decision scrutiny on forthcoming cabinet decisions. While these committees are purely advisory in nature, they are intended partly to act as a 'bridge' between the current leader-and-cabinet governance model and a future committee system.

- 3.4 A further change introduced during the year involved improvements to the council procedure rules on motions with notice. These changes seek primarily to prevent council motions being used in a way which circumvents or appears to circumvent constitutional (and hence lawful) decision-making processes. In addition, amendments to motions now need to be registered with democratic services in advance of the council meeting, and statutory officers have a new right, in consultation with the mayor, to append a short note to both motions and amendments setting out any relevant financial or other implications.
- 3.5 Following a detailed consideration of pros and cons by a cross-party working group, council voted unanimously in October to move to a committee system of governance from the annual council meeting in May 2022. This decision will require a wholesale redrafting of the entire constitution, not simply to bring the necessary service committees into being, but to remove the leading role of the executive which is currently referenced in almost all sections of the document.
- 3.6 While redrafting the constitution to move from a leader-and-cabinet model to a committee system is arguably a more straightforward task than the reverse, not least because it is more about deletion than addition, this is still an important opportunity to review the constitution in its entirety, and one that I would like to ensure we capitalise on fully.
- 3.7 While the three watchwords agreed by council for the future functioning of the constitution are efficiency, effectiveness and engagement, with respect to the structure and wording of the constitution I would like us to add a fourth requirement for concision, simplicity and cohesiveness. Given the myriad incremental changes which have been made to it over the many years of its existence, these are not words which I believe a fair-minded observer would readily associate with the current constitution.

4 Lawful decision-making and good governance

- 4.1 The monitoring officer is the council's lead adviser on questions of lawfulness and the scope of the council's powers. In consultation with the chief executive and director of resources, I advise 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 under the current governance model 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. The cabinet has met on eight occasions between 1 November 2020 and 31 October 2021.
- 4.3 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. Items on the cabinet forward plan are added automatically onto the SMT forward plan, enabling SMT to seek advice from the head of legal, director of resources or head of human resources as necessary. This process enables a robust set of recommendations and alternative options to be presented to cabinet for consideration and decision, while ensuring that cross-cutting implications are adequately assessed by specialist officers.
- 4.4 While the rules on the forward plan and access to information more generally are in some cases less rigid for councils operating the committee system, I do not envisage the process of publicising proposals and forthcoming decisions to be very different when the decision-maker is a service committee rather than the cabinet or a cabinet member. There will still be a need for implications to be considered corporately, and for all members and senior officers to know what decisions are going to be made when. This could be by means of committee work programmes rather than a single forward plan.
- 4.5 In cases where I consider that any proposal, decision or omission by the council would result in a breach of any enactment or the rule of law, or if any decision or omission has been found by an ombudsman investigation to have given rise to maladministration causing injustice, as monitoring officer I am under a personal statutory duty to make a report on the matter to members. Any proposal that is subject to such a report cannot be implemented until the report has been considered. The sound governance processes operated by the council ensure

that the obligation to report potentially unlawful decision-making rarely, if ever, arises at Swale. I issued no such reports during the year to 31 October 2021.

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 the individuals involved in decision-making on behalf of their communities cannot be overstated.
- 5.2 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 basic processes continue to function appropriately, but there are legitimate questions about how well the code of conduct has kept up with the advent of social media and the generally more rancorous political atmosphere – nationally and to some extent locally – that it has helped to create. This issue is the subject of a separate agenda item at the standards committee meeting, and I do not intend to labour the point here.
- 5.3 The legally mandated registers of interests are available on the council's website, and both borough councillors and parish clerks are very familiar with how these work. The system for registering members' gifts and hospitality is now also fully operational. The key requirement and the key point of the rules on interests 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. The declaration and resolution of personal interests should always be guided by this principle.
- 5.4 Most members will be aware that the law provides for the possibility for the monitoring officer to classify an interest as 'sensitive' if both I and the member concerned reasonably believe that its disclosure could lead to the member being subject to violence or intimidation. The effect of an interest being 'sensitive' is that details of it are redacted from the published register, although the fact that an interest exists still needs to be declared in the usual way.
- 5.5 In recent years, in response to increasing levels of intimidation and threats of violence against elected representatives, and in common I believe with most monitoring officers, I have taken a fairly liberal approach to the question of whether an interest is 'sensitive', and have been sympathetic towards members who are fearful of the consequences of having their interests – particularly their home addresses – published. I am always willing to discuss this with members.

Code of conduct cases 1 November 2020 to 31 October 2021

- 5.6 During the period covered by this report a total of 41 contacts were recorded as complaints (“complaints”), resulting from 26 separate incidents or alleged incidents (“complaint cases”). Last year these figures were 42 and 21 respectively, largely because of a single incident which generated a very high number of complaints. This year’s figures represent a concerning 24% increase in complaint cases over the previous year.
- 5.7 Of these 26 complaint cases, 23 related to borough councillors and the remaining three to parish councillors. Eleven of the 41 complaints (27%) were made by borough councillors against other borough councillors. This is a reduction on the exceptionally high proportion (67%) last year when, again, the figures were somewhat skewed by a single complaint case, but in my view this is still a cause for concern.
- 5.8 Fifteen borough councillors (32% of the total number) were the subject of a complaint during the year. Clearly this should in no way be interpreted to mean that this number of councillors had in fact breached the code of conduct. Of those 15 councillors, 10 were the subject of only one complaint case, while three borough councillors were the subject of more than three complaint cases each.
- 5.9 Of the 26 complaint cases, eight were considered and/or investigated by the monitoring officer or deputy monitoring officer, who determined that there was no case to answer. Two complaint cases were considered by the monitoring officer or deputy 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. This could be because the complaint was trivial, tit-for-tat, politically motivated, out of time, or a combination of these.
- 5.10 In two cases a preliminary investigation was commenced or concluded, which showed there to be insufficient evidence to support any further action. In a further two cases, the complaint was withdrawn by the complainant. Two complaints were informally resolved, by an apology being provided to the complainant or words of advice being given to the subject councillor. In one of these cases the complainant was satisfied with the resolution; in the other, the complainant wanted to take the matter further, but I determined in consultation with one of the independent persons that following the informal resolution there was no public interest in any further action.

- 5.11 In four complaint cases the subject councillor was determined not to have been acting in the capacity of a councillor at the time of the alleged conduct. Section 27 of the Localism Act 2011 makes it clear that the standards regime cannot be engaged by such conduct, although this provision has been the subject of some criticism in recent years, not least from the committee on standards in public life.
- 5.12 One of the cases in which the councillor was determined not to have been acting in that capacity was a substantial complaint which would have been a serious breach of the code of conduct had it been lawful for the standards regime to engage with it and had it been proven. I discussed this case at length with one of the independent persons, and we were unable to identify any reasonable argument which would have satisfied the tests established in case law for the councillor concerned to have been regarded as acting in that capacity at the time of the alleged conduct.
- 5.13 A summary of these complaint outcomes is provided below.

Final outcome of complaint case	No.
Complaint considered or investigated and not upheld	8
Subject councillor not acting in that capacity	4
Complaint withdrawn by complainant	2
Complaint failed initial tests in constitutional assessment criteria	2
Investigation dropped for lack of evidence	2
Complaint informally resolved to complainant's satisfaction	1
Complaint informally resolved; no public interest in further action	1
Ongoing case still open at time of report	6

- 5.14 Six complaint cases remain open at the time of writing this report. Last year only one case was open at the time of writing. That case finally went to a formal standards hearing, which found that the subject member had breached the code of conduct. In view of the fact that the member had already offered a full public apology for the conduct, no sanction was applied.
- 5.15 The two independent persons appointed in 2017 under s28 of the 2011 Act to give their views on complaint cases, Patricia Richards and Christopher Webb, have remained in their roles, with an extension to their contracts to 2025 recently agreed by council. The ability to consult the independent persons on matters relating to complaints has enabled me to be both challenged and supported in my

thinking about cases, and this is a facility which I continue to find to be extremely valuable. I am very much indebted to Patricia and Christopher for their invariably wise and thoughtful counsel.

Historic cases of interest

- 5.16 A summary of some of the key rulings in the development of case law as it relates to councillor conduct is provided for information in Appendix I. There are a number of cases dealt with by the Swale monitoring officer before November 2020 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 summarised for information in Appendix II.

6 Officers' code of conduct

- 6.1 The constitution includes a code for employees, which contains a requirement to register interests. Officers are reminded of this requirement on regular basis. In response to an internal audit recommendation, a new IT system is currently being implemented to improve the way that this process works and to ensure that officers who should be able to consult the information are supported to do so. The system is expected to be live early in the new calendar year.

7 Related party transactions

- 7.1 In accordance with the code of practice on local authority accounting in the United Kingdom, 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 by the end of June 2021 for the 2020/21 annual accounts.

8 Protected disclosures – the whistleblowing policy

- 8.1 The purpose of the council's whistleblowing policy is to enable employees to feel confident in making disclosures about potential wrongdoing by individual(s) in a position of authority within the organisation. It provides a mechanism for raising

concerns without fear of victimisation, discrimination, disadvantage or dismissal.

8.2 Following agreement by the standards committee, a CSPL recommendation for local authorities to include the name and contact detail of the external auditor in their whistleblowing policies and on their websites was actioned last year.

9 Support to council, cabinet, scrutiny and committee meetings

9.1 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, whether attending in person or remotely; and
- Publishing minutes as soon as possible after the meeting, in particular ensuring that cabinet minutes are published within three working days of the meeting.

9.2 The restrictions on gatherings which came into effect in March 2020 caused the council to cancel or postpone planned meetings for a short while, but we quickly developed the means for formal meetings to be conducted virtually via skype, all in accordance with the regulations made under the Coronavirus Act 2020. Swale was one of the first districts in Kent to hold a virtual council meeting and a virtual annual council meeting.

9.3 The relevant regulations expired in May of this year, and despite pressure from across the local government sector, the government took no steps to renew them or enshrine them permanently in primary legislation. A court case brought by the Association of Democratic Services Officers unhelpfully confirmed that terms such as 'present' in the Local Government Act 1972 had to be interpreted as meaning that members had to be physically present in a single location in order to make lawful decisions.

9.4 Given the physical constraints of Swale's council chamber at a time when the

pandemic was still raging and few members or officers felt completely safe to attend crowded meetings, the council was innovative in pioneering 'hybrid' committee meetings at which the committee members and a small number of technical officers are physically present but other attendees – visiting members, most officers and members of the public – are able to dial in remotely.

- 9.5 While the technology we use for this is not perfect, it does provide a safe, affordable and generally effective means for members to continue to make decisions in a transparent, democratic and accountable way. Meetings which have had no formal decisions on the agenda (including cabinet advisory committees, scrutiny committee and other meetings) have largely continued to be held fully remotely, while we have also successfully trialled full council meetings at a couple of different venues around the borough.
- 9.6 The ability to participate in meetings from home has meant that over the last 18 months we have seen a considerable increase in visiting members attending committees, as well as a more modest increase in attendance by members of the public. I am sure all members will agree that this is extremely positive.
- 9.7 From 1 November 2020 to 31 October 2021 the following meetings were serviced by the democratic services team:

Name of meeting	Count
Annual council	1
Appointments subcommittee	2
Audit committee	4
Cabinet (including extraordinary meetings)	8
Cabinet delegated decisions	0
Community, economy and property cabinet advisory committee	2
Council (including extraordinary meetings)	9
Eastern area committee	4
Emergency committee	1
Environment, health and wellbeing cabinet advisory committee	2

Name of meeting	Count
General licensing committee (including extraordinary meetings)	4
General purposes committee	3
Licensing Act 2003 committee (including extraordinary meetings)	4
Licensing sub-committee	11
Local plan panel (including extraordinary meetings)	8
Member development working group	2
Planning committee	13*
Planning working group	4**
Policy development and review committee (now abolished)	2
Policy, finance and housing cabinet advisory committee	2
Record of officer decision	7
Scrutiny committee (including extraordinary meetings)	10
Sheppey area committee	4
Sittingbourne area committee	4
Standards committee	1
Standards hearings subcommittee	1
Swale joint transportation board	4
Western area committee	4
Total	121

* Includes one reconvened planning committee meeting.

**The four working group meetings cover a total of four site visits.

- 9.5 These figures do not reflect the additional meetings administered by the democratic services team, including two external charities 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 represent an effective and productive use of these.

- 9.6 It is worth emphasising that virtual or hybrid meetings require the attendance of more democratic services officers, because of the risk of individuals' broadband connections failing and because of the assistance which is sometimes needed by members and the public in participating in the meeting. Democratic services are a small team of extremely dedicated officers who have worked tirelessly over the last 18 months to enable decision-making to keep going in a way that members and the public have been able to engage with. I am sure members share my sense of gratitude to them for their commitment, industriousness and consistently solutions-focused approach.

10 Member training and development

- 10.1 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.

11 Use of covert surveillance

- 11.1 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. No applications for such surveillance were made during the year to 31 October 2021.

12 Comments and conclusions

- 13.1 This has been another year of significant change for the council, with the promise of more change to come. The advent of hybrid meetings, while not without its issues, has embedded at least some of the improvements to the accessibility of meetings, for councillors and for members of the public, that we witnessed as a result of the covid regulations, probably on a permanent basis.
- 13.2 For officers, the possibility of returning to the office after the months of no face-to-face contact with colleagues has been welcome, but with the pandemic having demonstrated the feasibility for most people to work almost exclusively at home if that is their preference, the new permanent way of working which ultimately emerges from the covid crisis will be very different to the old one. In

the longer term, this is likely to have implications for the recruitment and retention of staff which will affect the whole local government sector.

- 13.3 Change is also the order of the day with regard to the council's constitution and the way in which members make decisions and control the organisation. The move to a committee system will provide more members with meaningful opportunities to influence decisions as they are being taken, but the removal of individual decision-making powers from the constitution will necessitate a more strategic and more policy-based approach to the task. The adoption of a new governance model will affect both the political dynamics of the council and the way members and officers work with each other, and both members and officers will need to be appropriately supported to adapt to these changes.
- 13.4 The number of complaints made against borough councillors last year remained high, and the proportion of them which were made by fellow councillors is in my opinion also a cause for concern. The discussion which the committee is due to have under a separate agenda on the future of the code of conduct may have the kernel of a solution to this issue, particularly if it represents an opportunity for all members to reflect on what they want from the standards regime and how they want to use it to drive a respectful political culture focused on the needs and aspirations of the borough and its residents. In my view as monitoring officer, this is the key task for the standards committee in the year ahead.

14 List of appendices

- 14.1 The following appendices are to be published with this report and form part of the report:
- Appendix I: Compendium of recent legal cases of interest
- Appendix II: Historical cases of interest dealt with by the Swale monitoring officer

Appendix I:
Compendium of recent legal cases of interest

R (Greenslade) v Devon County Council (2019)
Interaction between standards regime and grievance procedures
Facts: The case was brought by a councillor who had been found to have breached the Devon code of conduct. Devon’s complaints procedure provided for anonymity of the complainants and did not allow for an oral hearing before the standards committee.
Findings and decision: The court held that, when assessed overall, that procedure was not unfair: Cllr Greenslade had had the opportunity to answer the complaints in person before an independent QC, and to provide comments on his draft report, as well as being able to make written submissions to the Standards Committee. The context in which fairness was to be judged importantly comprised both the changes wrought by the Localism Act 2011 and the particular procedures adopted by the council, to which there had been no direct challenge.
Comment: This case underlines the freedom allowed to local authorities under the Localism Act 2011 in regulating their own procedures for dealing with complaints against elected members. It is also noteworthy that Mrs Justice Andrews appeared to accept the council's argument that Article 6 ECHR does not apply to local government standards matters, which are essentially disciplinary in character.

R (Harvey) v Ledbury Town Council (2018)
Interaction between standards regime and grievance procedures
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.
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.

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 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)

Councils' and MOs' powers to investigate alleged misconduct

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)

Limits of personal data exemptions in Freedom of Information Act

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)

Inability of parish councils to impose their own sanctions

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.

R v Flower (2015)

Criminal implications of non-disclosure of a disclosable pecuniary interest

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 disclosable pecuniary interest (DPI) in a matter being considered.

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.

Decision: Conditional discharge for six months and an order to pay £930 in costs.

Commentary: The lack of any real sanction or appetite for prosecution in the Localism Act 2011 is evidenced by the fact that since its implementation this is thought to have been the only prosecution in relation to an elected member participating in a discussion and vote without reasonable excuse despite having a DPI.

R (Benjamin Dennehy) v London Borough of Ealing (2013)

Social media, freedom of expression and the code of conduct

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.

Commentary: 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 been made available to councilors as part of the induction handbook following the May election. This case does provide 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.

Cllr John Copeland v West Lindsey DC Standards Committee (2012)

Freedom of expression and the code of conduct

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.

Appendix II:

Historical cases of interest dealt with by the Swale monitoring officer

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.

Borough councillor alleged to having sent a personal letter of an inappropriate nature to complainant, in addition to other allegations by other complainants.

Action: Monitoring officer discussed with independent person and the complaint was referred for investigation by a professional external investigator.

Outcome: Investigator concluded that on the balance of probability the subject member was not the author of the letter. Other conduct did not amount to a breach of the code of conduct, but diversity training was recommended and accepted by the subject member.

Borough councillor made unsubstantiated allegations of corruption against cabinet members at a meeting of the full council.

Action: In consultation with the independent person it was determined that there was no need for an independent investigation as the relevant facts were all contained in the transcript of the meeting. The monitoring officer wrote an 'investigation' report for the standards committee.

Outcome: Monitoring officer's report indicated that there had been a breach of the code of conduct. Standards hearing upheld this view, but as the subject councillor had already made a full public apology, no further sanction was applied.

