

Standards Committee	
Meeting Date	18 December 2023
Report Title	Annual Monitoring Officer Report
EMT Lead	Robin Harris – Monitoring Officer
Head of Service	
Lead Officer	
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 3 January 2023 to 4 December 2023. 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 post-pandemic normality. The ‘new ways of working’ programme continues and the Council has seen the introduction of a 34 hour working week for staff and the refurbishment of the second floor in Swale House, to provide a more modern working environment.
- 1.3 Members’ own ways of working also changed as a result of the pandemic. The Government has declined to allow local authorities to return to holding hybrid decision making meetings. However, many Council meetings are hybrid meaning that only members who are actually making decisions need to be present in the chamber. The technology in the Council Chamber, which has been a limiting factor, will now be updated.
- 1.4 The Council continues to operate in a challenging employment market, with roles previously done by two or more officers being picked up now by a single staff member. There is also difficulty in recruiting and retaining staff, particularly in professional fields such as planning.
- 1.5 It has been another busy year in terms of complaints against borough and parish councillors under the code of conduct, with 17 formal complaint cases and 20 individual complaints dealt with in the year to 30 November 2023. These complaints are reviewed 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
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 how policy areas are divided between committees.
- 3.2 Following the switch to the committee model of governance, the Constitution Working Group has been reviewing the Council's update Constitution, with a view to correcting errors, providing greater clarity and generally improving on the Constitution as a living document.
- 3.3 The first set of proposed amendments to the Constitution were approved by Council in November and there will be further submissions to the Policy and Resources Committee and then Council in the coming months.

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 other members of the Executive Management Team, 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 committee governance model is the agenda of, and reports and recommendations to committees. Committee reports and decisions are made publicly available for councillors either electronically or by way of a paper version. Committee decisions can also be viewed by members of the public through the council's website.
- 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 committee agendas are provided to SMT, enabling SMT to seek advice from the legal, S151 Officer or head of human resources as necessary. This process enables a robust set of recommendations and alternative options to be presented to committees for consideration and decision, while ensuring that cross-cutting implications are adequately assessed by specialist officers.
- 4.4 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 4 December 2023.

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 a new code of conduct in February 2023, based on the LGA Model Code of Conduct. The Council has also adopted a Social Media Policy. The Standards Committee is also looking at an Officer Member Protocol. However, this is the subject of a separate agenda item at the standards committee meeting, and there I do not intend to deal with this in depth in this report.
- 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 3 January 2023 and 30 November 2023

- 5.6 During the period covered by this report a total of 19 contacts were recorded as complaints (“complaints”), resulting from 15 separate incidents or alleged incidents (“complaint cases”). Last year these figures were 12 and 11 respectively. While this was a low number, by historical standards at Swale, it is nevertheless disappointing that this year’s figures represent a concerning, substantial increase in complaint cases over the previous year.
- 5.7 Of the 19 complaint cases, 15 related to borough councillors and the remaining 4 to parish councillors. Only 1 complaint was by a Borough Councillor against another Borough Councillor, which is an improvement on previous years. However, there were, as a result more complaints from members of the public and staff, which is not a positive trend.
- 5.8 In respect of borough councillors, 5 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. However, it is indicative of Councillors receiving multiple complaints.
- 5.9 Of the 19 complaint cases, only 1 resulted in a standards hearing, although there are 3 linked cases awaiting determination.
- 5.10 In the majority of cases, no further action was taken, due to a number of factors, including, the complainant ceasing to engage, absence of evidence, the subject member no longer being a Councillor or the matter not being in the public interest.
- 5.11 In 1 complaint case 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 There are 5 complaint cases remaining open at the time of writing this report. Last year no cases were open at the end of the calendar year.
- 5.13 The two independent persons were appointed in 2017 under s28 of the 2011 Act to give their views on complaint cases, Patricia Richards and Christopher Webb. Both have remained in their roles, with an extension to their contracts to 2025. The ability to consult the independent persons on matters relating to complaints 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.

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 now used, which improves the way that this process works and ensures that officers who should be able to consult the information are supported to do so.

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 for all current members by the end of May 2023 for the 2022/23 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 in 2020.

9 Support to council 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.

9.2 From 3 January 2023 to 4 December 2023 the following meetings were serviced by the democratic services team:

Name of meeting	Count
Annual Council	1
Audit Committee	5
Community Committee	6
Council	7
Eastern Area Committee	4
Environment Committee	5
Extraordinary Council	1
Housing and Health Committee	5
Licensing Committee	3
Licensing Sub-Committee	10
Planning and Transportation Policy Working Group	3
Planning Committee	16
Planning Working Group	3
Policy and Resources Committee	8
Record of Officer Decision	1
Regeneration and Property Committee	6
South Thames Gateway Building Control	1
Sheppey Area Committee	4
Sittingbourne Area Committee	4
Standards Committee	2

Name of meeting	Count
Standards Hearing Sub-Committee	1
Swale Joint Transportation Board	4
Urgent Decisions	1
Western Area Committee	5
Total	106

- 9.3 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.
- 9.4 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.
- 9.5 It is worth emphasising that virtual or hybrid meetings may sometimes 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 12 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 4 December 2023.

12 Comments and conclusions

- 12.1 This has been another year of significant change for the council, with the promise of more change to come. For officers, the return to the office after the months of no face-to-face contact with colleagues has been welcome, and the initial response to the 34-hour working week has been positive.
- 12.2 The move to a committee system has provided more members with meaningful opportunities to influence decisions as they are being taken, but this remains a work in progress and the number of committees, meetings and reports was noted in the council's peer review.
- 12.3 The number of complaints made against borough councillors last year remained high. Further, the council's peer review reported a poor relationship between officers and members. In my view, this needs to be the focus of the committee's work in the next year.

13 List of appendices

- 13.1 There are no appendices.

14 Background papers

- 14.1 There are no background papers