

STANDARDS COMMITTEE

Minutes of a meeting of the Standards Committee held on
1st November 2007 commencing at 7 p.m.

Present: Mr. P. Hobbs (Vice-Chairman, Acting Chairman)

District Cllrs. Dibsdall, Dyball, Mrs. Morris and Mrs. Parkin.

Independent Member: Mr. A. Smith

Town/Parish Representatives: Mrs. M. Wallach

Apologies for absence were received from Mr. J. London, Cllr. Loney, Mr. A. Riddell (Chairman), Cllr. Ryan, Mrs. S. Schofield and Mr. D. Taylor.

374. MINUTES OF THE LAST MEETING

The Chairman welcomed Mrs. Wallach to her first Standards Committee meeting.

Resolved: That the minutes of the meeting of the Committee held on 23rd July 2007 be agreed and signed by the Chairman as a correct record.

375. DECLARATIONS OF INTEREST

There were no declarations of interest in respect of any matter discussed or voted on during the meeting.

376. REPORT OF THE MONITORING OFFICER 2007 (SEE REPORT 3 – 01.11.07)

Some amendments to the reports on the agenda were tabled including the Monitoring Officer's report. The Monitoring Officer thanked the Chairman for taking the trouble to read the reports in detail and for pointing out the need for slight amendments. There were no amendments of any substance and it was agreed that such amendments be incorporated into the reports.

The Monitoring Officer presented the third Annual Report of the Monitoring Officer to the Committee. The purpose of the Monitoring Officer's Report was to provide an overview of the work of the Monitoring Officer in the past calendar year and to provide an opportunity to review and learn from experience. The Monitoring Officer's Report set out the Monitoring Officer's statutory responsibilities, summarised how these duties had been discharged during 2007 in accordance with the Council's Constitution and legislative requirements and drew attention to those issues that would require attention in the next calendar year.

The Monitoring Officer made the following comments on her report:

- The Council's Constitution had undergone an in depth review and the changes to it had been approved by Council on 25th September 2007.

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- There had been no instances of unlawfulness or maladministration by Council this year.
- The report included a summary of complaints received against the District Council by the Ombudsman. Details of the complaints were available from the Local Government Ombudsman's website.
- Regarding the tasks for the Committee in the year 2008, the implementation of a local referral unit in respect of breaches of the Code of Conduct was highlighted. Referrals now dealt with by the Standards Board for England would be received by the Council's Monitoring Officer from April 2008 who would report the receipt of the complaint to the Standards Committee. The Committee would then have to decide whether the matter warranted investigation. With regard to the new referral system, the Minister who had spoken at the sixth Annual Assembly of the Standards Board for England had reported that there would be no extra funding made available to local authorities to carry out this role.
- The Committee noted that the revised Members' Code of Conduct had been adopted by Council on 25th September 2007. It was acknowledged that a great deal of training on this issue would have to be undertaken.
- The Monitoring Officer outlined the work the Committee had undertaken during 2006/07 and advised that many of the new Register of Members' Interest forms had been completed.
- In relation to the ten cases reported to the Standards Board for England all had been in connection with parish or town councils.
- It was noted that the Monitoring Officer would be restarting Code of Conduct training workshops in November 2007.
- The new Legal Services Manager had been in post for a little while and had implemented the publication of a regular legal newsletter.

ACTION 1: The Monitoring Officer to ensure to the Standards Committee's Independent and Parish/Town Council representatives receive the Legal Newsletter.

In relation to the Council dealing with referrals from the Standards Board for England, the Committee was advised that the decision-making on whether there needed to be an investigation or not and the subsequent appeals process would probably entail the setting up of at least two sub-committees of the Standards Committee.

The Chairman asked if Committee members could be involved in the training on the Code of Conduct. The Monitoring Officers reported that she would be happy to involve the Committee in providing training.

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ACTION 2 The Monitoring Officer to submit the proposed programme of training so that members of the Standards Committee could be given the opportunity to take part.

In response to another question, the Monitoring Officer explained that a premature complaint to the Ombudsman meant the complainant had not accessed the Council's complaints procedure before going to the Ombudsman. Cllr. Dibsdall commented that the Council's complaints processes were not as visible as they used to be. The Monitoring Officer explained that a review of the Council's complaints procedure had been completed recently and the visibility issue was shortly to be addressed as a result. Officer training would also be undertaken.

In response to a question from Cllr. Mrs. Dyball, the Monitoring Officer explained the mechanics of the Council's call-in of key decisions system.

The Committee thanked the Monitoring Officer for an excellent and positive report.

Resolved: (a) That, subject to any comments from the Chairman, the Monitoring Officer's Report 2007 as attached to these minutes at Appendix A be endorsed; and

(b) that it be recommended that Council note the amended Monitoring Officer's Report 2007.

377. GUIDANCE ON THE DISCLOSURE OF CONFIDENTIAL INFORMATION BY MEMBERS (SEE REPORT 4 – 01.11.07)

Further to Council (25.09.07) when the revised Members' Code of Conduct was adopted as part of the Council's Constitution, the Standards Board for England had encouraged local authorities to adopt guidance on the disclosure of confidential information. To assist Members in interpreting the Code of Conduct regarding the disclosure of confidential information, guidance on this subject was set out in the appendix to the report.

A comment was made that controversy was often caused by non-confidential information being classed as confidential in reports to Committees of the Council.

A question was asked if the word "entitled" on page 4 of the report under (b) should be "required" or should the word "required" also be in the sentence.

ACTION 3: The Monitoring Officer to investigate the inclusion of the word "required" under (b) of the Requirements of the Members' Code of Conduct as set out in the Guidance.

Resolved: That, subject to Action 3 above and any comments from the Chairman, Council be recommended to adopt the Guidance on the Disclosure of Confidential Information by Members, as attached at Appendix B to these minutes, and that it be included in the Constitution.

378. COMPLAINTS INVESTIGATED AND DETERMINED (SEE REPORT 5 – 01.11.07)

The Committee was advised that on the 21st December 2006 the Standards Board for England received two separate allegations that two Members of Hartley Parish Council had failed to disclose a personal interest and had failed to withdraw from a meeting in which they had a prejudicial interest. The allegations had been accepted for investigation on review under SBE17779.07 and SBE17780.07. The Board made a decision to investigate these two cases and did not refer them for local investigation. These investigations had been completed on the 13th July 2007. The case summaries for SBE 17779.07 and SBE 17780.07 were attached to the report as an appendix. The Monitoring Officer commented that she was not sure how these two complaints had got through the Standards Board for England's referral criteria and felt that lessons could be learned in relation to the criteria to be applied when the Council set out its own referral processes.

Cllr. Mrs. Parkin requested that her disgust at the fact that these two complaints had got so far in the Standards Board for England's referral process be recorded.

Resolved: That the report be noted.

379. SIXTH ANNUAL ASSEMBLY OF STANDARDS BOARD FOR ENGLAND: ORAL REPORT

The Monitoring Officer reported that she had attended the Assembly with Cllr. Mrs. Dyball and Mr. Riddell. The Monitoring Officer and Cllr. Mrs. Dyball reported the following:

- The conference largely concentrated on the fact that all complaints would be received by local authorities come April 2008. At the moment complaints were received by the Standards Board for England. The Minister spoke on this subject and stated that he was confident that local authorities would do a good job but advised that there would be no Government funding to support the extra work. Mrs. Patricia Hughes, Deputy Chair of the Standards Board for England, was as detailed as she could be given the fact that legislation on this subject had not yet been issued. The Chairman made the comment that it might be better if the Conference was held as and when necessary and appropriate rather than annually.
- It had been suggested to delegates that the resource issue surrounding the referrals change could be addressed by partnership working. The Monitoring Officer commented that this might constitute a loss of local control which was what local filtering was meant to be about. Differing levels of workload would also make the joint working arrangements difficult. However, joining forces on the appeals part of the process might be a viable option. A suggestion was made that the number of parish/town council representatives in the Committee might need to be increased as this would cause a heavy workload for them as most of the complaints came for parish and town councils. It was noted that complaints emanating from Swanley would automatically exclude two District Council Members of the Committee.

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- The issue of mediation before the investigation of a complaint was raised. This would require a trained independent mediator to be employed by the Council which could prove expensive. Mediation could produce an agreement/contract which parties to mediation could sign up to. A time limit to the mediation could be allocated.
- Cllr. Mrs. Dyball commented that one of the most useful sessions had been in connection with 12 to 15 case studies. She understood that these were available from the Standards Board for England and suggested that they be used as a training tool.
- A comment was made about the reasonable rates of pay being paid to the Council's Investigating Officer. The Committee expressed a sincere hope that this Officer could continue with his excellent work which had resulted in considerable savings for the Council.

ACTION 4: The Monitoring Officer to source a case study pack from the Standards Board for England for possible use in the Council's Code of Conduct training.

Mr. Smith reported on the discussions at the most recent meeting of the Kent and Medway Standards Committee as follows:

- Local referrals and the impact of this change.
- The probability of the need for the creation of at least two sub-committees of Standards Committees to deal with the referral process.
- A proposal to have a solicitor to chair panels. This was turned down due to the huge cost implications.
- In relation to training, one Kent Committee had made it virtually compulsory for members of its Standards Committee to undertake training. The authority in question had included the necessity in a protocol and if members did not undertake the requisite training then they would be judged to be in breach of the Members' Code of Conduct. However, it was acknowledged that training could not be made compulsory for parish/town council members.
- The serious difference in the levels of training of the Code of Conduct given to town and parish councils throughout Kent was noted.
- The responsibilities and visibilities of Standards Committees was briefly discussed.

The Chairman commented that the Chairman for the Association of Independent Members was the Chairman of the Standards Committee from the Isle of Wight which had no parish/town councils.

Resolved: That the report be noted.

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380. DVD – THE CODE UNCOVERED (REPORT NO. 7 – 01.11.07)

The Standards Board for England had produced a new DVD to help Monitoring Officers, Members and Standards Committees understand their obligations under the recently revised Code of Conduct which had been adopted by the Council on 25th September 2007.

The DVD used a fictional scenario to explore a number of aspects of the Code, following the story of a group of Members and local authority Officers as they prepare to discuss a highly controversial planning application. As the plot unfolded, the story addressed areas that could cause confusion and presented solutions to potential difficulties. Training sections and commentary were interspersed with the drama and explored issues in more detail. Among the rules discussed were those on declaring interests, disclosing confidential information and bullying.

Members viewed the DVD and made the following comments:

- The Chairman stated that it was difficult to take in and understand all the questions with regard to personal and prejudicial interests and strongly recommended that the Standards Board for England publish an algorithm or decision tree of the process.
- Comments were made that the DVD had sounded slightly muddled and could make some members “glaze over” which meant that not all the available information on the DVD was being heard and understood.

Resolved: That the report be noted.

THE MEETING WAS CONCLUDED AT 8.38 P.M.

Chairman

**REPORT OF THE
MONITORING OFFICER
2007**

INTRODUCTION

This is the third Annual Report of the Monitoring Officer. The purpose of the report is not only to provide an overview of the work of the Monitoring Officer in the past year, but also to provide an opportunity to review and learn from experience. This Report therefore, sets out the Monitoring Officer's statutory responsibilities summarises how these duties have been discharged from the last Monitoring Officer's Report in November 2006 through to October 2007, in accordance with the Council's Constitution and legislative requirements and draws attention to those issues that will require attention in the next calendar year.

1. RECOMMENDATIONS

That the Standards Committee comments on and endorses the Monitoring Officer's Annual Report.

That the Full Council notes the Monitoring Officer's Annual Report.

2. THE ROLE OF THE MONITORING OFFICER

The role of the Monitoring Officer derives from the Local Government and Housing Act 1989. The Act requires local authorities to appoint a Monitoring Officer.

The Monitoring Officer has a broad role in ensuring the lawfulness and fairness of Council decision making, ensuring compliance with Codes and Protocols, promoting good governance and high ethical standards.

A Summary of the Monitoring Officer's Functions is as follows:

| <u>Description</u> | <u>Source</u> |
|---|---------------------------------------|
| Report on contraventions or likely contraventions of any enactment or rule of law | Local Government and Housing Act 1989 |
| Report on any maladministration or injustice where the Ombudsman has carried out an investigation | Local Government and Housing Act 1989 |
| Appoint a Deputy | Local Government and Housing Act 1989 |
| Establish and maintain the Register of Members' interests. | Local Government Act 2000 |
| Report on sufficiency of resources. | Local Government and Housing Act 1989 |
| Maintain the Constitution | The Constitution |
| Support the Standards Committee. Promote and maintain high standards of conduct. | Local Government Act 2000 |

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| <u>Description</u> | <u>Source</u> |
|---|---|
| Receive reports from Ethical Standards Officers and case Tribunals | Local Government Act 2000 |
| Consulting with, supporting and advising the Head of Paid Service and Chief Finance Officer on issues of lawfulness and probity. | The Constitution |
| Legal Advisor to the Standards Committee when carrying out a local Determination Hearing. | Local Authorities (Code of Conduct) (Local Determination)(Amendment) Regulations 2003 |
| Receive referrals from Ethical Standards Officers for local Investigations. | Local Authorities (Code of Conduct) (Local Determination)(Amendment) Regulations 2003 |
| Advise on whether executive decisions are within the Budget & Policy Framework. | The Constitution |
| Provide advice on vires issues, maladministration, financial impropriety, probity, Budget and Policy Framework issues to all members. | The Constitution |
| Issuing Dispensations to Members regarding prejudicial interests. | The Standards Committee |
| Considering whether certain Information is exempt from disclosure under the Freedom of Information Act. | Freedom of Information Act 2000 |

3. THE CONSTITUTION

The Constitution sets out how the Council operates and how decisions are made. It sets out the procedures which are followed to ensure that these decisions are efficient, transparent and that those who make the decisions are accountable to local people. The Monitoring Officer is the guardian of the Council's Constitution and is responsible for ensuring that the Constitution operates efficiently, is properly maintained and is adhered to.

3.1 Constitutional Review and Revision

During 2007 the Constitution was reviewed and revised. The main objective of the review was to make the council's constitution more efficient, transparent and accountable to Members, Officers and local people.

The review also undertook to make the Constitution more user friendly, to reduce duplication and for the document to include the Council's main Codes, Protocols, Procedure Rules and guidance documents.

3.2 Fitness for Purpose

The purpose of the Constitution is set out in Part 1 and is to:

- ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions;
- support the active involvement of local people in local authority decision making;
- help Members represent local people more effectively;
- enable decisions to be taken efficiently and effectively; and
- hold decision makers to public account.

3.3 Managing the Constitution

The revised Constitution was formally approved by the Council on 25th September 2007. Any significant changes to the Council's decision making arrangements and Committee structure will need to be approved by full Council. The Council will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

4. LAWFULNESS AND MALADMINISTRATION

The Monitoring Officer is the Council's lead adviser on issues of lawfulness and the Council's powers and in consultation with the Head of Paid Service and the Chief Financial Officer advises on compliance with the Budget and Policy Framework. Part of this role involves monitoring Committee reports, agendas and decisions to ensure compliance with legislation and the Constitution. The Monitoring Officer ensures that Cabinet decisions are made publicly available. This is done by Officers from Committee Services. Cabinet decisions can be viewed by members of the public through the Council's website: www.sevenoaks.gov.uk

If the Monitoring Officer considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration she must report to the full Council or where appropriate the Cabinet after first consulting with the Head of Paid Service and Chief Financial Officer. Any proposal or decision that is subject to such a report cannot be implemented until the report has been considered.

The sound governance arrangements operated by the Council ensure that the power to report potentially unlawful decision making is rarely used and the Monitoring Officer has not had to issue such a report throughout 2006/07.

4.1 Reports from the Local Government Ombudsman

The annual letter for 2006/07 from the Local Government Ombudsman sets out a summary of the complaints received against the Authority and dealt with by his office over the year. These were as follows:

- He received 22 complaints in 2006/07, a slight increase, compared with last year.
- The biggest category continues to be planning with 11 complaints a slight drop on last year.
- During the year he made decisions on 28 complaints. He found no maladministration in 11 complaints and he exercised discretion to close a further 5 without requiring any action by the Council. He found that 4 complaints were outside jurisdiction.
- When he completes an investigation he must issue a report. There are a significant proportion of investigations that do not reach the report stage. This is because the complaint is settled during the course of the investigation. These are called “local settlements”.
- He issued no reports against the Authority this year.
- Four complaints were settled, all of which were about planning,
- In respect of the Council’s complaints procedure and handling of complaints his office referred four “premature complaints” to our authority for consideration. At 14% of all decisions this was well below the national average.
- Two premature complaints were resubmitted to the Ombudsman during the period. No maladministration was found in either complaint.
- The Ombudsman was of the opinion that the evidence suggested that the Council handles complaints well. It was noted that planning officers are willing to negotiate with developers to try and remedy errors.
- In respect of response times to Ombudsman enquires it was noted that this was more than double the response time of last year, and was nearly 36 days compared with the target time of 28 days for councils. However, planning was the only department taking longer than 28 days and its figure was inflated by one exceptional case. The Ombudsman was notified that this year we have reviewed the Council’s complaints procedure and some improvements had already been identified and are being implemented that include:
 - a new information/guidance sheet and intranet section for staff;
 - movement of the formal complaints process to our Customer Relationship management computer system including an automated notification process to ensure deadlines are met; and

- an updated version of our customer feedback leaflet.

The annual Ombudsman's letter is published on their website www.lgo.org.uk.

5. GOOD GOVERNANCE

The Monitoring Officer has a pro-active role in ensuring good practice, good procedures and good governance. This involves promoting networking, collaboration and joined-up working practices and decision making as well as ensuring standing orders, codes of practice, procedures are kept under review and up to date. Collaborative working entails regular monthly liaison meetings with the three Statutory Officers, Heads of Service/Management Team as well as working in partnership with other departments to develop and disseminate policies and procedures. Work being carried out to further develop and refine the use of resources represents a good current example of collaborative working. The Council has undertaken a voluntary pilot study under the Corporate Performance Assessment (CPA) and as a result this year the Authority have been rated an Excellent Authority by the Audit Commission.

Good governance involves providing procedure notes, guidance, developing and implementing protocols and providing briefings and enabling effective support to Councillors in their different roles including Member training.

The tasks for the year 2008 are to:

- Increase Members understanding and knowledge of the requirements of the revised Code of Conduct.
- Implementing a local referral unit in respect of breaches of the Code of Conduct
- Promote and increase an understanding of the roles and responsibilities of the statutory officers.
- Increase awareness of the ethical framework, and supporting policies and procedures and provide further training to Members and to staff.
- Promote and encourage joined up working and better governance arrangements.
- Monitor and test the operation and effectiveness of the ethical framework.
- To provide information on the ethical framework to the public, town and parish councils and members of staff.
- Review the effectiveness of governance arrangements based on the CIPFA/Solace framework.
- Work to embed a culture of risk management throughout the Authority.

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- Enhance and support the work of the Overview and Scrutiny Committees and the new Performance and Governance Committee.
- Continue to promote diversity and equalities within the Authority.
- Embrace the proposals set out in the 2006 Local Government White Paper.

5.2 The Ethical Framework Manual

Last year the Monitoring Officer developed a Training Manual to strengthen and improve the ethical framework of the authority.

The purpose of the manual was to provide an authoritative source of information, on the Code of Conduct and the work of the Standards Board for England.

The Authority adopted a revised Code of Conduct on 25th September 2007 following an extensive round of consultation via the Standards Board for England on suggestions on a revised Code. The Standards Committee of this authority took an active part in the consultation process in an attempt to influence the final provisions of the revised Code.

Following the introduction of the revised Code an amended Training Manual is to be implemented to coincide with weekly training workshops for Members as well as Parish and Town Council Clerks on the requirements of the revised Code.

6. THE ETHICAL FRAMEWORK AND SUPPORT TO THE STANDARDS COMMITTEE

As Lead Officer for the Standards Committee and the Ethical Framework the Monitoring Officer has a key role in facilitating, promoting the Council's Ethical Framework and in promoting and maintaining high standards of conduct within the Authority. As well as policy development and implementation this also involves advising Members and Officers including those within the Parish/Town Councils on propriety issues, advising the Standards Committee on applications for dispensations and advising the Standards Committee when they determine an allegation of misconduct on the part of a Member including a Member from a Parish/Town Council. Investigations may also be referred to the Monitoring Officer from an Ethical Standards Officer for the Standards Board for England. The maintenance of the Registers of Interests for the District as well as the Parish/Town Councils is also the responsibility of the Monitoring Officer.

Examples of the Standards Committee's work during 2006/2007 is as follows:

- Annual Monitoring Officer's Report.
- Consulting on the Review of the Code of Conduct
- Report on the Association of Independent Members of Standards Committees in England.
- Report on the Fifth Annual Assembly of Standards Committees.

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- Term of Reference of the Committee.
- Report on “A Question of Standards” – Prescott’s Town Hall Madness and the Standards Board for England’s Response.
- Disciplinary Hearings and the Press and Public.
- Looking at the Role of the Ombudsman.
- Devolution – Annual Review 2005/06 – The Standards Board for England.
- Standards Committee Pre-hearing Briefing.
- The Case Review Number Four.
- Training and Development.
- Nick Marcar speaking about his experiences as a former Ethnical Standards Office at the Standards Board for England.
- Adoption of the New Code.
- Register of Member Interests.
- Protocol on Gifts and Hospitality for Members.

6.1 Maintaining a Register of Member Interests

The Monitoring Officer is responsible for establishing and maintaining a Register of Member Interests for the District and Parish/Town Councils. Such registers are held within the Elections and Land Charges Section of the Council. With the introduction of the revised Code of Conduct gifts and hospitality worth £25 or over must now be included in the Register of Member Interests. This means that such gifts and hospitality is now a personal interest and must be declared at any meeting where a matter relating to that interest is discussed. Guidance on the acceptance and registration of gifts and hospitality was produced this year as a Protocol and forms an appendix to the Constitution.

An annual audit takes place to ensure that the Register of Member Interests are being kept up to date.

6.2 Code of Conduct for Employees

The Council implemented an amended Code last year based on an original draft published by the IDeA. The Code forms part of the employers’ terms and conditions of employment. The Code is well publicised on the Council’s internal intranet and is introduced to employees through the induction process.

Under the new Code employees must declare to their Directors any non-financial or financial interests that they or members of their family have which they consider could conflict with the Council’s interests. This should also be recorded on a Register of Interest form available on SIMON and forwarded to the Personnel Team.

Also under the new Code, employees must declare to their Director membership of any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about rules or membership or conduct. So that there can be no misunderstanding or confusion, membership of Freemasonry and similar organisations should be declared.

All relationships of a business or private nature with external contractors, or potential contractors should be made known to the employees Head of Service and Director and recorded on a Register of Interest form available on SIMON and forwarded to the Personnel Team.

All hospitality received and given should be appropriate and necessary and must, wherever possible, have the prior sanction of the Head of Service or Director and must be recorded in the department's hospitality book. There is a Protocol on Corruption, Gifts and Hospitality contained within the Staff Code of Conduct.

6.3 Whistle Blowing

The whistle blowing policy of the Council is entitled "Staff Confidential Reporting Policy" and is publicised throughout the organisation on the internal intranet. Information on the Council's Whistle blowing Policy is included with the Staff Induction Packs.

As a first step, concerns should be raised with the employee's immediate manager or their superior. This depends however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example, if it is believed that management is involved, the employee should approach:

- the Audit and Efficiency Manager
- the Head of Personnel and Development
- any Director
- a Councillor

Where appropriate, the matters raised may:

- be investigated by Management, the Personnel Section, Internal Audit, or through the disciplinary process
- be referred to the police
- be referred to the external auditor
- form the subject of an independent inquiry

The Chief Executive has overall responsibility for the maintenance and operation of this policy. Internal Audit maintains a record of concerns raised and the outcomes, (but in a form which does not endanger confidentiality). A reporting mechanism forms part of the Terms of Reference of the Performance and Governance Committee which was set up this year.

In the last calendar year there have been two matters needing to be investigated, the outcome of which proved that the allegations were groundless. These investigations were reported to the Performance and Governance Committee in the Annual Internal Audit Report in June 2007.

6.4 Human Resources Strategy and Workforce Plan

Last year a Human Resources Strategy and Workforce Plan was completed which incorporated the following:

- Recruitment
- Learning and Development
- Employment Stability
- Corporate Equalities and Inclusion
- Dignity at work
- Capability
- Disciplinary
- Grievance Procedure
- Sickness Absence
- Violence at Work
- Domestic Violence Policy Statement
- Parental and Family Leave
- Flexible Working
- Maternity Leave
- Relocation Expenses
- Alcohol and Substance Misuse
- Staff Code of Conduct
- Child Protection

The above policies are regularly reviewed in line with legislation changes.

6.5 The Standards Board for England, Standards Board Complaints and Determinations

The Monitoring Officer is responsible for establishing and maintaining an effective working relationship with the Standards Board for England. The Monitoring Officer is also responsible for receiving reports from Ethical Standards Officers regarding investigations carried out by the Standards Board into the conduct of Members. Such reports may need to be determined by the Council's Standards Committee. The Ethical Standards Officer can now refer allegations of Member misconduct for local investigation and determination.

Cases Reported to the Standards Board November 2006 - October 2007

| | |
|--|-----|
| Total allegations made: | |
| District Councillors | Nil |
| Parish/Town Councillors | 10 |
| Not referred | 4 |
| Ethical Standards Officer Investigations which found no breach | 2 |
| Current Ethical Standards Officer Investigations which may be referred for local determination | 1 |
| Referred cases which may be sent for local investigation and determination | 3 |

6.6 Local Investigation & Determination Procedures for Complaints regarding the Conduct of Members

Last year the Standards Committee agreed new procedures for handling local investigations and a revised Local Determination Procedure. The Monitoring Officer may delegate other Council Officers to perform the function of investigation into the conduct of Councillors of the District and Parish/Town Councils. In appropriate cases, the Monitoring Officer will appoint the Deputy Monitoring Officer to undertake the investigation, but in other cases it may be appropriate to appoint an outside investigator, which could involve borrowing from another authority. The Monitoring Officer has entered into a Protocol for Mutual Assistance by the Kent Monitoring Officers.

The Monitoring Officer may require any Council Officer to provide a statement, answer questions or supply information to assist in the conduct of an investigation and require Councillors to provide such statements, answer questions or supply information.

The Investigative and Determination Process is working well. However, shortly, ethical standards will be made a truly local issue. The key provision is that local Standards Committees will be handed responsibility for receiving complaints and deciding whether they should be investigated. The Standards Board for England's

new role will be that of strategic regulator with the responsibility to monitor and promote standards and to support and oversee local authorities in their application of the Code. Only cases that cannot be handled locally because of conflicts of interest or because they raise issues of particular importance will be dealt with by the Standards Board.

6.7 Reviewing the Effectiveness of the Ethical Framework

One of the key on-going areas of work is to review and assess the impact of the ethical framework on the behaviour of Members of the District, Parish/Town Councils and Council staff. Many of the tools used to assess standards of customer care within the organisation; such as interviews and customer feedback also lend themselves to the assessment of ethical health. The Monitoring Officer anticipates that in the year ahead the Standards Committee's work programme will include work in this area in order to allow it to assess the effectiveness of work to date and to plan for the future.

7. CORPORATE COMPLIANCE WITH LEGISLATION

Legal updates including details of new legislation are circulated by the Legal Team to relevant Officers within the organisation. Those Officers then circulate legal updates including new legislation to Members when they consider this to be appropriate.

This year the Legal Department has introduced a Legal Section newsletter which contains legal updates on issues that Members and staff may find interesting, helpful and relevant. The guide supplements their usual frequent updates which are sent to specific people about their area of work. Examples of content are:

- Planning conflict resolved – Enforcement Notices defence.
- Validation of planning applications
- Advertisements – Town and Country Planning
- Houses in Multiple Occupation
- Data Protection Act – new guidance on personal data
- Code of Conduct for Councillors – update

The Legal Section have this year implemented a Time Recording system and for some users Case Management. The Section are well on the way to achieving Lexcel accreditation.

Examples of work undertaken in the last year to update and train officers on new legislation are as follows:

- Data Protection Update
- Freedom of Information Act 2000
- Property: Housing Act 2004 and Private Lettings

- Property Law: Leases
- Practice Management: Managing Risk
- Local Government: Safe and Clean Communities
- Property: Common Sense?
- Local Government: Vexing Disclosure
- Property: E-Conveyancing
- Employment: Tribunals and Tribulations?

All Cabinet reports and the various committee reports have a compulsory heading in which the author has to consider Legal Implications and Human Rights issues, and if there are likely to be such implications the report is to be sent to the Legal Team for relevant advice.

8. SUPPORT TO COUNCIL, CABINET, SCRUTINY AND COMMITTEE MEETINGS

The distribution and publication of committee reports, agendas and decisions is central to meeting the requirements of a key deliverable. It is the Monitoring Officer's responsibility to oversee the process and ensure that these documents comply with statutory and constitutional requirements.

This includes:

- Distributing and publishing all agendas within five clear working days of the meeting taking place and ensuring that all agendas are compliant with the access to information rules and exempt information is marked up accordingly.
- Advertising public meetings five clear days before the meeting date.
- Ensuring that papers are made reasonably available to the public.
- Drafting minutes for approval by the chair within nine working days.
- Publishing a record of all decisions including key decisions taken by Cabinet within 48 hours (2 working days) after the meeting.
- Ensuring that petitions are handled in accordance with the Council's Constitution.
- Ensuring that meetings are accessible.

8.1 Statutory Meetings Analysis

One of the explicit aims of the Local Government Act 2000 was to streamline the decision making process to allow Councils to focus on service delivery.

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In 2006/07 the following were serviced:

| | |
|--|----|
| Full Council Meetings (including 1 extraordinary meeting and 1 annual meeting) | 8 |
| Cabinet | 14 |
| Overview and Scrutiny Board (obsolete May 2007) | 6 |
| Performance and Governance Committee | 3 |
| Electoral Arrangement Committee | 0 |
| Environment Select Committee | 8 |
| Services Select Committee | 6 |
| Social Affairs Select Committee | 6 |
| Modern Local Government Group | 5 |
| Development Control Committee | 16 |
| Standards Committee (including determination hearings) | 5 |
| Sevenoaks Joint Transportation Board | 4 |
| Licensing Committee | 3 |

Other meetings serviced include Development Control Committee site meetings (14) and Licensing Committee hearings (9).

The volume of meetings represents a substantial commitment of both Councillors' and Officers' time and resources. It is of great importance that meetings constitute an effective use of time and resources; that they add value to corporate effectiveness and help in meeting the aims and objectives set out in Part 1 of the Constitution and the Community Plan.

8.2 The Forward Plan

The co-ordination and maintenance of the Forward Plan is central to meeting the requirements of good governance as it enhances open and transparent decision making.

In compliance with Access to Information Procedure rules and the Constitution, the Forward Plan sets out key decisions which will be taken by the Cabinet. The Forward Plan sets out the date/period within which the decision will be taken. The Forward Plan is published on a monthly basis.

8.3 Call-In requests

There were no call-in requests within 2006/07.

8.4 Overview and Scrutiny

This year Members reviewed the relationship and respective workloads of the three Select Committees and the Overview and Scrutiny Board (OSB). The overview and scrutiny functions were transferred to the Select Committees and OSB was disbanded. In addition a Performance and Governance Committee was set up.

This overhaul was necessary to ensure the overview and scrutiny systems within the Council were working effectively. The feedback from the CPA Pilot Inspection Report in July 2006 had recognised the strength and success of the Select Committees. However, they concluded that OSB had lost its direction and required reviewing. The changes have been designed to strengthen the Council's overview and scrutiny function.

The Council has plans to further develop successful and responsive overview and scrutiny. Some of the challenges in this area are as follows:

- Further overview and scrutiny Member training.
- Engaging our community to ensure effective and responsive local government through overview and scrutiny.
- Developing closer working relationships between the Executive and Members to enhance overview and scrutiny.
- Building effective scrutiny with our partner organisations.
- Measuring the effectiveness of overview and scrutiny.

8.5 Performance and Governance Committee

This year the authority implemented the creation of a Performance and Governance Committee. This Committee was required to ensure alignment with recently received CIPFA Guidance in order to incorporate relevant aspects required to be covered by an “audit” committee. The Committee will enable the Council to meet the requirements relating to audit committees and also to ensure high level insight of the Council's procurement activities in compliance with sound Corporate governance requirements.

9. MEMBER TRAINING AND DEVELOPMENT

The Monitoring Officer is responsible to the Standards Committee for the provision of training to Members within the District and the Parish/Town Councils. An extensive training development programme for Members is also organised by the Personnel Team of the Council.

The Monitoring Officer tailors training to each individual Member's needs and has produced a revised Training Manual for each Member of the District Council and for

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each Clerk to the Parish/Town Councils in relation to the provision of the revised Code of Conduct.

The Monitoring Officer has set up further weekly training workshops for District Members and for Parish/Town Council Members and Parish/Town Council Clerks, following on from those that took place last year.

The training workshops will be rolled out to all 29 Parish and Town Councils and all District Councillors. The Monitoring Officer last year extended training on the Ethical Framework to Officers within the Council. The Monitoring Officer intends to do the same this year.

Earlier this year, prior to the Local Government elections, the Council hosted a Pre-Elections Candidates Day which included information on the Role and Expectations of a Councillor, the Code of Conduct, Participation in Council Business, Communication and Behaviour Expectations.

Post election training also took place as well as specialist training on the Code of Conduct both old and new. The specialist training was undertaken by a representative from a top 100 law firm and was well received and attended by District, Town and Parish Members. Such training took place in collaboration and partnership with other Kent authorities. Further training on the Code of Conduct also took place for Members of the Development Control Committee.

The approach to training has resulted in a high level of Members and Clerks being trained. The training has been well received with Members and Clerks indicating on monitoring forms that training objectives have been met.

10. CONCLUSION

The Monitoring Officer's role encompasses both proactive and reactive elements. The proactive role centres on raising standards, encouraging ethical behaviour, increasing awareness and utilisation of the elements of good governance and ensuring that robust procedures are in place.

The reactive role focuses on taking appropriate action to deal with issues and potential problems as they arise. The Monitoring Officer's effectiveness in this role is in turn dependent on effective systems and procedures being in place to identify problems and ensure that Members, Officers and public are aware of appropriate channels to raise concerns.

The work programme for the next year aims to expand on the work carried out this year and to consolidate on and embed the systems, policies and procedures that are at present in place.

Christine Nuttall
Monitoring Officer

GUIDANCE ON THE DISCLOSURE OF CONFIDENTIAL INFORMATION BY MEMBERS

Introduction

As a Member you will have access to a great deal of information which is confidential, either because it is personal information or because it is commercially sensitive or it is information which would not otherwise be placed in the public domain.

The handling of confidential information is an essential element in the relationship of trust that should exist between Members, Officers and the public and the mishandling of such information and/or its accidental or deliberate disclosure is likely to damage trust as well as lead to formal proceedings being taken against the Council, individual Members or Officers.

The Council is committed to the principles of openness and transparency. However, in the practical application of these principles, you need to have regard to legal obligations which, in some cases, may require information to be kept confidential.

Requirements of the Members' Code of Conduct

Under paragraph 4 of the Code of Conduct:

'You must not 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 –

- (a) you have the consent of the person authorised to give it;
- (b) you are required/entitled by law to do so;
- (c) 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
- (d) the disclosure is –
 - (i) reasonable and in the public interest; and
 - (ii) made in good faith and in compliance with the reasonable requirements of the authority.

What is Confidential Information

In order to ascertain whether information is confidential, it is important to understand what is meant by a duty of confidence and how confidentiality can be established.

A duty of confidence arises when one person (the 'confident') is provided with information by another (the 'confider') in the expectation that the information will be

used or disclosed only in accordance with the wishes of the confider. This is generally known as the common law duty of confidence.

There are various ways in which a person or the Council may be under a duty of confidentiality (either explicitly or implied), for example:

- (a) if the relationship is inherently confidential e.g. between client and lawyer.
- (b) if the relationship is personal e.g. it is between colleagues in circumstances that suggest an expectation of confidentiality.
- (c) if the source of the information will be put at risk if identified e.g. whistle blowers.

Confidentiality is unlikely to be established where the information is already known to a wide circle or is in the public domain.

Information which at one time was to be treated as confidential may subsequently cease to be confidential by passage of time or where, in the case of exempt information, the relevant meeting did not resolve to exclude the press and public.

Confidentiality can be agreed either orally or in writing. However, it is not necessary for the person who supplied the information to have stated expressly that the information is confidential. For example, the fact that correspondence is not marked 'confidential' does not necessarily prevent it from being confidential. In many cases, the fact that the information is confidential may be inferred from the subject matter and the surrounding circumstances.

With the consent of the 'confider', confidentiality can be set aside.

It may be difficult to establish that a confidentiality agreement existed retrospectively. This is especially true if there is little or no evidence of an attempt having been made to restrict or protect the information at the time the information was given. However, as already emphasised some relationships are inherently confidential and in those circumstances, confidentiality may well be implicit, rather than explicit.

Types of Confidential Information

Information in documents held by the Council, belongs to the Council corporately and not to individual Officers or Members.

The Council has policies on data protection, freedom of information and whistle blowing. Other statutory provisions may also be relevant to the disclosure of confidential information. If in doubt you should seek advice from the Legal Section of the Council.

Information may be supplied to the Council by a government department upon terms which prevent its disclosure to the public, or information which by law is prohibited from being disclosed to the public. The public and press may need to be excluded from meetings where such information is being considered.

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Information may be exempt under Schedule 12A of the Local Government Act 1972. Under this legislation there are a number of categories and circumstances of exemption such as information about individuals, financial or business affairs of an individual including the Council, trade disputes, legal advice, crime and Standards Committee deliberations etc.

Some Committee Reports may relate to exempt information which remain confidential until a decision is made that it is in the interests of the public to release some or all of the information. In practice, this exercise is undertaken at the time the report is drafted and/or following a specific Freedom of Information or Environmental Information Regulations request.

The public and press may be excluded from a meeting where exempt information is being considered.

It would be a mistake to consider that it is only 'confidential information' or 'exempt information' as defined in the legislation that should be protected from disclosure. Information other than that which is to be discussed at, or is the subject of a report to, a committee meeting may be provided to you in confidence.

Information provided expressly 'in confidence' to you (or similar words used) should be treated as confidential information. An example might include sensitive legal or financial information provided to you by Officers outside the context of a formal committee meeting, or sensitive information provided to you by a constituent.

Generally, the confidentiality or otherwise of information needs to be considered in the context of individual circumstances. However, the following information would normally be treated as confidential:

- (a) Where there is a legal restriction on the disclosure of information for example under the Data Protection Act 1998, contractual obligations, a court order or pending legal proceedings.
- (b) Exempt Committee Report as identified by the Committee Agendas.
- (c) Where information is supplied to a Member by an Officer or other person in confidence.
- (d) Matters concerning terms and conditions of employment of individual Officers or pending grievance or disciplinary proceedings.
- (e) Matters concerning details of commercial negotiations.
- (f) Personal information concerning an individual.
- (g) Information protected by legal professional privilege.
- (h) Information which, given its nature, timing and context is such that a reasonable person would consider it to be confidential.
- (i) Where the disclosure of information would normally tend to have a detrimental effect on the interests of the Council, the service users or

third parties involved.

A Member's Right to Information

The Council has a general commitment to openness. Your access to information and documents is therefore restricted only where there is a good reason for doing so.

You have a common law right to access information on a 'need to know' basis. This entitles you to access information or documents that are reasonably necessary to enable you to discharge your functions as a Councillor. This would cover your role as a member of committees, sub-committees or working groups. As well as positions to which you are appointed by the Council and in the undertaking of your ward Councillor responsibilities. The right is limited to a need to know and a mere curiosity or desire to know is not sufficient. The courts have also held that as a Councillor, you have no right to a 'roving commission' to examine the books or documents of the Council.

One aspect of the need to know principle is proportionality. In asking for information and documents, you need to ensure that what you are asking in terms of volume of documents, time needed to locate, research and collation of information is commensurate to your need to know.

An Officer receiving a request for information from you is entitled to know the reasons why the information is needed so that a proper assessment of the need to know can be made. Where you are dissatisfied with the Officer's response, you may refer the matter to the relevant Director for a review.

When is a Member subject to a duty of confidentiality

The duty of confidentiality under the Code of Conduct applies only when you are acting in an 'official capacity'. The information must therefore have been received and/or disclosed by you in your role as a Councillor. This should, however, not be interpreted as meaning confidential information which has been received in your role of Councillor, can be disclosed with impunity in a private capacity.

The duty under the Code is not limited to information supplied by Officers or the Council – it also covers information given to you in your capacity as a Councillor, by any person.

What Requirements must a Member Comply with under the Code of Conduct?

The Member Code of Conduct imposes a duty of confidentiality on you and prohibits the disclosure of confidential information except in a defined range of circumstances and subject to a number of requirements.

The defined range of circumstances are as follows:

- (a) Before disclosing confidential information, you must have the consent of the person authorised to give it. This would normally be the author of the document or the Director or Head of Service for the area of service. In appropriate cases the Chairman of the relevant committee may need

to be consulted.

- (b) You may disclose confidential information if you are entitled by law to do so e.g. by a court order.
- (c) You may disclose confidential information to a third party e.g. a lawyer for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person.
- (d) The disclosure is in the public interest. This is only justified in limited circumstances, when all of the following four requirements are met:
 - (i) The disclosure must be reasonable
 - (ii) The disclosure must be in the public interest
 - (iii) The disclosure must be made in good faith
 - (iv) The disclosure must be made in compliance with any reasonable requirement of your authority.

The first requirement, that the disclosure must be reasonable, requires you to consider matters such as:

- (a) Whether you believe that the information disclosed, and any allegation contained in it, is substantially true. If you do not believe this, the disclosure is unlikely to be reasonable.
- (b) Whether you make the disclosure for personal gain. If you are paid to disclose the information, the disclosure is unlikely to be reasonable.
- (c) The identity of the person to whom the disclosure is made. It may be reasonable to disclose information to the police or to an appropriate regulator. It is less likely to be reasonable for you to disclose the information to the world at large through the media.
- (d) The extent of the information disclosed. The inclusion of unnecessary detail, and in particular, private matters such as addresses or telephone numbers, is likely to render the disclosure unreasonable.
- (e) The seriousness of the matter. The more serious the matter disclosed, the more likely it is that the disclosure will be reasonable.
- (f) The timing of the disclosure. If the matter to which the disclosure relates has already occurred, and is unlikely to occur again, the disclosure may be less likely to be reasonable than if the matter is continuing, or is likely to re-occur.
- (g) Whether the disclosure involves your authority failing in a duty of confidence owed to another person.

Points to remember

- You must not disclose confidential information merely to make political capital/gain.
- Disclosure of confidential information to the press is most likely to involve a breach of the Code of Conduct and is rarely justified.
- You should have regard to your fiduciary duty to the Council and council taxpayers and that you have joint responsibility to avoid the disclosure of information of a commercially sensitive nature.
- Confidential information gained by you in connection with pending or ongoing litigation should not be disclosed under any circumstances, as this would amount to a breach of trust.

The second requirement, that the disclosure must be in the public interest, needs to involve one or more of the following matters or something of comparable seriousness, that has either happened in the past, is currently happening, or is likely to happen in the future:

- (a) A criminal offence is committed.
- (b) Your authority or some other person fails to comply with any legal obligation to which they are subject.
- (c) A miscarriage of justice occurs.
- (d) The health or safety of any individual is in danger.
- (e) The environment is likely to be damaged
- (f) That information tending to show any matter failing within (a) to (e) is deliberately concealed.

Points to remember

- 'Public interest' has been described as something that is of serious concern or benefit to the public, not merely of individual interest.
- The public interest does not mean 'of interest to the public' but 'in the interest of the public'. The term is not defined in law, so you will need to make a subjective judgement, in which policy and legal interpretations are both involved to some degree
- Because of the implications associated with releasing confidential information e.g. risk to an individual, risk to commercial negotiations etc, any decision to release such information has to be made with great care. In evaluating the effect of disclosing confidential information, it will be

necessary for you to consider the full context of that disclosure, and to make a risk assessment of the disclosure.

Therefore:

- (i) Identify the relevant public interest factors;
- (ii) List the factors for and those against releasing the information;
- (iii) Evaluate the relevant public interest factors, e.g. no weight, minimal weight, moderate weight or considerable weight;
- (iv) Determine where the balance lies.

The third requirement, that the disclosure is made in good faith, will not be met if you act with an ulterior motive, for example, to achieve a party political advantage or to settle a score with a political opponent.

Points to remember

- The law defines good faith as a state of mind consisting in:
 - (i) honesty in belief or purpose;
 - (ii) faithfulness to one's duty or obligation;
 - (iii) observance of reasonable commercial standards of fair dealing in a given trade or business; or
 - (iv) absence of intent to seek unconscionable advantage.
- In law, the consensus is that someone does something 'in good faith' when they do it honestly and with no ulterior motive.

The fourth requirement, that you comply with the reasonable requirements of your authority, mean that before making the disclosure you must comply with your authority's policies or protocols on matters such as whistle-blowing and this Guidance.

Points to remember

- Never allow your party political interests to override the interests of the Council and council tax payers in the way that you deal with access to or the disclosure of confidential information.
- Just because communication is not labelled 'confidential', you should not assume that it is for general release. You should always consider the circumstances.
- Do not take risks.

In summary, to decide whether the disclosure is reasonable and in the public interest, you may need to conduct a balancing exercise weighing up the public interest in maintaining confidentiality against any countervailing public interest favouring disclosure. This will require a careful focus on how confidential the information is, on any potential harmful consequences of its disclosure, and on any factors which may justify its disclosure despite these potential consequences.

In some situations, it is extremely unlikely that a disclosure can be justified in the public interest. These will include where the disclosure amounts to a criminal offence, or where the information disclosed is protected by legal professional privilege.

General

This Guidance is meant as a general guide and does not attempt to cover all eventualities. Further advice or clarification can be sought from the Monitoring Officer or the Legal Section.

November 2007