

**REPORT OF THE  
MONITORING OFFICER  
2018**

## Introduction

This is the fourteenth Annual Report of the Monitoring Officer, for the period January 2018 to December 2018. The purpose of the Monitoring Officer's Report is to provide an annual overview of the work of the Monitoring Officer, the work of the Standards Committee and the general governance arrangements of the Council. Reporting provides an opportunity to review and learn from experience.

The Report also gives Members of the Standards Committee background information to facilitate the carrying out of their functions. The Monitoring Officer's Report sets out the Monitoring Officer's statutory responsibilities and summarises how these duties have been discharged during 2018 in accordance with legislation and the Council's Constitution. Where necessary the Report can draw attention to those issues requiring attention in the coming year.

### 1. Recommendations

That the Standards Committee notes the Monitoring Officer's Annual Report.

That 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 and 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

<u>Description</u>	<u>Source</u>
Establish and maintain the Register of Members' interests.	The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012 The Localism Act 2011 The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
Report on sufficiency of resources.	Local Government and Housing Act 1989
Maintain the Constitution	The Constitution
Promote and maintain high standards of conduct.	The Localism Act 2011
Grant Dispensations	The Localism Act 2011 and delegation from Council
Consulting with, supporting and advising the Head of Paid Service and s.151 Officer on issues of lawfulness and probity.	The Constitution
Appointing an Investigating Officer in relation to Member Complaints	The Localism Act 2011 and the Constitution
Advising the Standards Hearings Sub Committee in relation to allegations of breaches of the Code of Conduct and advising when matters are determined following an investigation	The Localism Act 2011 and the Constitution
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 and s.5 of Local Government and Housing Act 1989
Legal Advice and Support to the authority	The Constitution
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 responsible for ensuring that the Constitution operates efficiently, is properly maintained and followed.

#### **3.1 Constitutional Review and Revision**

This Council continues to update its Constitution as and when necessary and reports to the Governance Committee of the Council in this respect. During the year there were no substantial revisions to the Council's constitution.

#### **3.2 Fitness for Purpose**

The Constitution sets out in clear terms how the Council operates and how decisions are made. Some of these processes are required by law, while others are a matter for the Council to choose. The purpose of the Constitution 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**

Any significant changes to the Council's decision making arrangements and Committee structure 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. The Governance Committee ensures that this takes place.

### **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 Finance Officer (s.151 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 agendas, reports and minutes of all Council meetings are made publicly available unless there is a reason for exemption under the Local Government Act 1972. In addition, Portfolio Holder decisions are also made publicly available subject to the same caveat as are all planning and licensing

decisions made by Officers including other Officer delegated decisions as required by the Openness of Local Government Bodies Regulations 2014. It is of course the Council's position that where required by law all such decisions should easily be accessible by members of the public through the Council's website: [www.sevenoaks.gov.uk](http://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 he must report to the full Council or where appropriate the Cabinet after first consulting with the Head of Paid Service and the Chief Finance Officer (s.151 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 2018.

#### 4.1 Reports from the Local Government Ombudsman

On 18 July 2018 the Local Government and Social Care Ombudsman wrote to the Council with its Annual Review Letter, which is attached. In the year 2017/18 the Local Government and Social Care Ombudsman received ten complaints about the Council. Four related to Planning and Development, two to Environment Services, two to Benefits and Tax, one to Housing and one to Highways and Transport. For comparison, last year the Ombudsman received eleven complaints.

During the year, seven decisions were made by the Local Government and Social Care Ombudsman. Five were referred back for local resolution and two were closed after initial enquiries.

### 5. Good Governance

The Monitoring Officer has a pro-active role in promoting good practice, good procedures and good governance. This involves networking, collaboration, 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. The Monitoring Officer regularly meets with the Head of Paid Service (the Chief Executive) and sits on Strategic Management Team with the Chief Officers including the s.151 officer (Chief Finance Officer). The Monitoring Officer also works in partnership with officers of the Council to develop and disseminate policies and procedures.

### 6. Quercus 7 Ltd and Quercus Housing Ltd

As Members will recall, on the last day of 2015 the Council stepped up its efforts to bring further economic growth to the District by establishing a Trading Company (Quercus 7 Ltd) wholly owned by the Council so as to exercise the powers to trade contained in the Local Government Act 2003 and the Localism Act 2011.

On 13 April 2018 the Council established a housing company (Quercus Housing Ltd) to deliver affordable housing in the district on a not-for-profit basis spending available s.106 funds.

In case of conflict of interest the officers of the Legal Department and the Chief Officer Corporate Services are available to procure independent advice to the Council on issues arising from this arrangement.

It should be remembered that the companies are separate entities from each other and are not part of the Council. No member is in control of either company. The role of the Monitoring Officer therefore does not apply to the operations of Quercus 7 Ltd or Quercus Housing Ltd.

## **7. The Ethical Framework and Work of the Standards Committee**

The Standards Committee (introduced on the 24 July 2012) comprises seven Members. Legislation allows for the appointment of Independent Persons, who have a statutory role under the Localism Act 2011 to assist any Member who has been accused of breaching the Code of Conduct. Sevenoaks District Council has appointed two Independent Persons. They are not co-opted Members of the Standards Committee although they are given details of the Committee's meeting date in order that they may attend.

The Independent Persons also assist the Monitoring Officer in considering complaints and are consulted by the Monitoring Officer following investigations to help decide what action to take.

The Standards Committee has a key role in facilitating and promoting the Ethical Framework and in promoting and maintaining high standards of conduct within the Authority. The terms of reference of the committee are set out within Part 3 of the Constitution entitled "Standards Committee".

Examples of the Standards Committee's work during 2018 are as follows:

- Receiving the Annual Monitoring Officer's Report
- Attending additional meetings of the Standards Committee
- Being on Standby to grant Dispensations
- Being on Standby to carry out hearings.

## **8. Disclosable Pecuniary Interests and Non-Pecuniary Interests**

The codes of conduct of relevant authorities must include provision for the registration and disclosure of Disclosable Pecuniary Interests (DPIs) as defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. The Localism Act 2011 introduced criminal offences for failure to register DPIs.

Members are aware that they commit a criminal offence if they participate or vote when they have a DPI 'in' a matter. A Member has a DPI 'in' a matter where it is, or includes, his interest - where there is a close alignment between the interest and the matter under consideration. Ultimately the responsibility for complying with this provision lies upon Members although the Monitoring Officer will provide

advice as necessary. Training will be refreshed in 2019 with the new intake of Members.

Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. Members are aware that even if a Member's interest does not amount to a disclosable pecuniary interest, if their interest in a matter would lead them to predetermine a decision, or look like they are biased, it would not be appropriate for that member to participate in the decision. If they did so the decision could be vulnerable to challenge. The Sevenoaks District Council Code of Conduct also requires the registration of certain non-pecuniary interests, although no criminal liability attaches to a failure to register.

The prohibitions on councillors participating in any discussion or vote on an item of Council business in which they have a DPI ensures that Councillors cannot put their private financial interests before the public interest. However, where a Councillor has a disclosable pecuniary interest but stand to make no personal financial gain by participating in a discussion or vote on Council business related to that interest, they can apply for a dispensation, under section 33 of the Localism Act 2011. The grounds for granting a dispensation will depend on the circumstances.

Dispensations are mostly considered by the Standards Sub-Committee for Granting Dispensations, although the Monitoring Officer has power to grant dispensations in circumstances where a meeting may not be quorate. In respect of parish and town councils, the Clerk has the power to consider and grant dispensations.

Members convicted of offences under the Act are liable to a fine of £5,000 and may also be disqualified from being a councillor for up to five years. This should not be confused with the offence of Misconduct in Public Office, instances of which are rare and which carries a maximum penalty of life imprisonment.

## **9. Code of Conduct for Employees**

The Code is based on an original draft published by the IDeA and has been updated since being implemented in 2006. The Code forms part of the employers' terms and conditions of employment. The Code is available on the Council's intranet and is introduced to employees during the induction process along with relevant policies.

Under the Code employees must declare any non-financial or financial interests that they or members of their family have which they consider could conflict with the Council's interests. Chief Officers and the Chief Executive declarations of non-financial or financial interests are declared to the Monitoring Officer.

All relationships of a business or private nature with external contractors, or potential contractors should be made known to the employees' Managers and Chief Officers. All hospitality received and given should be appropriate, necessary and must, wherever possible, have the prior sanction of the relevant Chief Officer and must be recorded in the Hospitality Book kept by the Chief Executive's Secretary. There is a Protocol on Corruption, Gifts and Hospitality contained within the Staff Code of Conduct. The Hospitality Book is regularly reviewed by the Monitoring Officer, Head of Paid Service and s. 151 Officer.

## **10. Standards Committee and the Code**

Sevenoaks District Council's Code of Conduct is based on text published by the Department for Communities and Local Government (DCLG). Town and Parish Councils have adopted their own Codes based on the seven Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The District Council encouraged Town and Parishes to adopt the Sevenoaks District Council Code, although it is known that some have adopted the National Association of Local Council's model.

The Standards Committee is an ordinary committee of the Council which means that it is subject to the usual requirements relating to access to information and political balance.

## **11. Complaints against Members**

The current Standards Regime, set up under the Localism Act 2011, was implemented by this Council in July 2012. This provides a mechanism for receiving and processing complaints against Members.

Under the Localism Act 2011 authorities are not obliged to include provisions in their arrangements for Members to be able to appeal against findings that they have breached the Code of Conduct. In line with this, Sevenoaks District Council decided not to include appeal provisions in its arrangements (although for procedural irregularity a complaint can always be made to the Ombudsman).

The Localism Act 2011 makes no provision for sanctions against Members found to have breached the Code of Conduct. However, authorities are able to censure Members, to publicise breaches of the Code of Conduct, to arrange for a report to Full Council and to recommend that Members be removed from positions on committees and outside bodies. This Council decided to include in its arrangements provisions for the Monitoring Officer to be instructed to arrange training for the Member and/or conciliation, if appropriate, which is a useful practical measure for improving Member conduct.

A number of formal complaints were received between January and December 2018. For comparison, there were seven complaints between January and December 2017. It should be noted that the complaints which were unresolved at the date of my report on 2017 resulted in no further action. It appears that although the Code of Conduct is well observed there is no apparent hindrance to those who wish to make a formal complaint about Member conduct.

Under the existing system, the Monitoring Officer first carries out an 'initial intake test' to determine whether the complaint can be processed.

If it passes that test, it will thereafter be assessed and the Monitoring Officer will take no further action, attempt informal resolution or recommend formal investigation. In the latter case, if the investigation concludes that there is evidence of failure to comply with the Code of Conduct, the Monitoring Officer (having consulted the Independent Person) will either seek informal resolution or refer the matter to the Standards Hearing Sub Committee.

Please see the below table for a breakdown of complaints received during 2018. It is not appropriate to discuss these matters at Committee and this analysis is provided to illustrate the nature of the complaints and their resolution:

<b>Date made</b>	<b>Subject Member</b>	<b>Complainant public or Member?</b>	<b>Date received</b>	<b>Assessed</b>	<b>Result</b>
27/03/18	Town Councillor	Member	28/03/18		Failed Initial Intake test.
27/03/18	Town Councillor	Public	28/08/17		Failed Initial Intake test.
08/06/18	Town Councillor	Public	08/06/18	17/07/18	No further action.
13/06/18	Town Councillor	Member	13/06/18		Withdrawn.
28/06/18	District Councillor	Public	28/06/18		Failed Initial Intake test.
31/07/18	District Councillor	Public	01/08/18	10/08/18	No further action.
23/10/18	Town Councillor	Public	23/10/18		Failed Initial Intake test
10/11/18	District Councillor	Public	12/11/18		Failed Initial Intake test.
13/11/18	District Councillor	Public	14/11/18		Failed Initial Intake test.

## 12. Support to Councillors, 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. He also oversees the annual reporting to the Audit Committee of the proper working of the Members' Allowance Scheme.

Ensuring compliance with the committee process 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 available to the public.
- Drafting minutes for publication within nine working days.
- Publishing a record of all decisions including key decisions taken by Cabinet within 48 hours (2 working days) of the meeting.
- Ensuring that petitions are handled in accordance with the Council's Constitution including e-petitioning.
- Ensuring that meetings are accessible.
- Complying with the requirements of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- The Openness of Local Government Bodies Regulations 2014
- Attendance at Cabinet and Council.

One of the explicit aims of the Council has been to try and streamline the decision making process to allow Council to focus on service delivery. The following is the statutory meetings analysis, covering meetings which were serviced between 1 January 2018 and 31 December 2018:

Full Council Meetings (including 1 annual meeting)	5
Cabinet	11
Audit Committee	4

CIL Spending Board	2
Development Control Committee	12
Direct and Trading Advisory Committee	3
Economic and Community Development Advisory Committee	4
Finance Advisory Committee	5
Governance Committee	1
Health Liaison Board	3
Housing & Health Advisory Committee	4
Legal & Democratic Advisory Committee	4
Licensing Committee	4
Licensing Hearing	5
Planning Advisory Committee	6
Policy & Performance Advisory Committee	4
Scrutiny Committee	4
Sevenoaks Joint Transportation Board	4
Standards Committee	2

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

The requirements for notice of Key Decisions set out in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 are being followed to the satisfaction of the Monitoring Officer.

The Council is required by Law to discharge certain scrutiny functions and this function is fulfilled to the satisfaction of the Monitoring Officer by the Scrutiny Committee.

It should be noted that during the year the Council was joined by a new Member in the Farningham, Horton Kirby and South Darenth ward. The by-election in that ward was triggered by the former incumbent without dispensation being unable to

attend meetings for six months, leading to automatic disqualification as a Member. Naturally this is not a regular occurrence and has in any case not impacted upon the delivery of support to the Committee process.

### **13. The Transparency Code**

The Council has been under a duty to publish a range of data under the Local Government Transparency Code and associated Regulations since 2014.

It is the Government's stated desire to place more power into citizens' hands to increase democratic accountability and make it easier for local people to contribute to the local decision making process and help shape public services. The Code has been issued to meet this desire. The Government has set out that:

“Transparency is the foundation of local accountability and the key that gives people the tools and information they need to enable them to play a bigger role in society. The availability of data can also open new markets for local business, the voluntary and community sectors and social enterprises to run services or manage public assets.”

The Government published a revised and updated Code in 2015 and the Council remains committed to carrying forward the enhanced requirements of the new Transparency Code. The development of a new Council website, which will shortly go live, is aimed to provide improved access to Council information, including data sets required to be published by Government.

### **14. Member Training and Development**

Members received training on a number of matters during the calendar year, including vital training on planning enforcement, development control and making defensible planning decisions. Throughout the year they have been kept up-to-date with developments relating to the Local Plan. Compulsory Licensing training is provided to Members on an annual basis and upon election all Members are provided with induction training.

Significantly, during the year a programme of Member training was rolled out to all Members following the results of a survey into their preferences. It included training on compliance with the General Data Protection Regulation, which came into force on 25 May 2018.

### **15. GDPR**

GDPR (the General Data Protection Regulation) came into effect during the year and the Council was ready for implementation on the appointed date of 25 May 2018. The Data Protection Act 1998 was replaced by the Data Protection Act 2018, giving individuals greater rights, protections and freedoms.

It was essential for the Council to be ready to honour the various rights enshrined in the regulation, in particular the 'right to be forgotten' and the right of subject access. Robust systems are in place to ensure that the public can exercise these rights as they should.

Furthermore, policies and procedures were put in place to ensure compliance and the Monitoring Officer is satisfied that the necessary changes and developments have occurred. The Council is fully compliant with GDPR and this is a testament to the hard work of Officers and Members in implementing the new regulation.

## **16. Whistle Blowing**

Sevenoaks Council is committed to having effective whistleblowing arrangements in order to safeguard individuals who have genuine cause for raising concerns in the work place and to promote good governance and safeguard the public interest.

The Council's Whistle Blowing Policy sets out how to raise concerns within the organisation and is designed to give statutory protection to employees who "blow the whistle" on their employer's malpractice. In addition, the Council aims to mitigate the risk of inappropriate behaviour by those undertaking work on behalf of the Council and the Council refers to this Policy in contracts with suppliers and service providers, in the Procurement Guide and in its partnership arrangements.

The Council takes seriously and will investigate all reports of improper activities. The Policy aims to ensure that when concerns are raised, the Council will address the concerns and protect the person raising the concern.

The Council is committed to the highest possible standards of openness, probity and accountability and in line with this commitment the Council reviewed and updated its Whistleblowing Policy two years ago to incorporate the requirements of the new Statutory Code of Practice recommended by the Whistleblowing Commission. The Whistleblowing Policy is subject to annual review by the Audit Committee with the review taking into consideration the views of users of the Policy and any relevant professional or regulatory changes.

The new Code of Practice makes whistleblowing more effective within organisations and provides practical guidance to employers, workers and their representatives and sets out recommendations for raising, handling, training and reviewing whistleblowing in the work place.

In the past calendar year no concerns were raised under the Council's whistleblowing policy. This is however no reason for complacency and it is essential that fit-for-purpose policy remains in place.

## **17. Regulation of Investigatory Powers Act**

The Regulation of Investigatory Powers Act 2000 (RIPA) introduced a statutory framework for those carrying out surveillance as part of an investigation. The Protection of Freedoms Act 2012 (2012 Act) amended RIPA to provide additional controls. The internal authorisation process is now followed by external authorisation from a Justice of the Peace.

In practice the District Council seeks to carry out surveillance activity by overt means whereby it is not necessary to engage the provisions of RIPA. There were no

applications to carry out surveillance of the sort which requires RIPA authorisation during the year.

## **18. Code of Corporate Governance**

The Monitoring Officer is happy to report no difficulties in implementing the Code of Corporate Governance during the year. Code compliance is overseen by the Audit Committee and Members will recall that during 2017 the Monitoring Officer updated the Code in line with legislative changes.

## **19. Conclusion**

As reported last year, the key legal provisions and challenges facing the Council remain the same. There is a need for the Monitoring Officer to carry out both a proactive and reactive role in conjunction with the Standards Committee. This involves raising standards, encouraging ethical behaviour, adopting good governance and promoting robust procedures.

It should be noted that the elections in May 2019 may produce challenges as new Members begin their public lives at the Council. Being an election year we can expect the already well-informed residents of the District to be acutely aware of their representatives and the requirements of the Code of Conduct. However, the Monitoring Officer has every confidence that as ever the new intake will act with the Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership in mind.

The Monitoring Officer has a reactive enforcement role and together with the Standards Committee's it is his job to enforce the Code of Conduct and relevant sections of the Localism Act 2011. As can be seen from the above, there are few reports of misconduct amongst Members and very few of any substance. Nevertheless, the Council cannot take this for granted and at all times it is necessary to be vigilant and active in safeguarding the reputation and legality of the Council.

The Monitoring Officer's Report sets out the elements of good governance and demonstrates that robust procedures are in place to raise ethical standards, identify problems and ensure that Members, Officers and the Public are aware of appropriate channels to raise concerns.

Martin Goodman  
Monitoring Officer

## **Attached:**

Local Government and Social Care Ombudsman Annual Review Letter