

Monitoring Officer report

Standards Committee – Tuesday, 7th November 2023

Report of: Head of Legal Services and Monitoring Officer

Purpose: For information

Publication status: Open

Wards affected: All

Executive summary:

This report gives an overview from the Monitoring Officer of democratic and ethical governance activity from 1st July 2022 – 30th June 2023.

This report supports the Council's priority of: Building a better Council

Contact officer Lidia Harrison, Head of Legal and Monitoring Officer
lharrison@tandridge.gov.uk

Recommendation to Committee:

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

Reason for recommendation:

This is an annual report to the Committee by the Monitoring Officer to give the Committee an overview of the work of the Monitoring Officer that falls within the scope of the functions for which the Committee is responsible. It also comments on other current issues that the Monitoring Officer function has been involved with.

Future reports can be further developed as the current Committee see fit.

Introduction and background

1 Background

- 1.1 The Monitoring Officer is appointed under Section 5 of the Local Government and Housing Act 1989 and has several statutory functions in addition to those conferred under the Local Government Act 2000 and subsequent regulations governing local investigations into Member conduct.
- 1.2 The Head of Legal has performed the role of the Monitoring Officer of the Council and has carried out the statutory functions since June 2018. She was and continues to be supported by Barry Gilham as the Deputy Monitoring Officer.
- 1.3 During 2022/23, there has been regrettably an issue with the timeliness of dealing with complaints. The delay has been due to change of personnel and other urgent high priority issues which meant that Officers with responsibility for conduct complaints including the Monitoring Officer and Deputy Monitoring Officer were re-allocated to support those issues. To ensure that all outstanding complaints are now dealt with as quickly as possible, a second Deputy Monitoring Officer, Caroline Daniels has been appointed in October 2023.
- 1.4 The Monitoring Officer is a member of the Management Team. Management Team and the Extended Management Team meet separately and together. The Monitoring Officer has regular 'Statutory Officer meetings' with the Council's Chief Executive; Deputy Executive and the S151 Officer.
- 1.5 The Council's in house Legal Service team provides advice and assistance to Officers throughout the Council and reports to the Monitoring Officer on any areas of concern in relation to lawfulness and compliance with the Council's protocols, policies and processes.
- 1.6 The Monitoring Officer and her staff have attended meetings and provided advice to Officers and Members at an early stage, including seeing relevant reports to Committee meetings. The Monitoring Officer also requires appropriate recording of delegated authority to evidence compliance with the Council's Constitution.
- 1.7 Since its last annual Monitoring Officer report, the following items have been considered by the Monitoring Officer in various Committees:
 - The draft Annual Governance Statement for 2021/22 (A&S Feb 2023)
 - Member Induction and Development (Full Council May 2023);
 - Extending the term of office of the Independent Person(May 2023);
 - The Independent Remuneration Panel (IRP) recommendations regarding Member Allowances (S&R Dec 2022),

- A timetable of Committee and Council meetings for the 2023/24 municipal year (S&R Jan 2023)
- Appointment of Councillors to Outside Bodies – Gatwick and High Weald AONB (S&R Jan 2023)
- An annual update and proposed amendments to the Council’s current RIPA Policy and Officer Guidance (S&R Mar 2023)
- The allocation of seats in accordance with political balance requirements for the municipal year (Full Council May 2023)
- Appointment of Councillors to outside bodies (Full Council May 2023)
- Amended Financial Regulations and reviewed the Scheme of Delegations (June 2023)
- Drafted new Planning Protocol (Planning Policy Sep 2022);

1.8 Ordinarily, the Committee’s views would be sought, and any recommendations acted upon regarding updating the Council’s Code of Conduct. However, the fact that the Council will have all out elections in May 2024, the Monitoring Officer recommends that a review is undertaken after the next Council elections, by the “new intake” of Members, so that they can influence the Code that they will have to comply with.

2.0 The number and nature of complaints of breaches of the Code of Conduct.

2.1 The Code of Conduct is designed to protect the democratic role, promote good conduct and safeguard the public’s trust in local government and is based upon the Nolan Principles.

2.2 In each conduct case, it is necessary for the Monitoring Officer to assess whether the behaviour complained about arose where the person was acting or purporting to act as a Councillor known as ‘official capacity’. Consideration is given to the following assessment criteria:

Adequate information: Is sufficient information available at the ‘initial test and assessment stage’ to decide whether the complaint should be referred for fact-finding investigation or other action?

Official capacity: Was the Subject Member acting in an official capacity?

Seriousness: The Monitoring Officer will not normally refer a matter for investigation or other action if it is considered trivial, malicious, vexatious, or politically motivated.

2.3 The Monitoring Officer will consider when the events subject to the complaint took place and will not normally investigate or pursue other action if the events occurred more than 6 months prior to the complaint being submitted other than in exceptional circumstances,

such as where the conduct relates to a pattern of behaviour which has recently been repeated.

2.4 During the reporting period (from 1st July 2022 – 30th June 2023) there were a total of thirteen complaints received. Of those cases received in 2022-23 details and outcomes are detailed as follows:

Complaint or allegation	Details	Outcome
1 Complaint raised against a District Councillor	Complaint about post on social media.	Written apology, no formal action.
2 Complaint raised against a District Councillor by a fellow Councillor	Complaint about Conduct of Councillor towards a fellow Councillor (Discriminatory comments said to a Councillor by a fellow Councillor).	No Action - Insufficient evidence to take the complaint forward - no witnesses
3 Complaint raised against a District Councillor	Complaint about a Councillor having misled a member of the public concerning the planning process.	No Action - Not enough evidence to support the allegation and the member of the public was deemed to be vexatious by the MO.
4 Complaint raised against two Parish Councillors	Complaint about Councillors not showing respect to a member of the public.	No action - Not enough evidence to support the allegation
5 Complaint raised against a District Councillor	Complaint about post on social media	No action - comments were made in a "private chat" group. So it was unclear whether the Councillor was acting as a Councillor when such comments were posted

6 Complaint raised against a Parish Councillor	Complaint about a Councillor speaking to a member of the public in a disrespectful manner and making unfounded allegations.	No action - Councillor had not breached the Code as they were not acting in the capacity of a Councillor at the time of the altercation.
7 Complaint raised against a District Councillor	Complaint about a Councillor had failed to respect an Officer and a member of the public.	Matter was escalated to the Hearing Panel. There was sufficient evidence that the Councillor had breached Paragraph 1.2 of the Council's Code of Conduct, in failing to respect the complainants, and by behaving as he did, had brought their office into disrepute. Agreed by the Hearing Panel that the Councillor should be given further training on the Council's Code of Conduct and provide a written apology to both complainants.
8 Complaint raised against a District Councillor	Complaint about a Councillor who had made false and libellous allegations against members of the public.	No action - No breach of the Code of Conduct, and that the Councillor was acting in personal capacity.
9 Complaint raised against a District Councillor	Complaint about Councillors not showing respect to a member of the public	No action - no evidence to support the allegation / complaint was submitted.

10 Complaint against a Parish Council	Complaint about the Parish being corrupt and gaining a financial interest in a planning application	No action – after a fact-finding investigation the complaint was untrue. The complainant had been misinformed
11 Complaint raised against a Parish Councillor	Complaint about Councillors not showing respect to a member of the public	No action - Not enough evidence to support the allegation
12 Complaint raised against a Parish Councillor	Complaint about Councillors not showing respect to a member of the public	No action - Not enough evidence to support the allegation
13 Complaint raised against a District Councillor	Complaint about Councillors not showing respect to a member of the public	No action - Not enough evidence to support the allegation

2.5 The most common reason for complaints continues to be alleged disrespectful behaviour. The majority of complaints were assessed as requiring no further action. Sometimes this has been accompanied by some informal recommendations or guidance to improve governance.

2.6 The Monitoring Officer intends, during 2023-24, to further review the arrangements for dealing with complaints against Members. This is to achieve greater clarity of process and responsibilities for the benefit of members of the public and Members themselves. The Committee will be kept informed of this work and will consider it at a future meeting.

3.0 Member training and awareness raising sessions

3.1 The Monitoring Officer, assisted by the Deputy Monitoring Officer ran a session on the Member Code of Conduct in June 2023 and this was

attended by 10 Members of Council in the live session and recorded to allow Members who were not able to attend to access the training later.

- 3.2 A range of other training and awareness raising sessions were held during 2022-23 including Planning, Introduction to Committees, Finance Module 1 (new Members) and Finance Module 3 (existing Members), Housing; Licensing; Local Plan Briefing; Future Tandridge Programme updates and other topical issues.

4.0 Democratic process

- 4.1 Clarity and accountability in the decision making of the Council is an important bedrock for good governance. Following lessons learned from the Covid-19 Pandemic, members of the public continue to be able to participate at formal meetings in person or virtually in terms of speaking and addressing meetings, as well as viewing them remotely.
- 4.2 In total, 55 formal public meetings were held and facilitated by the Democratic Services team of the Council during the reporting period. Members of the public asked 0 public questions and presented 0 petitions during 2022-23.

5.0 Decision-making governance

- 5.1 It is important, though, as in any year, to reflect to the Committee process on how the decision-making arrangements worked in practice as regards instances of closed sessions, urgent decisions, and instances of call-in.
- 5.2 The press and public can be excluded from the whole or part of a meeting if the meeting is to discuss confidential or exempt information (as set out in Schedule 12A of the Local Government Act 1972, as amended). The Monitoring Officer, in the role of ensuring lawful decision making, has reviewed the number of times that either the public was excluded or that an exempt report was featured on an agenda. This happened 22 times over the past year. In each case, the Monitoring Officer was satisfied that the reasons for closure were appropriate.
- 5.3 Under Standing Order 35 in the Council's Constitution, the Chief Executive is authorised to undertake urgency decisions on behalf of the Council. The need for urgent action arises between meetings of a committee and when there is not enough time to call a special meeting. In such circumstances, decisions may be taken by the Chief Executive and other Management Team. The Chief Executive and the Management Team Member are then required to first consult Political Group Leaders and the Chair of the concerned committee. Once the consultation has been completed, it is necessary to complete a form. These decisions will now be added to the Delegated Action List which is sent to Members every three weeks. The Delegated Action List is held by Democratic Services.

- 5.4 There were 4 urgency decisions taken during the review period.
- 5.5 No decisions of a committee were called in under the Council's call-in procedure under Part F of the Constitution during 2022-23.

6.0 Transparency and access

- 6.1 Modern.Gov is the software package used by the Council for creating, tracking and publishing Council and Committee meeting agenda, reports and minutes. This is important for transparency as the system publishes clear information on the Council's website as to the calendar of meetings and the accessibility of meeting papers.
- 6.2 Members will continue to receive regular reminders to keep their register of interests up to date and are now able to upload their interests electronically. Modern.Gov is used to manage Councillors register of interests amongst other things. Democratic Services will be looking into seeing what other functions can be recorded on the system in 2023/24 i.e. any training completed.
- 6.3 The system has wider capabilities to support paperless meetings and report preparation. The Monitoring Officer and the Democratic and Electoral Services Manager will be looking at various options with a view to sharing a report with all Councillors in 2023/24.

7.0 Constitution Review

- 7.1 Some further work has been undertaken to ensure that the Constitution enables the needs of a modern council. A cross-party working group was reconvened to making recommendations to the Strategy and Resources Committee on potential improvements. A report will be presented to the November Strategy and Resources Committee on these proposed changes.

8.0 Independent Person

- 8.1 The Council currently has one Independent Person, Mr Shaun Mundy. He was first appointed by the Council on 19th July 2012 (via a recommendation from the Standards Committee on 4th July 2012). His initial term was from then until the end of the 2015/16 Municipal Year. He was reappointed at Annual Council on 26th May 2016 to serve until the end of 2019/20. He was reappointed in 2020/21 and 2022/2023.
- 8.1 The Independent Person is appointed by the Council to fulfil the statutory role set out in the Localism Act 2011. The role of the Independent Person is familiar to the Committee, but in summary, the prime duty is to provide impartial and independent advice and support to the Monitoring Officer in considering code of conduct complaints and, where required, to those making complaints and those complained about during the course of an investigation.

8.2 Following a recruitment campaign, interviews to appoint two Independent Persons will take place in mid-November. The outcome of the interview process will be reported to the next Committee meeting in January 2024.

9.0 Conclusion

9.1 This report provides an overview of the work of the Monitoring Officer; the work of the Standards Committee and other governance arrangements for the Municipal year 2022/23 as well as the preceding year. It is imperative that Members and Officers set the ethical tone within the Council and model the behaviours that they expect of themselves and others.

9.2 The Monitoring Officer will contact in 2023/24 those Parish Councils that have not yet adopted the Local Government Association (LGA's) model code with the aim of bringing a universal approach to the model code across the District.

Key implications

Comments of the Chief Finance Officer

The Monitoring Officer's Report has not identified any financial implications for this Council over and above normal requirements.

Comments of the Head of Legal Services

Relevant references to legal powers are included in the main body of the report. Under S5 of the Local Government and Housing Act 1989 the Council is required to designate an officer as the Monitoring Officer whose responsibilities set out in the Council's Constitution include ensuring lawfulness and fairness of decision making and to contribute to the promotion and maintenance of high standards of conduct through provision of support and advice to

Equality

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The public sector equality duty (specific duty) requires Officers to consider how it can positively contribute to the advancement of equality and good relations, and demonstrate that it is paying 'due regard' in Council's decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, the Monitoring Officer does not believe that it will have an impact on our equality duty on end users.

----- end of report -----