

Monitoring Officer report

Standards Committee – Tuesday, 13th September 2022

Report of: Head of Legal Services and Monitoring Officer

Purpose: For information

Publication status: Open

Wards affected: All

Executive summary:

The Monitoring Officer's Annual Report summarises the matters within the remit of the Standards Committee and the work done by the Council's Monitoring Officer from 1st July 2021 – 30th June 2022 to promote and maintain high standards of conduct by Councillors.

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 Standards Committee notes the Monitoring Officer's Annual Report.

Reason for recommendation:

The various functions of this Committee and the Monitoring Officer include promoting and maintaining high standards of conduct and monitoring the operation of the Code of Conduct for Members.

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 Since its last annual report the Monitoring Officer function has:

- Considered the draft Annual Governance Statement for 2020/21
- Reviewed the procedure for the Hearing of Allegations of breaches of the Code of Code of Conduct for Members;
- Reviewed and agreed the LGA's Model Code of Conduct
- Undertaken Member Induction and Development;
- Extended the term of Office of the Independent Person;
- Drafted the Independent Person Protocol;
- Revised the Member / Officer Protocol.

1.3 The remainder of this report provides detail on complaints under the Monitoring Officer's purview for the last two years.

1.4 There are 3 potential stages through which a complaint may proceed:

Stage 1 - Initial Assessment stage where the Monitoring Officer will decide whether to reject the complaint, seek informal resolution of the matter or refer the complaint for fact-finding investigation.

Stage 2 - Where a complaint is referred for investigation, the Monitoring Officer will appoint an Investigating Officer to investigate the matter

Stage 3 - If the Investigating Officer's final report concludes that there is sufficient evidence of a failure by the Member to comply with the Code, the Monitoring Officer will consult with the Independent Person before either seeking a local resolution to the matter or sending the allegation before the Hearing Panel for determination.

1.5 This is the first report detailing complaints since Full Council agreed to adopt the new LGA Model Code of Conduct at the Council meeting held on 22nd April 2021. The Council resolved to adopt the new LGA Model Code of Conduct which was drafted following recommendations by the Committee On Standards In Public Life. Significant training was provided to Councillors on the provisions of the new Code.

1.6 The new Code remains based upon the Nolan Principles and aims to be a national code adopted by all tiers of Local Government.

2 Complaints against Councillors

2.1 It has been a busy two years in terms of complaints against District and Parish Councillors under the Code of Conduct. The Monitoring Officer function has received 8 complaints about District Councillors

between 1st July 2021 – 30th June 2022. This compares with 11 complaints received in the previous year.

- 2.2 The Monitoring Officer function has received 10 complaints about Parish Councillors between 1st July 2021 – 30th June 2022. This compares with 2 complaints received in the previous year.
- 2.3 Of the 13 complaints (Parish and District) received for 1st July 2020 – 30th June 2021:
 - 3 was not pursued by the complainant;
 - 2 were rejected at Stage 1
 - 2 were resolved informally
 - 6 reached stage 3 and was found there was insufficient evidence
- 2.4 Of the 18 complaints received (Parish and District) for 1st July 2021 – 30th June 2022:
 - 3 were not pursued by the complainant;
 - 2 were rejected at Stage 1
 - 5 were resolved informally
 - 1 reached stage 3 and was found there was insufficient evidence
 - 1 reached stage 3 and was escalated to the hearing panel
 - 1 reached stage 3 and was escalated to the Standards Committee
 - 5 live complaints.
- 2.5 Social media has once again been a source of rancour both between Councillors and between Councillors and the public over the course of the last two years. Often these issues do not evolve into formal complaints and will therefore not find their way into the figures.
- 2.6 It is also entirely legitimate, of course, for Councillors and others to make political points on social media, but there is a broad grey area between points of policy difference and what are effectively ad-hominem attacks. While relevant case law guarantees extremely broad rights of free expression to politicians, Councillors do need to exercise care and restraint in not stepping too far into that grey area, particularly when the 'homines' being attacked are sometimes members of the public rather than fellow Councillors.
- 2.7 Some complaints received do not constitute a breach of the Code of Conduct and are mainly a personal dissatisfaction with an individual Councillor or Councillors. Such matters do not fall within the purview of the Code and complaints are responded to accordingly. These are reflective of the fall-out, tensions and dissatisfactions that exist amongst some Councillors towards one another. The Code concentrates on behavioural matters and compliance with the Nolan Principles of Public Life, it does not consider political differences or disagreements on decisions taken.

- 2.8 During 2021/22, 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. Work has been undertaken to ensure that all outstanding complaints are dealt with as quickly as possible and complaints received in 2022/23 are being dealt with in a more timely manner

3 Whistleblowing Complaints

- 3.1 The Monitoring Officer also has overall responsibility for the maintenance and operation of the Whistleblowing Policy, which includes keeping a record of all whistleblowing cases and presenting a summary of these to the Audit and Scrutiny Committee on an annual basis.
- 3.2 The Whistleblowing policy was revised in November 2020. This applied the policy to members of the public, stakeholders, and contractors as well as Officers. Whistle blowers are asked to report their concerns to named senior Officers. This ensured that Senior Management were aware of any matters and that the correct processes were followed and reported in turn to the Monitoring Officer. Not all complaints received are whistle-blowing reports, even where the complainant has cited them as such. In accordance with the Council's Whistleblowing policy, complaints are assessed and either dealt with as Whistleblowing complaints or otherwise referred to the Council's complaints process and investigated as part of that process.
- 3.3 There have been no whistleblower complaints raised in the last two years.

4 The Monitoring Officer's Work 1st July 2021 – 30th June 2022

- 4.1 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 supported during part of that time in 2021 by two Deputy Monitoring Officers, Catherine De Bruin (until May 2022) and Barry Gilham (from May 2022 onwards). Barry Gilham deals predominantly with complaints raised against Parish Councillors.
- 4.2 The three statutory officers (The Head of Paid Service, the S151 Officer and the Monitoring Officer), often called the "golden triangle" have specific roles within the Council and responsibility, with other Officers and with Councillors. The Statutory Officers used to meet regularly in 2020 but this arrangement stopped during Covid and has been replaced more recently with MT ('Management Team') meetings.

- 4.3 It is acknowledged that many of the systems and behaviours that underpin good governance at the Council are still underused or absent. Some progress has been made in the past year or so in terms of drafting a governance framework but there are still elements that are weak within the organisation and which are being looked at as part of the Future Tandridge Programme via individual service reviews.
- 4.4 The more significant issue for the Council is engendering a culture of good governance throughout the Officer and Member cohorts. These behavioural issues are a key factor in building a robust governance framework. There is a great deal of work to be done in this area and it is anticipated that with a new Deputy Monitoring Officer starting in November 2022, further work will continue in this area.
- 4.5 In March 2021, the Centre for Governance and Scrutiny (CfGS) undertook a research piece to produce a new **Governance Risk and Resilience Framework**, which identifies behaviours that support a healthy governance environment and the work behind the Annual Governance Statement and the CIPFA principles in "*Delivering Good Governance*".
- 4.6 The seven behaviours set out in the CfGS report are as follows:
- **Extent of recognition of individual and collective responsibility for good governance.** *This is about ownership of governance and its associated systems;*
 - **Awareness of political dynamics.** *This is about the understanding of the unique role that politics plays in local governance and local government. Positive behaviour here recognises the need for the tension and "grit" in the system that local politics brings, and its positive impact on making decision-making more robust;*
 - **How the council looks to the future to set its decision-making priorities.** *This is about future planning, and insight into what the future might hold for the area, or for the council as an institution and includes the way the council thinks about risk;*
 - **Officer and councillor roles.** *Particularly at the top level, this is about clear mutual roles in support of robust and effective decision-making and oversight. It also links to communication between key individuals, and circumstances where ownership means that everyone has a clear sense of where accountability and responsibility lie;*
 - **How the council's real situation compares to its sense of itself.** *This is about internal candour and reflection; the need to face up to unpleasant realities and to listen to dissenting voices. The idea of a council turning its back on things "not invented here" may be evidence*
 - **Quality of local (external) relationships.** *This is about the council's ability to integrate an understanding of partnership working and partnership needs in its governance arrangements, and about a similar integration of an understanding of the local community and its needs. It is about the extent to which power and information is shared and*

different perspectives brought into the decision-making, and oversight, process;

• The state of member oversight through scrutiny and audit committees. *This is about scrutiny by councillors, and supervision and accountability overall.*

4.7 Some work (described below) has started to address these factors and will be used moving forward as a basis for identifying areas of risk for the Council in its governance framework.

4.8 The Monitoring Officer duties are listed below with examples:-

Duties	Work undertaken
<p>1.Maintaining the Constitution.</p> <p>The Monitoring Officer is the 'guardian' of the Council's Constitution and is responsible to maintain an up to date version of it and that it is adhered to in practice.</p>	<p><i>A key role for the Monitoring Officer is to be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make recommendations for ways in which it could be amended.</i></p> <p><i>During the year the Constitution has been updated several times to reflect best practice and provide clarification with the principles that are articulated within the Constitution. The reports that have been presented are listed below:-</i></p> <ul style="list-style-type: none"> • Strategy & Resources Report on the Review of the timetable of meetings for the remainder of 2021/22 and associated governance matters (5th October 2021); • Strategy & Resources Report on Improving Tandridge District Council's Financial Management and Reporting Arrangements (1st February 2022) • Strategy & Resources Report on Contract Standing Orders (7th April 2022);

	<ul style="list-style-type: none"> • Full Council Report on Allocation of seats to Committees and Sub-Committees for 2022/23 and constitutional amendments (26th May 2022)
<p>2. Ensuring lawfulness and fairness of decision making.</p> <p>After consulting with the Head of Paid Service and S151 Officer, the Monitoring Officer will report to the Audit and Scrutiny Committee if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.</p>	<p><i>There were no occasions where the Monitoring Officer had reason to believe that there was a likelihood that the Council was about to take a decision that would be unlawful. Counsel's advice would be sought by the Monitoring Officer to clarify the position where necessary and to ensure effective discharge of a proposal or decision.</i></p> <p><i>Consequently, no reports have been issued to the Council under Section 5(2)(a) of the Local Government and Housing Act (1989).</i></p> <p><i>The Monitoring Officer is a member of the Council's Management Team and Extended Management Team together with the Head of Paid Service and the s151 Officer as well as the Information Governance Management Team (IGMT) and a Member of the Procurement Board and is able to comment on issues discussed at these meetings.</i></p> <p><i>The Council's legal team provide advice and assistance to Officers throughout the Council and report to the Monitoring Officer on any areas of concern in relation to lawfulness and compliance with the Council's protocols and processes.</i></p> <p><i>The Monitoring Officer and her teams attend meetings and</i></p>

	<p><i>provide advice to Officers and Members at an early stage, including seeing reports to Committees prior to publication.</i></p> <p><i>The Monitoring Officer also requires appropriate recording of delegated authority to evidence compliance with the Constitution. All such decisions are accompanied by a delegated authority form which is uploaded in Docusign for the Head of Paid Service, the Monitoring Officer, the s151 Officer and any other member of EMT to sign. The Monitoring Officer is liaising with Democratic Services to see how these decisions are publicly available and as soon as possible.</i></p>
<p>3. Advising whether Committee decisions are within their Terms of Reference.</p>	<p><i>Both the Monitoring Officer and s151 Officer see reports prior to publication.</i></p> <p><i>The Monitoring Officer has advised on the revised draft Financial Regulations and draft Planning Protocol.</i></p>
<p>4. Providing advice The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors and will support and advise councillors and officers in their respective roles.</p>	<p><i>The Monitoring Officer regularly advises Officers and Members on issues of lawfulness including seeking external legal opinion where necessary.</i></p>
<p>5. Contributing to Senior Management The Monitoring Officer will contribute to the senior management of the Council, in particular through the provision of professional advice on the lawfulness or probity of any matter.</p>	<p><i>The Monitoring Officer is a member of the Council's Management Team, and Extended Management Team ('EMT'). The Monitoring Officer has also sat on the Future Tandridge Programme Board.</i></p>

	<p><i>With the creation and appointment of a new Deputy Head of Legal (due to start at the end of November 2022) it is proposed that she will sit on SMT.</i></p>
<p>6. To monitor the operation of the Members' Code of Conduct</p>	<p><i>In the current municipal year the Monitoring Officer has received 18 (10 Parish; 8 District) complaints. The number of complaints are significantly up on previous years and is mainly in relation to matters that are connected to a particular Parish. Most complaints do not meet the threshold for investigation however they have required quite significant resource to process and have not contributed to the raising of standards at the authority.</i></p> <p><i>There has been one Parish complaint that has been escalated to the Hearing Panel. The panel accepted that the Parish Councillor had apologised and had acknowledged his error. The Panel urged the Councillor to exercise greater care while fulfilling his Parish Councillor duties in future.</i></p> <p><i>There has been one District complaint that had been escalated to the Standards Committee. There was a finding against the District Councillor for several breaches of the Code and by way of a sanction, the District Councillor was asked to send a letter of apology to the Officer concerned and to include all Officers and Councillors.</i></p>
<p>6. To promote and maintain high standards of conduct by Members.</p>	<p><i>It is hoped that with the appointment of two new Deputy Monitoring Officers for both</i></p>

	<p><i>Parish and District a new approach will be taken to dealing with complaints following the model identified by the Committee on Standards in Public Life in their best practice recommendations. This focuses on raising standards across the board, rather than seeking to use the Code as a way of resolving minor issues, which is costly, time-consuming and can be counter productive. This would result in behaviour being addressed more effectively than going through the formal Code of Conduct routes. This will be looked into in December when the new Deputy Monitoring Officer for District has been appointed.</i></p>
<p>7. To assist Members, to observe the Members' Code of Conduct.</p>	<p><i>In January 2023, the Monitoring Officer and the two Deputies intend to meet with the Group Leaders to discuss the new approach to standards within the new framework and Parish Councillors to discuss behaviour so that there is a clear understanding of how issues will be approached and behaviours addressed.</i></p>
<p>8. To advise, training or arranging to train Members, on matters relating to the Members' Code of Conduct;</p>	<p><i>Members have been trained on the Code in May 2022, including common issues that have arisen around Member/Officer roles. However it is the application of the Code and the understanding of Members as to "how we do things around here" that is important.</i></p>
<p>9. To recommend to the Council on the adoption or revision of its Members' Code of Conduct</p>	<p><i>The Council adopted the LGA Model Code at Full Council on 22nd April 2021.</i></p>

<p>10. To maintain and keep up to date a register of Members' interests</p>	<p><i>All Members of both Parish and District completed new returns following the 2022 elections and subsequent by-elections. Members are reminded to keep these up to date on a regular basis. The Register of Members' Interests is published on the Council's website.</i></p>
<p>11.To prepare and keep under review a protocol for managing Member and Officer relationships.</p>	<p><i>The Protocol for Member/Officer Relations was considered by this Committee on the 15th March 2021 and approved by Full Council on 22nd April 2021. There is a need to train Members and Officer further on this and training will be provided as part of the work on the Future Tandridge Programme.</i></p>

10.9 The key messages to note from the year are:

- a) Between 1st July 2021 – 30th June 2022 of the Council's elected Members, one complaint raised required a referral to the Standards Committee.
- b) Between 1st July 2021 – 30th June 2022 of the Council's Parish Councillors, one required an investigation or a referral to the Hearing Panel of the Standards Committee. They found a Parish Councillor to have breached paragraph 5 of the Parish Code of Conduct - "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute".
- c) The Constitution continues to be regularly updated.
- d) On a positive note, most Councillors and most Parish Councils in Tandridge do not appear on my radar and that point should be noted by the Committee.
- d) The few that do come to the Monitoring Officer function's attention regularly are entrenched in historical issues and behaviours. These do need to be addressed as it presents a risk of governance failure for the Council.

5 Independent Person

- 5.1 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.

- 5.2 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.
- 5.3 When the new Deputy Monitoring Officer commences employment in November, it is anticipated that the arrangement around the Independent Person will be reviewed.

6 Conclusion

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.

With the more recent complaints received there is reference to one particular Parish Council and once the complaints have been fully investigated, the Monitoring Officer and the Deputy Monitoring Officer for Parishes intend to attend a meeting of that Parish Council and to liaise with the public and to observe how that Parish Council conducts its proceedings at meetings. Hopefully, the Parish Council would benefit and welcome any guidance and assistance from the Council in respect of the rules and procedures required at meetings.

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

The comments of the Head of Legal Services are included in the body of this report.

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.

47. 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.

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