

**ANNUAL REPORT OF THE  
MONITORING OFFICER  
CALENDAR YEAR 2021**

## **Introduction**

This is the seventeenth Annual Report of the Monitoring Officer, for the period January 2021 to December 2021. 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 Report sets out the Monitoring Officer’s statutory responsibilities and summarises how those duties were discharged during 2021 in accordance with legislation and the Council’s Constitution. Where necessary the Report draws 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:

| <b>Description</b>  | <b>Source</b>   |
|---|---|
| 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.  | The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012<br>The Localism Act 2011<br>The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 |

| Description   | Source  |
|---|---|
| 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.

### 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 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. The Monitoring Officer did not have to issue such a report throughout 2021.

For information, Members should note that during 2020/21 there was one detailed investigation carried out by the Local Government and Social Care Ombudsman, which was not upheld.

By way of comparison, in the previous year there were three detailed investigations carried out by the Ombudsman. Two of these complaints were upheld and in one of those the Council had already provided a satisfactory remedy before the complaint reached the Ombudsman.

### **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. 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 2021 are as follows:

- Receiving the Annual Monitoring Officer's Report

- Being on Standby to grant Dispensations
- Being on Standby to carry out hearings
- Convening a Working Group to consider the adoption of the LGA's Model Code of Conduct

### **7. 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.

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 prohibition on participation 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 stands to make no personal financial gain by speaking or voting 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 upon conviction.

### **8. 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.

### **9. Standards Committee and the Code of Conduct**

Members will recall that in February 2021 a working group was established to consider whether to adopt the 2020 draft Model Code of Conduct produced by the LGA. The working group was a joint group of Members of the Standards and Governance Committees. The conclusion was that the Model Code should not be adopted. This was confirmed at a Standards Committee and, the Governance Committee having no further comments, the existing Sevenoaks District Council Members Code of Conduct was reaffirmed by Full Council in July 2021. This is attached for reference.

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 encourages town and parishes councils to adopt the Sevenoaks District Council Code, although it is known that some have adopted the National Association of Local Councils' 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. If so minded, it is within the Standards Committee's terms of reference to advise the Council on the adoption of revisions to the Code of Conduct so as to implement best practice.

### **10. 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

## Appendix

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.

Eleven formal complaints were logged as received between January and December 2021. For comparison, there were ten complaints between January and December 2020. 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 2021. It is not appropriate to discuss these matters at Committee and this analysis is provided only to illustrate the nature of the complaints and their resolution:

| <b>Date made</b> | <b>Subject Member (Parish includes Town)</b> | <b>Complainant public or Member?</b> | <b>Date received</b> | <b>Assessed</b> | <b>Result</b>              |
|------------------|--|--------------------------------------|----------------------|-----------------|----------------------------|
| 14/01/21         | Parish Member                                | Public                               | 14/01/21             | No              | Failed Initial Intake test |
| 14/01/21         | Parish Member                                | Public                               | 14/01/21             | No              | Failed Initial Intake test |



**Appendix**

| <b>Date made</b> | <b>Subject Member (Parish includes Town)</b> | <b>Complainant public or Member?</b> | <b>Date received</b> | <b>Assessed</b> | <b>Result</b>              |
|------------------|--|--------------------------------------|----------------------|-----------------|----------------------------|
| 21/04/21         | Parish Member                                | Public                               | 21/04/21             | No              | Failed Initial Intake test |
| 21/04/21         | Parish Member                                | Public                               | 21/04/21             | No              | Failed Initial Intake test |
| 21/04/21         | Parish Member                                | Public                               | 21/04/21             | No              | Failed Initial Intake test |
| 21/04/21         | Parish Member                                | Public                               | 21/04/21             | 10/05/21        | No further action          |
| 21/04/21         | Parish Member                                | Public                               | 21/04/21             | No              | Failed Initial Intake test |
| 18/05/21         | Parish Member                                | Public                               | 18/05/21             | 20/05/21        | No further action          |
| 20/05/21         | Parish Member                                | Member                               | 20/05/21             | 25/06/21        | No further action          |
| 04/06/21         | Parish Member                                | Public                               | 04/06/21             | 13/07/21        | No further action          |
| 18/11/21         | Parish Member                                | Public                               | 18/11/21             | 14/12/21        | Apology accepted           |
|                  |  |                                      |                      |                 |                            |

Members will also recall that at the time of the last Annual Report, an matter was still subject to investigation. The independent investigator recommended no further action and the parties were notified on 19 February 2021.

### 11. 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 statutory meetings which were serviced between 1 January 2021 and 31 December 2021:

- Annual Council-1
- Audit Committee-3
- Cabinet-10
- Cleaner and Greener Advisory Committee-4

- Council-4
- Development and Conservation Advisory Committee-4
- Development Control Committee-16
- Finance and Investment Advisory Committee-5
- Governance Committee-1
- Health Liaison Board-3
- Housing and Health Advisory Committee-5
- Improvement and Innovation Advisory Committee-4
- Licensing Committee-5
- Licensing Hearing-2
- People and Places 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.

### **12. Member Training and Development**

It should be noted that certain compulsory Licensing and Planning training is provided to relevant Members on a regular basis. Upon election all Members are always provided with induction training. Regrettably, during 2021 training was hindered by the global Covid-19 pandemic. However, a full suite of training will be available to Members during 2022 across a wide range of areas relevant to Council business.

### **13. GDPR**

On 25 May 2018 the General Data Protection Regulation came into force. The Data Protection Act 1998 was replaced by the Data Protection Act 2018, giving individuals greater rights, protections and freedoms. During 2021 these rights were well protected and there was not an influx of work due to the relatively new provisions.

It is, however, essential to remember that the Council must be ready to honour the various rights enshrined in GDPR, 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 are 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.

### **14. 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. It is possible report that unusually there were applications to carry out surveillance of the sort which requires RIPA authorisation during the year and that these were duly reported to the Investigatory Powers Commissioner's Office.

### **15. 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. The Monitoring Officer has every confidence that Members act within the Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

During 2021, there is no doubt that the continuation of the global Covid-19 pandemic had significant impact upon the Council and its communities. The Police and Crime Commissioner elections and the Kent County Council elections took place together, the former having been delayed from the previous year.

Despite the necessary changes to meetings, the introduction of social distancing and various other changes to ways of working, there was no impact upon governance or standards of significant concern to the Monitoring Officer. Members embraced with enthusiasm the new arrangement of screens and broadcasting in the Council Chamber and Conference Room. In May 2021 the regulations no longer supported remote meetings and the Council adapted well to the need to be Covid-19 compliant while carrying out meetings in person. The Government is currently considering the future of remote access to meetings.

Members will also be aware of the significant legal challenge undertaken by the Council in respect of the Local Plan. This was a major piece of work with implications for the whole District, undertaken at a time when mere attendance in a court setting was not straightforward. This has been drawn to Members' attention elsewhere but in the opinion of the Monitoring Officer it is valuable to note the litigation.

## **Appendix**

As a Statutory Officer with specific duties and powers set out in the Constitution, the Monitoring Officer has a reactive enforcement role. Together with the Standards Committee 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 a very small number 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.

Members are asked to note this report which sets out the elements of good governance and demonstrates that robust procedures are in place to maintain ethical standards, identify problems and ensure that all are aware of appropriate channels to raise concerns.

**Martin Goodman**  
**Monitoring Officer**