

## West Devon Borough Council

### Monitoring Officer Report 1 April 2010 to 31 March 2011

#### Background

Under the Local Government and Housing Act 1989, all Councils have a duty to appoint a Monitoring Officer to ensure the lawfulness and fairness of Council decision-making.

The Monitoring Officer is responsible for advising the Council on the legality of its decisions, and on the conduct of Councillors under the Local Government Act 2000.

For the purpose of this report, the duties of the Monitoring Officer are broken down into three functions:

- Decision-making
- Conduct and Standards
- Constitution

#### Decision making

The Monitoring Officer is required to ensure the lawfulness and fairness of the Council's decision-making. To carry out this role, the Monitoring Officer monitors Council and Committee agenda providing a check on each report. Although the original aim was to monitor all agenda, this has not proved possible due to capacity. The Monitoring Officer therefore carries out the monitoring of agenda through a spot check system.

Under this duty the Monitoring Officer is also required by law to report to Council if she is of the opinion that a decision may be made which is likely to contravene the law or cause maladministration or injustice.

#### Agenda monitoring

Reports are checked against criteria based on the principles of clarity, fairness and lawfulness. The Monitoring Officer provides a report to the Chief Finance Officer and the author of the report indicating whether or not the report meets Monitoring Officer requirements and specifying any amendments that are required. Reports may fail to meet Monitoring Officer requirements for more than one reason. The following table shows the number of agenda monitored as against the number of agenda published:

	2008 - 09	2009 - 10	2010-11
Total Number of Agenda	32	38	37
Total Number of Agenda monitored	20	20	23
Percentage of Agenda monitored	64%	53%	62%

The agenda monitored included ordinary meetings and special/extraordinary meetings.

The number of instances where reports have failed to meet the Monitoring Officer requirements are set out in the table below, together with the reason for that failure:

Reason	2008/09	2009/10	2010/11
Recommendation incorrect or unclear	5	2	1
Purpose of report not stated	4	0	0
Wrong Committee	1	1	0
Financial/risk management implications not stated	4	0	1
Legal powers not specified (or incorrect)	7	4	6
Legal implications not fully stated	1	3	4
Report unclear	2	1	1
Documents missing	0	0	0
Missing Equality implications	5	2	0
Information report	0	0	2
Part II exemption not justified/ public interest test unclear	2	2	4
Incorrect delegation	4	3	3
Minor amendments	5	4	3
<b>Total</b>	<b>40</b>	<b>22</b>	<b>25</b>

More reports have been monitored than the previous year and the overall position is similar to the previous year. This is encouraging as this year has seen the introduction of a new joint report template with South Hams and West Devon with the necessary changes that the change incurred.

Consequently, the related guidance on Report Writing has been updated and is readily available on the Council's intranet for all report writers to consult. There has also been an increase in the number of officers making early contact with the Monitoring Officer when writing a report so that advice can be given at an early stage.

### **Report on contraventions of Law**

None made.

## **Conduct and Standards**

Every Council must have a Standards Committee and every councillor (including co-opted members and parish councillors) must comply with the Code of Conduct.

There are a number of functions the Monitoring Officer is required to perform within this area:

### **Support to the Standards Committee**

The Monitoring Officer is the Lead Officer for the Standards Committee assisting the Committee in its role of promoting and maintaining high standards of the conduct of councillors. In addition, the Monitoring Officer maintains regular contact with the Chairman of this Committee. There is some overlap with these functions with the matters reported in the Annual Report (see separate item on the agenda).

The Local Assessment rules require three Standards subcommittees:

- **The Assessment sub-committee** – deals with the initial assessment of standards complaints and decides whether or not to refer the complaint for investigation or other action;

- **The Review sub-committee** (made up of different members to the Assessment Sub-committee) - deals with a request from the Complainant for a review of the initial decision of No Further Action.
- **Hearing Sub-committee** - follows an investigation and receives Investigating Officer reports and determines whether the Code has been broken, and if so what (if any) sanctions should be imposed.

The full Standards Committee has met three times this year. In addition the Assessment Sub-committee and Review Sub-committee met several times to consider complaints received against borough or parish/town councils. These are detailed in the accompanying Annual Report on the Standards Committee.

### **Receiving Investigating Officer reports and conducting investigations**

The Monitoring Officer must carry out investigations (or appoint an Investigating Officer to act on her behalf) into matters which have been referred for local investigation by the Assessment Sub-committee or the Review Sub-committee.

There have been four referrals for investigation, one of which is still ongoing. In two cases the Investigating Officer found that the Code had not been broken and the decision was upheld by the Standards Committee. In the final case the matter was referred to Standards for England for investigation. The Standards for England Investigating Officer found that there was no breach, which was upheld by the Standards Committee.

### **Maintaining registers of interests and gifts and hospitality**

The Monitoring Officer is required to maintain Registers of Interest for Council members, parish councillors and also the register of gifts and hospitality. These registers are updated as and when new interests or gifts/hospitality are notified to the Monitoring Officer.

The Monitoring Officer sends reminders on maintaining up-to-date Registers to all Borough Council and Standards Committee members and all Parish Clerks in May/June and in November/December each year.

### **Annual and Quarterly Returns to Standards for England**

Due to the imminent changes to the Standards framework, these are now no longer required by Standards for England.

## **Providing advice on standards matters**

The Monitoring Officer is statutorily required to provide advice to Parish Councils as well as the Borough Council on all standards matters. The Monitoring Officer has provided advice by personal appointment, telephone and email/letter on a wide range of standard matters, primarily related to declaring interests and the interpretation of the Code of Conduct.

## **Training**

The Monitoring Officer is required to support the Standards Committee in its duty regarding standards training for both borough councillors, co-opted members and parish/town councillors.

A Schedule of the standards training for the year 2010/11 is shown below:

<b>Date</b>	<b>Training provided for:</b>	<b>Training</b>	<b>Number attending</b>
22.09.10	Standards Committee	Joint training with SHDC Standards Committee	5 West Devon Standards Committee members
24.02.11	Mary Tavy Parish Council	Following other Action direction to Monitoring Officer	Parish Council
05.03.11	Standards Committee	Localism Bill	West Devon Borough Council Standards Committee

Specific Parish Council training was not carried out during this year as comprehensive training had been carried out in June 2009. All training was carried out in-house by the Monitoring Officer and/or Deputy Monitoring Officer with support from the DAPC for the Parish training in February.

## **Investigations of Officers misconduct**

The Monitoring Officer is required to keep the **Whistleblowing Policy** under review, advise on policy and procedure and maintain a record of concerns raised and their outcomes. This Policy is due for a full review during 2010. No concerns have been notified to the Monitoring Officer under this Policy this year.

## **Constitution**

Every Council has to have a Constitution saying how it works and setting out its governing rules. The Monitoring Officer must maintain the Constitution and provide advice and guidance. The responsibilities are as follows:

### **Review of the Constitution**

As part of this duty, the Monitoring Officer carries out an annual review of the Constitution and proposes any amendments to Council in time for the Council to be able to adopt the revised Constitution at its Annual Meeting in May.

A review of the Constitution was carried out this year and amendments made, and the Constitution 2010 was adopted at the Annual Meeting. A full review of the Constitution is planned for 2010/11.

### **Provision of advice**

The Monitoring Officer may provide advice on any aspect of the Constitution, but the most frequently asked questions tend to relate to delegation and general powers. These queries are often linked to the monitoring of agenda.

### **Rules within the Constitution**

The Constitution contains a set of rules by which the Council operates, such as procedure at council meetings, financial rules and contract procedure rules.

Under these rules, the Monitoring Officer has a number of duties shared with the Chief Executive (Council Procedure Rules) and with the Section 151 Officer (Financial Procedure Rules).

The Monitoring Officer also has specific duties under the Contract Procedure Rules as follows:

### **Exemptions from the Contract Procedure Rules**

For contracts with an estimated value of less than £50,000 the Monitoring Officer can grant exemptions (in consultation with the S151 Officer) from the contract procedure rules. The exemptions applied for tend to be to obtain fewer quotes/tenders than the number set out in the rules, or for appointing specialists. These Rules are due to be reviewed during 2010/11 and it is planned to provide guidance/training on the revised rules.

This year the Monitoring Officer received 15 applications for exemptions from the Rules (compared with 5 and 11 respectively for the two previous years)

and these were all granted. The increase may be a result of increased awareness of the Procedure Rules by officers.

### **Investigations**

The Monitoring Officer is required to carry out investigations where there has been breach in the Contract Procedure Rules (usually due to a fault in the tendering processes).

One investigation has been carried out this year (the same as the previous year) in relation to one tender package being received out of time.

**Catherine Bowen  
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July 2011**