

West Devon Borough Council

Monitoring Officer Report 1 April 2011 to 31 March 2012

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.

A joint report template has been implemented with South Hams and West Devon in order to facilitate report writing across the two councils. The guidance on Report Writing has been updated and is readily available on the Council's intranet for all report writers to consult. Further training will be given in June 2012 to Middle Managers on report writing.

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 five referrals for investigation, and the Final Investigating Officer's report is awaited on three of those matters. The Hearing Sub-committee found that there had been no breach of the Code in one of those matter and in the other that the Code had been broken and sanctions applied.

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.

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:

Date	Training provided for:	Training
10 May	Induction Training for new Council	The Code and Standards
23 June	One to one training	The Code of Conduct
6 July	Standards Committee	Handling complaints
25 January	Standards Committee	Hearings

Specific Parish Council training was not carried out during this year due to imminent changes to the Standards regime. All training was carried out in-house by the Deputy Monitoring Officer.

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. 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 2011 was adopted at the Annual Meeting.

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 and Internal Auditor) 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.

This year the Monitoring Officer received 5 applications for exemptions from the Rules (compared with 15) and these were all granted.

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).

No investigations were carried out this year.

Catherine Bowen
Deputy Monitoring Officer
West Devon Borough Council
June 2012