

**AN
ETHICAL
GOVERNANCE
AUDIT
OF
STEVENAGE BOROUGH COUNCIL**

**CHARTERED INSTITUTE
OF PUBLIC FINANCE
AND ACCOUNTANCY**

March 2003

PART 1

INTRODUCTION AND OVERALL SUMMARY

Introduction

The Chartered Institute of Public Finance and Accountancy has been commissioned to undertake an ethical governance audit of Stevenage Borough Council, including also a review of the role of the Monitoring Officer. We have undertaken the Audit in accordance with the wishes of the Standards Committee and the Council's Auditor.

The Audit has followed the proposals made to the last meeting of the Committee and has used the methodology developed by CIPFA's Better Governance Forum in conjunction with the Society of Local Authority Chief Executives. In addition it has drawn significantly on the indicators and contra-indicators devised by the IDeA's working party on ethical governance audits and the District Audit guidance for reviews of corporate governance.

The objective has been to be both constructive and collaborative, identifying areas of good practice, areas for development and drawing attention to over a hundred points which may address possible weaknesses or potential improvement.

The Audit has also been guided by the Local Authorities General Principles Order and the reports of the Committee on Standards in Public Life which dealt with local government. The Committee highlighted the low level of trust which its research showed to be felt by the public in local authority councillors and based many of its recommendations on a desire to use a new ethical framework to boost that low level of trust and respect for democracy and standards in public life generally. Some of our own comments have been based on that approach as well as a keenness to point out possible ways of improving the governance of, and ethical standards within, the Authority.

Overall Summary and Conclusions

The Chartered Institute of Public Finance and Accountancy has concluded that Stevenage Borough Council has a good standard of corporate governance, based on sound practices, procedures and systems, and that it can demonstrate also high standards of ethical conduct.

We have examined many of the Council's documents relevant to corporate and ethical governance and consider many to be of good quality. The practices for involving the public in council meetings, the setting out of rights and responsibilities of councillors and the public in relation to the Council, and the six Joint Liaison Committees, are examples of a Council which communicates well with its public and demonstrates openness and a willingness to provide information and dialogue.

The Council's Constitution contains many admirable aspects. However, we consider that, in comparison with some others and in view of recent changes in local authority practices which are still developing, it is in need of a fresh look. It needs to be made more user-friendly, briefer and less detailed, particularly in relation to the chief officer delegations and council procedures. The latter may benefit from a separation from the main document and a general review in the light of experience of operating new executive arrangements. The chief officer delegations could be briefer and more reflective of modern day approaches to the roles of officers and members; the introduction of member officer protocols, now often used successfully in other authorities, should assist with this and we have set out some headings for development in any document which may

emerge. The piecemeal addition of new statutory duties to already long lists of detailed delegations is not in keeping with current practices and the whole document would benefit from a more attractive, user-friendly format if it is to form the bedrock of integrating high ethical standards into the Council's operational framework. These comments were borne out by the results of the questionnaire circulated to members and officers.

The Council's Handbook on Members Conduct, written three years ago, contained useful material at that time, but is now completely outdated and in need of a thorough re-write.

References in the Constitution to secret ballots, external rights of veto in development control delegations and investigation of member conduct should be reviewed in the light of the General Principles Order and new legal requirements. These aspects are amplified in Part 2.

We have drawn attention to over a hundred points which the Standards Committee may wish to consider when it goes through the attachments to this short summary with the Monitoring Officer. A large number of Council agendas and reports have been reviewed; they are of a high standard, reflecting the integration of the ethical framework into the Council's systems and procedures. In this connection, the Standards Committee and its work with the Monitoring Officer, both for a period before the statutory requirement to introduce such a Committee and since, has demonstrated a commitment to promote and maintain high standards of conduct. If it is able to continue to develop its role, it could become a model for other authorities to follow and provide a strong contribution to fulfilling the objectives of the Committee on Standards in Public Life. We have suggested a large number of benchmarks to assist with this.

It is not proposed in this summary to regurgitate the rest of the results of the Audit as there are many points of detail which need to be read in full. The rest of the report is divided into four parts to facilitate analysis and any future work the Committee may wish to recommend as a result. The remaining parts are as follows:

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|--------|-----------------------------------------------|
| Part 2 | The Constitution and other documents examined |
| Part 3 | The role of the Monitoring Officer |
| Part 4 | Member and Officer Questionnaire |
| Part 5 | Benchmarks |

PART 2

THE CONSTITUTION AND OTHER DOCUMENTS EXAMINED

- 2.1 The purpose of the Constitution and the role of members are well set out at the beginning of the document, the latter in the form of a job description with emphasis being included on the role councillors have in maintaining high standards of conduct and ethics.

The rights and duties of councillors and the rights and responsibilities of citizens are also usefully contained in Article 3, although there is no indication as to whether these are contained in a more readily available format in, for example, public service outlets. The role of the council meeting is detailed in Article 4; at 4.02(t) the Council may wish to consider following the practice of other councils in authorising the Standards Committee to deal. Such matters are sometimes best left to a smaller body to examine in detail and forward any recommendations arising of a policy nature if appropriate.

The roles accorded to the Mayor in Article 5 indicate a recognition of a role for ethics and conduct issues to play a part in the activities of all members and not just those on the Standards Committee.

The distinction between the Scrutiny Overview Committee, Scrutiny and Review Panels, Changing Gear Implementation Panel, and Best Value and Fundamental Service Review Panels is carefully set out, providing a sound basis for the operation of their various functions; the success in practice of this is reviewed later in a variety of contexts, including the need to facilitate an opportunity for all councillors to perform a meaningful role.

A strong feature of the Council's fulfilment of the role of a fully effective ethical authority are the six Joint Local Committees. These help to build a bond of trust between the Council and the community, and demonstrate openness and willingness to provide good access to information and listening, dialogue and feedback.

2.2 **Article 13 – Decision making**

- 13.03(b) The definition of "key decisions" refers to amounts exceeding £50,000 for some specified decisions involving less than £250,000. The absence of any active consultation or monitoring at member level is arguably a weakness in terms of accountability and transparency for such relatively high amounts potentially involving matters of public sensitivity.

The Authority may wish to establish a monitoring or consultation mechanism for the categories specified to improve checks and balances.

Articles 13, 14 and 15, paragraphs 13.04, 13.05, 13.06, 14.01, 14.02, 15.01 and 15.02, are examples of statements which are largely superfluous or covered elsewhere or by law and needlessly add to the length and perceived complexity of the document. The same comment applies to Articles 6 to 10, which seem to be largely repeated in pages 55-63.

Article 16 – Suspension, interpretation and publication of the Constitution

16.03 To state this as a responsibility of the Chief Executive is old-fashioned and unrepresentative of the need for clear accountability and the need for a helpful statement of what happens in practice.

It could be replaced by more appropriate and practical delegation.

2.3 Table 2 The “responsibilities for council functions” are clearly set out and offer plenty of scope for meaningful involvement by all members. The role of the Changing Gear Implementation Panel is well judged and its role in best value, including the monitoring of best value improvement plans, should provide a sound foundation for carrying out best value reviews with satisfactory end results.

Provided the potential for over duplication is avoided, the only other areas for examination would appear to be initiation of topics, stage of initial member involvement and practical experience, possible over-reliance on officers, use of co-opted members and involvement on an ad hoc basis of third parties and organisations.

Table 3 The “responsibilities for executive functions” are similarly well set out. The Joint Local Committees are all interesting and fairly unusual adjuncts given their budgetary responsibilities and delegated powers, albeit almost entirely borough council functions.

2.4 Appendix A – Delegation to Officers

Although the delegations are comprehensively described in arguably laborious detail, they appear to be in need of a thorough overhaul in order to bring them into line with the more streamlined, clear-cut approach generally considered commensurate with the new executive arrangements.

The external auditor has drawn attention to the need for clear guidelines on the involvement of legal advice. References to this in the delegations to officers appear muddled and in need of careful review. For example, on page 68, the Head of Community Development or Head of Environmental Health can apply to court for an ASBO “in consultation with the Borough Solicitor” but the Head of Environmental Health can institute proceedings without any such reference. It may well be the case that purely routine cases can be dealt with differently from others but the delegation arrangements would benefit from a clearer, more comprehensive requirement than exists at present and the absence of any reference to the Borough Solicitor’s involvement on page 67 should be rectified. Similarly there is inconsistency in which matters the Borough Solicitor can instigate proceedings and those in which another officer has to authorise the Borough Solicitor to instigate proceedings, as on page 87.

The officer job titles have not been changed to reflect the up to date position. There are other inconsistencies and gaps, and signs that the original document has simply been supplemented piecemeal from time to time with little attention given to its overall cumulative role and effect. For example, some delegations to the Head of Engineering and Environmental Services are stated to be “in consultation with the Executive Councillor Environment and the Deputy Executive Environment” but the reasons why the particular matters should be referred to them as opposed to all the others listed throughout the

delegations are unclear, given also that the only other senior officer made the subject of such a one-off requirement is the Head of Housing. This aspect needs a review and replacement by a more generic requirement to consult on a carefully agreed wording to everyone's satisfaction and consistent with sensitive but expeditious use of delegated powers.

- Page 101 - the apparent unfettered delegation to officers to redesignate and create posts, albeit within budget, may need revision although it is understood that in practice such proposals do go to the Executive for approval.
- Page 114 - The dual responsibility for dealing with Ombudsman complaints is unusual and potentially problematic; there seems no reason for this activity to be singled out (in a way which could result in accountability difficulties) from all the other officer functions requiring liaison.
- Page 126 - Unlike the others, the delegations to the Head of Environmental Health start with a useful all-embracing description appropriate to an officer delegation but refer to the powers of an unspecified "committee", again in contrast to other delegations which make no reference to a committee. The apparent delegation on compulsory purchase without any reference to members is presumed to be inadequate wording rather than accepted practice but illustrates again the difficulties arising from being too detailed; if some matters are omitted from the start or not added as a result of new legislation, the exercise of such powers may be open to significant challenge.
- Page 128 - The particular delegation to the Director of Community Services/Head of Housing "jointly with the Borough Solicitor" again weakens the case for appropriate legal involvement in other matters, the implication being that it is unnecessary. Given that the conditions are generally a standardised routine, the selection of this matter for specific consultation with a member appears unjustifiable and potentially misleading, as well as being a largely professional and administrative matter needing only occasional reference to a member on one-off difficulties or sensitivities.
- Page 135 - The right of veto for an MP or MEP is not known to exist elsewhere and flies in the face of a number of aspects of the Local Authorities General Principles Order, particularly accountability. It is open to widespread misinterpretation and possible malpractice as well as false perceptions and should be deleted. The singling out of development control matters for this exceptional treatment is unwise given the sensitivities already surrounding such a sometimes controversial topic.

There appears to be no necessity for paragraph (4) in the majority of cases where such agreements are based entirely on standard conditions previously approved by members.

- Page 155 - The definition of "member" might usefully define a "co-opted member" and indicate what voting rights may or may not exist as only co-optees with voting rights are covered by the Code of Conduct for example.
- Page 157 - 2(iv) may benefit from revision as it offers scope in theory for meetings to start at times which most would consider very unreasonable and possibly leading to injustice.

- Page 158 - 4 may be inconsistent with 6(b)(vii) on page 159 and 4.02(b) on page 17 in relation to the appointment of a Leader of the Opposition, although it is understood in practice a problem has not arisen. Democratic institutions benefit from an active, defined and accepted role of an Opposition and this may warrant further consideration given the general lack of reference to them, notwithstanding the small numbers currently applicable, outside Council meetings.
- Page 162 - 11 – The Leader of the Opposition in Council meetings at this point is provided with fair opportunities; it is not specified where the power lies to “require” a debate and it is unclear whether the Leader’s update has to be circulated in advance; such a practice would aid debate.
- Page 165 - There is a limit of eight on the number of questions but no limit on petitions or deputations or speakers, and no requirement to submit accompanying statements in advance for circulation to members. However, questions have to be submitted in advance. Whilst current systems may work well enough, it may be useful to review these procedures particularly in the light of feedback comments from users. All three of these mechanisms provide support for the conclusion that the Council encourages participation and transparency and other elements comprising the basis of a sound ethical framework.
- Page 166 - The tightness of the deadlines prompts the question of whether all papers go to all members via email, or otherwise, and whether this is an agreed requirement which needs to be stated in the Constitution.
- Paper 167 - (b) prompts the question of whether this is the only way of getting an item on a committee agenda and, if so, whether a simpler method could not be tried. (j) may benefit from consideration of a limit on the length of speeches as applies in other instances in the Constitution.
- Pages 179 and 180 - these repeat the contents of pages 141 and 142 and seem to add unnecessary length to the document. Frequency and justification for utilisation may benefit from occasional monitoring by Standards Committee.
- Page 182 - 40a. may benefit from a requirement for the reasons to be stated by the chair at the meeting.
- Page 184 - 44 – voting by ballot is of questionable legal validity; it is definitely a breach of the Local Authorities General Principles Order and should be deleted. Under the Local Government Act 1972 all decisions should be made publicly unless Schedule 12A can be properly applied.
- Page 211 - Access to information procedure rules – these are equitable but 3 needs to be clear why the Executive apparently has the sole right to determine attendance and contribution to non-Executive meetings by Scrutiny Overview Committee and Scrutiny and Review Panel members. It needs to be questioned whether rights to speak by members are necessarily part of “access to information rights” for the public, and what procedures the Council has, or should have, to allow any member to speak at an internal body of which they are not a

member. These procedures would also benefit from a reference to decided case law on the “need to know” and the caveats associated with that and any corresponding rights of attendance. Such provisions should also indicate who decides the request and any right of appeal.

Page 212 - 8.1 – These accountability provisions need review as better practice may be to place this responsibility on the chief officer author of the report who is in a better position to know and will have suitable time in which to do so compared to the Borough Solicitor, who will only be likely to receive most reports nearer a deadline.

Page 218 - 17.3 – The question needs to be asked as to why this would not be better done at the next available Council meeting rather than incur delay.

18 – The unique reference to a “sufficient substitute” is unnecessary as all officer delegations include their subordinates in accordance with procedures they are responsible for prescribing within any determined by the Council.

2.5 **Whistleblowing Policy**

2.5.1 The Government’s desire in accordance with its consultation paper, the report of the Committee on Standards in Public Life and the detailed legislation in the Local Government Act 2000 and accompanying statutory instruments, is to improve standards of conduct in all aspects of local authority activity. This is sometimes referred to as “embedding the new ethical framework”. The announcement that a new compulsory Code of Conduct to form part of local government employees’ employment contracts is shortly to be the subject of public consultation brings into focus existing documents, policies and practices affecting employees. Concentration on member conduct has dominated the last two years, focused on the new compulsory Code of Conduct for Members.

2.5.2 The Council has in place all the customary appropriate procedures including a local code of conduct for employees, disciplinary and grievance procedures, and procedures for bullying and harassment, and recruitment and selection. The principal provisions in such documents are commonly found in those compiled by most authorities; the most recently introduced in the Borough Council are those relating to Whistleblowing under the Public Interest Disclosure Act 1998 and anti-fraud and corruption.

2.5.3 The Whistleblowing Policy utilises the provisions of the statute and provides an equitable balance of needs, thereby adequately contributing to the Borough Council’s implementation of the ethical standards framework. The policy approved contains all the basic ingredients usually to be found in such statements; the following items are put forward for consideration as possible additions which would progress the policy further:

- (i) provision for explanation as to why a matter will not be pursued (if that is the decision adopted) to the complainant
- (ii) responsibility specifically placed on chief officers to ensure staff awareness (including new recruits) and that training needs are met
- (iii) responsibility for review and monitoring placed on named officers with possible report to members at stated intervals; there is no indication in the policy that any such review or monitoring has yet occurred.

- (iv) proforma record sheet to be produced to assist with previous suggestion and a form for completion by the person instigating the procedure detailing information required
- (v) provision allowing for instigation of procedure by telephone or meeting
- (vi) clear statement that person instigating will have to provide sufficient grounds to enable matter to be taken forward
- (vii) addition to categories of actions covered of “misuse of Council resources” to correspond with provision in Member Code of Conduct and provision of any permitted use in approved document corresponding to the “requirements” referred to in the Member Code
- (viii) provision for the procedures for employees to be applied to whistleblowing allegations received from sources other than employees
- (ix) addition of telephone numbers and/or contact addresses for the officers listed in 5.1 (or subordinate senior officers if that reflects reality) and the external bodies referred to in 7.1, particularly for the most relevant – Public Concern At Work. Explain what PCAW is. This would demonstrate a commitment to making the procedure a valued part of the ethical framework
- (x) provision for those officers with a designated role in this and other conduct issues to meet regularly to analyse developments and maintain and promote high standards of conduct as part of the practical implementation of the anti-fraud, corruption and whistleblowing policy
- (xi) provision to be added to 3.3 to make it clear that malpractice may not always be taking place in the workplace itself and may be by contractors, but nevertheless intended to be covered by this policy
- (xii) further provision to be added to 3.3 to make it clear policy extends to client abuse as well as usual health and safety matters
- (xiii) clarify communication of policy to new employees and how the procedures are monitored and have been, or will be, amended in the light of experience
- (xiv) is the procedure sufficiently confidential to protect staff and complainants?
- (xv) does it provide appropriate information to management and members so that services can be improved?
- (xvi) are appropriate staff chosen and trained to handle complaints?

2.6 **Anti-fraud and Corruption Policy**

2.6.1 This is a summary in fairly general terms mostly of aspects covered in other places. Whilst the examples of fraud and corruption are helpful, clear definitions of both would improve the document which would also usefully be developed by expanding references to processes and principles followed in investigations, training provided to employees involved in internal control systems, and fraud and corruption awareness and investigation.

- 2.6.2 The procedures in 5.5, 5.6 and 5.7 are out of date, and take no account of decided case law or the ramifications of the new Member Code of Conduct and other aspects of the new ethical framework. For example, the specialised role of investigation leading to a report which might properly contain advice to the Standards Committee must be separate from the role of formal advice given to a hearing by the Committee if decided case law and new ethical framework procedures are to be properly followed and allegations of breaches of natural justice are to be successfully avoided.
- 2.6.3 Involvement of councillors as referred to in 5.7 needs to be reviewed in the light of paragraph 7 of the Member Code of Conduct as do all these paragraphs once the Section 66 Regulations are finally published and statutory guidance on them received from the Standards Board.
- 2.6.4 The joint working by officers indicated in 5 and 6 is a good feature of the policy in the context of an ethical governance audit.

2.7 **Complaints**

- 2.7.1 The Borough Council produced in January 2003 a corporate complaint policy and procedure plus helpful guidance for complainants and officers dealing with complaints. These are of a high standard. There is a comprehensive policy, clear procedural steps, use offered of information technology, an indication of the provision of support and training, and recognition of the need for services to adapt the main policy and procedures to their particular individual mode of operating.
- 2.7.2 Appropriate explanation is provided of the Local Government Ombudsman's role and contact details. No reference is made to the Standards Board for England and the procedure for dealing with complaints about members which are being received by the Board at a rate equivalent to 3,000 per annum compared to the 16,000 or so per annum received by the Ombudsman covering the wide range of local government services. There is a mention of remedies and a reference of these to one officer to decide in the interests of consistency. But there is no mention of any Council policy on remedies, which used to be a performance indicator requirement until comparatively recently. Such a policy might be developed by the officer in conjunction with the Standards Committee. There was no reference either to exactly how complaints were monitored, service improvements prompted by such monitoring, and any annual public report.
- 2.7.3 How complaints are dealt with is an essential part of promoting high ethical standards and conduct issues. It is suggested that the following questions are answered as part of a programme of continuous review and improvement on this topic:
- is the complaints system easy to access and well publicised?
 - are users of the system sampled for their comments?
 - are advertised time limits for action and keeping people informed of progress actually met?

2.8 **Contract Standing Orders**

- 2.8.1 Those adopted by local authorities contain many common features and some contain different amounts of detail and types of safeguards and obligations. Contracts of less than £50,000 are covered by the Council's Financial Regulations but not by Contract Standing Orders. This is not a low cut-off point compared with other authorities but may strengthen the need for regular monitoring of how the provisions are working compared with those used by other similar bodies.
- 2.8.2 There is no reference in the Contract Standing Orders to the provisions of Section 117 of the Local Government Act 1972 which governs officers of local authorities and any vested interest they may have in contracts. Given the attention devoted to this in the Member Code of Conduct it ought to figure in the Contract Standing Orders as well as the employee code of Conduct if the Authority wishes to be seen as embracing the ethical framework convincingly.
- 2.8.3 There is ample reference to the importance of seeking legal advice but the provisions on compiling select lists could be made more testing in the Authority's interests given the £50,000 limit referred to above, eg
- public advertisement in appropriate journals, etc
 - use of Council web site
 - detailed steps to be taken to verify financial viability and competence of applicants
 - minimum number of times each body listed is invited to tender
 - reason for adding names to be recorded
- 2.8.4 Subject to the above, the provisions laid down are all quite common place and should provide a robust basis for the Council's contract letting activities.

2.9 **Financial Regulations**

These regulations are excellent and contain full safeguards and requirements to support high standards in a financial context. The requirement for a declaration to be signed by relevant officers is a good way of promoting thorough knowledge and a responsible approach; it signifies the Council's determination to bring home the importance attached to the regulations. There are few sections which require consideration of change or supplementary paragraphs; one such might be "insurance" where references could be added to

- restrictions on correspondence or discussion by officers with the claimant or their representatives
- regular provision of information to officers about risks covered by the Council to assist them being checked and reviewed
- provision of ex gratia payments

2.10 **Codes of Conduct**

Protocols for members of the Planning and Development Committee

A clear and succinct document forming a helpful contribution to the ethical framework. Suggestions for consideration might include the provision to all members of a Council-approved statement with copies for distribution by, in particular, a local member to constituents who seek to lobby, etc. This would explain the member's role and why they might not be able to be as vociferous, etc in the matter as some would wish.

Also, consider guidance for any discussion of development control matters in political group meetings; acting as advocate or in a professional capacity for an applicant or objector or lobby group; the importance of the public's views being put in writing to the senior officer preparing the report to members.

The Standards Committee and all members, particularly those involved with development control decisions, will need to keep themselves informed about developing case law emerging from the Adjudication Panel and Standards Board web site guidance; the Standards Committee has a statutory duty to promote high standards of conduct against this background. Given the fairly significant proportion of complaints involving planning being received by the Standards Board, examination of other authorities' planning protocols and perhaps occasional meetings of Standards Chairs and Monitoring Officers, would be useful ways of keeping abreast of the need to adapt practices and amend the protocol(s) in accordance with developing guidance on this and other topics.

2.11 **Officer employment procedure rules**

- 2.11.1 As set out in the Constitution, these contain the basic responsibilities and mirror those generally found in authorities' core rules on recruitment, appointment and discipline. The more detailed procedures have not been received but could usefully be reviewed by the Standards Committee in the context of its overall role.
- 2.11.2 In commenting on the core outline responsibilities in the Constitution, the first paragraph has the customary requirement to include the partner of the persons listed as relatives but there is no requirement on an officer applying for such a post to disclose if their own partner is related to the persons listed, which is likely to be just as great a cause for concern (1(a)(i)).
- 2.11.3 Paragraph 2(a)(i) is another standard provision; the absence of any requirement to proceed similarly in the case of internal appointments renders the Authority vulnerable in the ethical context if there is more than one potential candidate internally. It might be helpful to define "proper officer" within this section of the Constitution. There is no right of appeal to members against dismissal for officers below Chief Officer level and, whilst there is nothing ethically wrong with that, the requirement in 10(c) to follow 9(c) might now create difficulties in relation to the code of conduct and equitable considerations concerning appeals; a better position might be that if members are not part of a full-scale formal appeals process then it might be better if they were not involved at all to avoid adverse points being taken.

2.12 **Report writing, and recent meeting agendas and reports**

- 2.12.1 All Standards Committee papers for the last two years have been examined together with recent papers to full Council, the Executive and some Committees. There are many good features and sound practices carried out. The key decisions and rolling programme, a generally clear, consistent and succinct style of report writing, notice of decisions taken format focussing on reasons, options and action, all support a sound decision making process. The other requirement, ie listing of background papers, legal and financial advice incorporated where relevant to assist compliance with the code of conduct, and infrequent but justified use of Part 2, all demonstrated sound corporate governance in the decision making process and a contribution to promoting respect for, and practice of, high ethical and efficiency standards.
- 2.12.2 The listing of committee members at the start followed by the practice of hearing interest declarations as the first item, as well as seating chart at the front of council meeting papers, are all good practices which either assist members to observe the Code or make meetings more transparent and accountable to any watching public or media.
- 2.12.3 The guidance on report writing is another positive feature. This could usefully be reviewed after a year's operation and might be supplemented by each report containing the name of the relevant portfolio holder alongside the list of author, lead and contact officer to aid accountability. The report writing guidance for officers might benefit from clear rules on circulation of drafts (to whom, when, etc) and an indication of what opportunity, if any, is provided for the portfolio holder to influence it within any existing or future protocols. Consideration could also be given to supporting the scrutiny process by the introduction of headings for (a) targets and objections; (b) approximate timescale for their being met and (c) target date for review of progress and successful achievement of objectives, etc. This helps to make overview and scrutiny a more comprehensive, all-embracing process and promote the discipline of delivery.
- 2.12.4 A further addition worthy of consideration is the process for placing items on agendas (how does a member request, who decides, can members write reports, etc). Similarly, the process for making items the subject of scrutiny could be reviewed against the need for transparency, accountability and fulfilling the objective of a meaningful role for all members. How the topics for scrutiny get selected and whether all members are systematically offered the chance to put forward one or more topics each year, are part and parcel of a system of open government in the new arrangements.
- 2.12.5 The Standards Committee has been kept properly informed of developments affecting the implementation of the ethical framework and has sought to influence them at a national level. There is a danger that some councils will not give them the headway and encouragement to carry out their statutory duties proactively and that Standards Committees will come to be seen as moribund bodies simply waiting for a complaint about a member to be referred to them. In Stevenage, however, there are indications to the contrary with the Committee seeking modest but useful additions to its role under Section 54(3) of the Local Government Act 2000; this should enable it to play a useful role in building in the ethical framework and lessen any prospect of Adjudication Panel recommendations for action under Section 80.

2.13 **Other Protocols**

- 2.13.1 The Constitution does not contain any other protocols but some topics, particularly on access to information and communications, are covered in other parts of the Constitution.
- 2.13.2 The most notable absence, however, is in relation to “member/officer protocols” now found in many authorities as a way of facilitating appropriate relations on most aspects of council business which commonly arise. Whilst they are often a written statement of current practice and convention, they seek to promote greater clarity and certainty. In particular, they usually help to ensure that members receive objective and impartial advice and that officers are protected from accusations of bias and any undue influence from members. The Standards Board has received more than three hundred complaints from officers about member “bullying” and the Audit Commission has commented at some length on this topic in the context of member/officer working relations in its publication on new ways of working for councillors following political restructuring.
- 2.13.3 Member/officer protocols regularly include guidance on the processes around officer reports, briefing meetings, drafting agendas, officer attendance at group meetings, political research assistants, correspondence issues, support services to members and party groups, changing meeting dates, communications by officers to members and vice versa and on behalf of the Council, involvement of local members in matters, political activity by officers, and conduct complaints by members and officers where Council protocols are alleged not to have been followed.
- 2.13.4 In the context of embedding the new ethical framework as part of a drive to promote the public’s perception of standards of conduct by councillors and officers, the initiation of such protocols by more councils seems inevitable.

2.14 **Other documents examined**

The following were received and reviewed, although mostly on the fringe of the principal purposes of this audit:

- Working with the Media – guidance for employees
- Chronicle
- Link
- Guide to Services
- Ward Members’ Map

It is worth stating that all were of a very high standard and demonstrated keenness to communicate openly and helpfully with the public and provide guidance for employees. They all make at least an indirect contribution to an ambition to promote high standards of conduct and a platform for countering some media publicity of a negative nature about councils, and councillor and officer behaviour. At least some of them could be utilised to publicise the role and work of the Standards Committee with that end in mind before testing public opinion on perceptions of trust and evaluating the results. This would test whether the introduction of the ethical framework has had any material effect and what more could be done.

PART 3

THE ROLE OF THE MONITORING OFFICER

The Monitoring Officer has several specific identifiable roles in an authority aiming for high standards in probity and corporate governance.

(a) **Maintaining the Constitution**

The introduction of the statutory ethical framework has created a need to consider the Monitoring Officer's role in relation to the democratic decision making process and a number of aspects of member services. The Council's Constitution is fundamental to a successful integration of the ethical framework and responsibility for maintaining and advising on it should be seen to fall to the Monitoring Officer. There is a sound case for attaching to that role's responsibilities linked functions in order to improve clear lines of accountability and the co-ordination of tasks which are bound up with its successful operation.

(b) **Ensuring lawfulness and fairness of decision making**

After consulting with the Head of Paid Service (currently the Chief Executive) and the Chief Finance Officer, the Monitoring Officer has to report to Council or Executive in relation to an executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness. Such a report has the effect of stopping the proposal or decision being implemented until the report has been considered by Council or Executive as appropriate.

(c) **Supporting the Standards Committee**

The Monitoring Officer has to contribute to the promotion of high standards of conduct through provision of support to the Standards Committee. There is evidence in the papers supplied that this has been accomplished to date very thoroughly and that the Committee is well on top of its task by taking an active interest in, and contribution to, national developments in the ethical framework implementation.

(d) **Receiving reports**

The Monitoring Officer has to receive, and act on, reports made by Standards Board Ethical Standards Officers and decisions of case tribunals.

(e) **Conducting investigations**

The Standards Committee will need to consider the need to avoid conflicts of interest in the Monitoring officer role once the Section 66 Regulations are published. It is clear from a European Court of Human Rights case (Reza v GMC, 1991) and Standards Board guidance that the investigation and formal advisory roles should be performed by different personnel. The expectation is that the Monitoring Officer will, in most cases, be the adviser rather than investigator but circumstances might dictate otherwise in some instances. There will also be occasions when the Monitoring Officer should play no part at all if they have been significantly involved in the past and the particular allegations revolve around such involvement. There is also likely to be a need to resolve which officers will be the note-

taker and liaison officers with the complainant and member complained about in order to avoid accusations of bias or maladministration. The choice of investigator, whether from within the same department as the Monitoring Officer or another, or from outside the Authority, plus a number of other issues will need to form part of a protocol on the investigation process to be approved by the Standards Committee once the Regulations are available in final form.

(f) **Proper Officer for access to information**

The Monitoring Officer is the officer best placed to oversee the need to ensure that Executive decisions, together with the reasons for those decisions, are legally sound, and that they and relevant officer reports and background papers are made publicly available as soon as possible.

(g) **Advising whether Cabinet decisions are made within the Budget and policy framework**

This task has to be performed by the Monitoring Officer but is facilitated if authors of reports are required to state at the beginning of the report specifically which parts of the relevant documents are being relied upon to conclude that they are within the framework. They are best placed to know; the Monitoring Officer's task, usually undertaken at short notice, is simply to verify that or not.

(h) **Providing advice**

The Monitoring Officer provides advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity, and budget and policy framework issues, to all councillors.

The need for impartial and independent advice, often in the face of political pressure, requires many attributes including analysis, resolution, consistency and steadfastness. Section 5(7) of the Local Government and Housing Act 1989 requires Monitoring Officers to appoint a deputy and to advise Council and colleagues of the person appointed even though they can only act in the Monitoring Officer's absence. Where a Monitoring Officer has a conflict of interest in an issue requiring their advice, it is good practice for them to find a reason to be absent so that the deputy can act.

(i) **Recent changes in statutory role**

Since 28 July 2001, the Local Government Act 2000 has removed the duty on Monitoring Officers to report on contraventions of statutory codes (ie primarily the Member Code of Conduct). The previous duty to report to Council on maladministration or injustice has been amended to apply where the Ombudsman has carried out an investigation.

(j) **Registers**

It is the responsibility of the Monitoring Officer under Section 81 of the Local Government Act 2000 to establish and maintain a register of interests of members and co-opted members. Monitoring Officers need to advise on this and ensure annual reminders, particularly for registering changes. The Monitoring Officer is also obliged to maintain a register of gifts and hospitality under paragraph 16 of the Model Code.

(k) **Training relating to allegations of member misconduct**

Changes in legislation and new regulations under Section 66 of the Local Government Act 2000 will be made this year governing the way in which Monitoring Officers handle this. Training by the Monitoring Officer for the Standards Committee on procedural matters will be needed in the “digestion period” prior to the new requirements taking effect. The Monitoring Officer will be the sole point of liaison with the Standards Board Ethical Standards Officers and will need to be acknowledged as the Authority’s responsible officer in all matters relating to actual or alleged member misconduct.

(l) **Executive Arrangements**

ODPM guidance states:

“Local authorities will need to recognise under executive arrangements the importance of the Monitoring Officer’s key roles of providing advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members of the authority.”

The Council’s documents adequately reflect this role, subject to consideration of (g) above.

The extended range of responsibilities for the Monitoring Officer means that the postholder needs to be fully aware of all the relevant matters in the Authority concerning the decision making process and to be in a position to give directions concerning them as rapidly as possible. The decision making process is likely to be at the heart of many complaints about member misconduct; the Monitoring officer will have an increasingly influential role, alongside the Standards Committee, in disseminating relevant information and advice to all members arising from decided cases and Standards Board guidance. Monitoring of matters relevant to ethical standards and promoting good practice will also come more to the forefront of this officer’s role.

PART 4

QUESTIONNAIRE SENT TO MEMBERS AND SENIOR OFFICERS

The use of the questionnaire is an important part of the Audit and was sent to the Council for amendment ten days before the Council despatched it on 10 February. Encouraging people to complete questionnaires in all walks of life is often difficult, probably because of the proliferation of the questionnaire technique in recent years. To date, some ten percent of those despatched have been returned. A usual rate for this type of CIPFA questionnaire is thirty to forty percent, which in itself is an above average return rate for questionnaires generally. Thoughtfulness given to answers is usually more valuable than quantity received.

Question 1

Nearly everybody felt that the Council practised high ethical standards, actively encouraged the promotion of high standards of conduct by members and officers, and was satisfied with the information and training received relating to ethical standards.

There were positive comments about the role of the Standards Committee and the officers in this regard as well as the political group, training received and the transparency approach adopted by the Council.

On the negative side, reference was made to a perceived lack of awareness of the ethical standards framework by middle management, excessive involvement by members in officers' operational work and member bullying.

There was felt to be a need for regular "refresher" training to keep up to date with developments and a preference was expressed for externally sourced training on this topic as sole reliance on internal training was felt to simply "reinforce existing culture".

Question 2

Whilst the Standards Committee has a statutory responsibility to promote, maintain and monitor high ethical standards, nearly everyone recognised that in practice it was a responsibility of all members and officers and that it was particularly important in councils in which almost all members belong to a majority group.

Question 3

In contrast to the position portrayed in nation-wide opinion polls, all respondents felt that the public trusted the Authority's councillors and reasons given for this included:

- good track record of service delivery and financial management
- councillor involvement in community activities
- stable, proactive membership

Suggestions for improving the level of trust included:

- more consultation, financial openness and admission of mistakes
- more information to the community about what councillors can, and can't, do
- publication of the Council's "framework" in a more comprehensive format

These suggestions were tempered by a note of caution that overactive promotion can have an opposite effect.

Question 4

Nearly everyone was positive about the availability to staff and members of full, accurate and clear policies, guidance and advice on ethical issues and procedures, the Council's willingness to act on criticism, and the forward plan.

There was less agreement on the ability of non-executive members to hold the Executive to account and to input to policy development in various ways, including overview and scrutiny. This mirrors the national scene where surveys such as that carried out by the Local Government Chronicle a few weeks ago reveal a substantial majority expressing dissatisfaction with the overview and scrutiny process.

All but one of the respondents were critical of the Council's Constitution and related documents. Comments included:

- room for improvement in presentation and content
- gobbledegook
- I rarely use them
- far too complicated
- too wordy
- some errors in it
- no-one is interested in it

Questions 5, 6 and 7

Replies were generally positive although one member felt that "embarrassing stuff gets put in part 2 without good reason" and another wanted more opportunity to question officers openly and a better role overall for backbenchers.

Questions 8, 9 and 10

Slightly different questions were directed at members and officers but the overall outcome was similar. Members appeared reasonably satisfied with training and development received and some pointed to specific examples of how the Authority had corrected a probity matter that needed to be put right and gave examples of how the Authority had changed something in response to internal or external comment.

Officers felt that most staff were fairly familiar with the Whistleblowing Policy, that sufficient staff training was provided on issues relating to ethical standards and that the Authority had clear lines of accountability and responsibility.

There was a member view that sometimes declarations of interest were not always clear. Whilst some respondents did not feel that the new ethical framework had so far produced any particular advantages or disadvantages, others felt it was beginning to move into greater prominence, heightened awareness of the subject and placed more emphasis by the Council on transparency.

CIPFA would like to record its appreciation to the members and officers who took the time and trouble to respond and assist in progressing the Audit for the Authority.

PART 5

BENCHMARKING

The construction of some initial benchmarks vis-à-vis the integration of the new ethical framework and practices related to it will centre on

- (a) the core statutory role of the Standards Committee and the Monitoring Officer; and
- (b) the extent to which the Committee, in conjunction with the Monitoring Officer, performs its statutory roles to promote and maintain high standards of member conduct, to monitor, and to arrange training, etc. There is sometimes a fine line between what the Committee can do under Section 54(a) (which is limited to member conduct albeit that many broad issues relating to standards of conduct can legitimately be claimed to encompass members) and under Section 54(c) where it can only undertake additional duties beyond those relevant to members with the agreement of Council.

Under (a) above the Committee could use benchmarks covering

- (i) number of complaints made directly to the Monitoring Officer relating to member conduct and success rate in resolving them
- (ii) number of complaints made to Standards Board relating to member conduct and proportions referred to Adjudication Panel or Monitoring Officer/Standards Committee or classified as warranting no further action
- (iii) outcomes of the above
- (iv) interventions by the Monitoring Officer relating to ethical standards
- (v) spontaneous consultations with Monitoring Officer relating to ethical standards

Under (b) above, there is considerable potential benefit for the performance of a responsible role in developing the Council into a leading organisation on ethical practice and the development of high standards. Examples might include

- (i) information and advice disseminated by Committee to members and officers and encouragement of dialogue on ethics issues
- (ii) changes to practices and procedures prompted by the Committee
- (iii) meetings between the three principal statutory officers to discuss ethics matters
- (iv) formation of a network of officers in departments responsible for assisting the Monitoring Officer role
- (v) formation of a network of nearby Monitoring Officers and Standards Committee Chairs to promote good practice and influence national developments

- (vi) creation of a new code of ethics for both members and officers, regularly amended to reflect changing circumstances, and referred to as a matter of course during conduct of the Council's business
- (vii) monitoring matters related to ethics, eg whistleblowing, introduction and maintenance of new Officer Code of Conduct, monitoring of complaints systems and co-ordinating suggestions for improvements
- (viii) use as a respected ad hoc reference point by Council and Executive for a neutral, independent view on matters connected with the Committee's duties
- (ix) training sessions organised and feedback reviewed
- (x) monitoring interest declarations in meetings, registers and allowances claims and recommending changes
- (xi) monitoring practices relating to background papers, exclusion of press and public, deletion of outmoded practices and suggestions for new ones in a preventative role
- (xii) review of recent difficult ethical situations and evidence of change to reflect experience gained
- (xiii) review of practices re dispensations and confidentiality
- (xiv) review of practices and initiatives introduced by each chief officer to improve ethical standards
- (xv) monitor practices of stakeholders, external suppliers and service providers relevant to ethical standards in their interaction with the Authority and efforts made to demonstrate to them the Authority's priority attached to high standards of conduct
- (xvi) evidence that the general body of staff have a reasonable knowledge of what the Monitoring Officer and Standards Committee do, how to seek advice on any matter relating to ethical conduct and what to do if they are aware of unethical conduct in the Council's operations
- (xvii) promotion of the positive aspects of the Committee's work and the Authority's efforts to maintain high ethical standards in the wider community with the object of increasing trust in the Council and its elected representatives.

Not all of the above will necessarily fit with the Committee's own objectives and the Authority's priorities and culture but most should be capable of adaptation to suitable benchmarks for developing the role of ethical standards in the Authority's operations and systems.