

ANNUAL REPORT OF THE MONITORING OFFICER

1.0 INTRODUCTION

This is the first Annual Report of the Monitoring Officer and its purpose is not only to provide an overview of the work of the Monitoring Officer in the past eighteen months but also to identify and promote examples of best practice and to provide an opportunity to review and learn from experience. This report therefore, sets out the Monitoring Officer's statutory responsibilities; summarises how these duties have been discharged during 2004/05 in accordance with the Council's Constitution, legislative requirements and relevant Government guidance and draws attention to those issues which will require attention in the year ahead.

2.0 RECOMMENDATIONS

2.1 *That the Standards Committee:*

1. Notes the Monitoring Officer's Annual Report.
2. Comments on any matters set out in the report.

3.0 THE MONITORING OFFICER PROTOCOL

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, promoting good governance and high ethical standards. A schedule summarising the Monitoring Officer's functions is set out in paragraph 3.1 below. The Monitoring Officer has a Protocol which provides guidance for Members, Officers, partners and others on how the duties of the Monitoring Officer will be carried out.

The Protocol is published in the Constitution and is on the Council's website.

3.1 **Summary of Monitoring Officer Functions**

Description	Source	How
1. Report on or likely contraventions of any enactment or rule of law.	Sections 5 & 5A, Local Government and Housing Act 1989	Paragraph 5 of this report.
2. Report on any maladministration or injustice where the Ombudsman has carried out an investigation.	Sections 5 & 5A, Local Government and Housing Act 1989	Paragraph 5.1 of this report.
3. Appoint a Deputy.	Section 5, Local Government and Housing Act 1989	The Head of Corporate Business and Court and Community (Legal Services) are the appointed deputies.
4. Report on sufficiency of resources.	Section 5, Local Government and Housing Act 1989	Action for 2005/06
5. Establish and maintain the Register of Members' interests, and the register of gifts and hospitality.	Section 81, Local Government Act 2000	Paragraph 7.1 of this report.
6. Receive copies of certificates under the Local Authorities (Contracts) Regulations 1997.	Local Authorities (Contracts) Regulations 1997	Procedures to be reviewed 2005/06.
7. Maintain, monitor and review the Constitution.	The Constitution	Paragraph 4
8. Support the Standards Committee. Promote and maintain high standards of conduct.	Part III, Local Government Act 2000	Paragraph 7.0, of this report.
9. Receive reports from Ethical Standards Officers and case tribunals.	Part III, Local Government Act 2000	Paragraph 7.8 of this report.
10. Consulting with, supporting and advising the Head of Paid Service and Chief Finance Officer and on issues of lawfulness and probity.	The Constitution, Article 13	Currently carried out through ad hoc meetings.
11. Advising the Council and Executive and Committees on issues of lawfulness and probity.	The Constitution	Paragraph 5.0 of this report.

Description	Source	How
12. Conduct investigations into misconduct	Section 66, Local Government Act 2000	Paragraphs 7.7, 7.8 of this report.
13. Proper Officer for Access to information	The Constitution	Paragraph 11.0 of this report.
14. Advise on whether executive decisions are within the Budget & Policy Framework.	The Constitution	Paragraph 5.0 of this report.
15. Provide advice on vices issues, maladministration, financial impropriety, probity, Budget and Policy Framework issues to all members.	The Constitution	Paragraphs 5.0 and 8.0 of this report.
16. Issuing Dispensations to Members regarding prejudicial interests	Standards Committee	Paragraph 7.0 of this report.
17. Primary Qualified Person for considering whether certain information is exempt from disclosure under the Freedom of Information Act.	Section 36, Freedom of Information Act 2000	Paragraph 8.0 of this report.

4.0 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 made the decisions are accountable to local people. The Monitoring Officer is the “guardian” of the Council’s Constitution and is responsible for ensuring that the Constitution operates efficiently, is properly maintained and is adhered to.

4.1 *Constitutional Review and Revision*

The Constitution was approved by Council on 21 November 2001. A significant review of the Constitution was undertaken during 2002/03 under the supervision of the Democratic Arrangements Forum. The Constitution was reconsidered in May 2003 by Full Council in light of recommendations from the Democratic Arrangements Forum.

Since June 2004, a number of changes in legislation and regulations have come into force which have necessitated further changes to the Constitution. These were made by Full Council in September 2004.

4.2 **Codes of Practice**

An updated version of the Protocol for Member/Officer Relations was agreed by Full Council on 29 June 2004. Guidance for Members and Officers representing the Council on Outside Bodies was issued in August 2005.

4.3 **Fitness for Purpose**

The Constitution's principles, aims and objectives are set out in Article 1. The Constitution commits the Council to provide clear leadership to the community in partnership with citizens, stakeholders, businesses and other organisations to support the active involvement in its decision making processes.

It seeks to achieve the following broad objectives:

- Clear decision-making
- Transparency about who makes decisions
- Inclusive decision-making
- A focus for community leadership
- Effective and efficient use of resources

It further aims to:

1. to enable the Council to provide clear Leadership to the community in partnership with citizens, businesses and other organisations;
2. to support the active involvement of citizens in the process of local authority decision-making;
3. to help Councillors represent their constituents more effectively;
4. to enable decisions to be taken efficiently and effectively;
5. to create a powerful and effective means of holding decision-makers to public account;
6. to ensure that on-one will review or scrutinise a decision in which they were directly involved;
7. to ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions; and
8. to provide a means of improving the delivery of services to the community.

5.0 **LAWFULNESS AND MALADMINISTRATION**

The Monitoring Officer is the Council's lead adviser on issues of lawfulness and the Council's powers and is lead adviser 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 also has a duty to ensure that Executive

decisions and the reasons for these decisions are made publicly available. This is done by Officers from Democratic Services through the Council's website:

www.bury.gov.uk then View council agendas, minutes and meetings

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 she must report to the Full Council or where appropriate the Executive after first consulting with the Head of Paid Service and Chief Finance 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 have ensured that the power to report potentially unlawful decision making has not, to date, been used.

5.1 *Reports from the Local Government Ombudsman*

Reports from the Local Government Ombudsman regarding service delivery failures which amount to maladministration are rarely received. If received these are reported to the Standards Committee and/or the Council along with proposals for remedial action. There were two reports of findings of maladministration causing injustice by the Local Government Ombudsman in April 2004.

The first case involved the Inspection and Registration Service for adults for which the Council is no longer responsible. The complainant felt that the Council had failed to investigate and determine his complaint. The Ombudsman acknowledged that at the time of the investigation complaint problems had arisen because of staff shortages (in the former Department of Personal and Community Services) and felt that the handling of the complaint led to some injustice caused by maladministration. The Council made a compensatory payment to the complainant. The events reported in this case took place prior to 2000. The administrative and organisational arrangements of the Council had changed significantly in the intervening period and in consequence there were no significant lessons to be learnt from the case.

The second case concerned a planning and drainage issue arising from the Council granting planning permission for a residential development. The Ombudsman considered that an error had occurred in the granting of permission. The Council made a compensatory payment to the complainant for time/trouble in bringing the complaint. (The Council believes it has since achieved a satisfactory long-term outcome in this case.)

6.0 GOOD GOVERNANCE

The Monitoring Officer has a pro-active role in ensuring good practice, procedures and governance. This involves promoting networking, collaboration and joined-up working practices and decision making as well as ensuring standing orders, codes of practice and procedures are kept under review and up to date. Collaborative working entails regular liaison with other monitoring officers and statutory officers as well as working in partnership with

other departments to develop and disseminate policies and procedures. Work carried out to develop and refine the Statement of Internal control represents a good current example of collaborative working. It further involves providing appropriate procedural notes, guidance, developing and implementing protocols, providing briefings and enabling effective support to Councillors in their different roles, including Member training.

6.1 ***Good Governance and Corporate Compliance***

The Annual Audit and Inspection letter for 2004 found that the Council's arrangements for standards of financial conduct and the prevention and detection of fraud and corruption continue to accord with sound practice. Increased awareness of governance and anti-fraud arrangements has been achieved with the publication/publicity associated with the "Anti-Fraud and Corruption Strategy."

7.0 **THE ETHICAL FRAMEWORK AND SUPPORT TO THE STANDARDS COMMITTEE**

As lead officer for the Standards Committee and the ethical framework the Monitoring Officer has a key role in facilitating and promoting the Council's ethical framework and in promoting and maintaining high standards of conduct within the Authority. As well as policy development and implementation, this also involves advising Members and Officers on propriety issues, considering applications for dispensations (as delegated by the Standards Committee) and investigating breaches of the Code of Conduct. The maintenance of the Registers of interests and hospitality is also the responsibility of the Monitoring Officer.

Examples of the work of the Standards Committee over the last year include:-

Input into the Draft protocol for Member and Officer relations

Co-ordinating responses to the ODPM on the consultation on the Code of Conduct for Employees and review of restrictions on political activities of employees

Co-ordinating the response to the Consultation by the Standards Board on the Code of Conduct

Provision of Standards training/bulletins

Review of the Council's Whistle Blowing Policy

7.1 ***Maintaining Register of Member Interests***

The Monitoring Officer is responsible for establishing and maintaining a Register of Members interests. This is held within Democratic Services. The register is updated following the Council's AGM each year and periodically thereafter as Members advise of changes to their entry on the register.

7.2 Code of Conduct for Employees

The Code of Conduct for Employees is incorporated into the Council's Constitution. The Office of the Deputy Prime Minister has recently carried out consultation on a proposed national Code of Conduct for Council Employees. The Standards Committee responded to this consultation on behalf of the Council.

7.3 Overseeing Registration of Officer Interests

All Council employees have a duty to maintain conduct of the highest standards to help to build the public confidence in the Council's integrity. Every employee has a duty under section 117 of the Local Government Act 1972 to make a written declaration of any existing or proposed oral or written contract with the Council in which they have a direct or indirect financial interest. Failure to comply is a criminal offence. This information is collected by Managers.

7.4 Overseeing Registration by Employees of Gifts and Hospitality

Each directorate is responsible for keeping an up-to-date record of any favours, gifts and hospitality offered and/or received. Failure to comply with the Code of Conduct may be a breach of conditions of employment and could form the basis of disciplinary proceedings. Procedures and systems to ensure this is done systematically and in a consistent manner across the Council are being developed in partnership with Corporate Human Resources (as part of a programme of work being done in preparation for the proposed implementation of a national Employees Code of Conduct). The work programme will also take account of recommendations made by the Audit Commission to improve accessibility of the Code.

7.5 Whistle Blowing

A review of the utilisation and effectiveness of the Whistle Blowing policy was carried out in 2005. The review has resulted in a revised policy to provide clear guidance for members of staff covering both policy and procedure. It places a clear duty on all managers to apply the Whistle Blowing Policy fairly and consistently within their area of responsibility and describes their role in so doing. The Policy is included in the Council's Anti-Fraud and Corruption Strategy and on the Council's Intranet and was widely publicised by leaflets, messages sent out with wage slips and messages in the Council's internal newsletter.

7.6 The Standards Board for England, Standard Board Complaints and Determinations

The Monitoring Officer is responsible for establishing and maintaining an effective working relationship with the Standards Board for England. In addition the Monitoring Officer is responsible for receiving reports from Ethical Standards Officers regarding investigations carried out by the Standards Board into the conduct of Councillors, the conduct of local investigations and local hearings.

Overall, 5 complaints regarding Councillors have been made to the Standards Board. Three of these cases were found not to constitute breaches of the Code at the assessment stage and were not pursued. Two matters have been referred to the Council for local investigation or determination by the Standards Board in 2004/05. One case was heard on 28 July 2004 and another has yet to be determined.

7.7 *Local Investigation and Determination for Complaints regarding the Conduct of Members*

The Standards Committee has agreed revised procedures for local investigations and the conduct hearings to take account of new powers to refer complaints about the conduct to Members back to the Council for investigations. The Monitoring Officer may delegate this function under the regulations. A new procedure for Local Investigation of Allegations was approved by the Standards Committee on 1 March 2005.

Under the procedure, the Monitoring Officer may appoint such Officers as she considers appropriate to carry out investigations into the conduct of Councillors and Co-opted Members of the Council. Such Officers may be the Deputy Monitoring Officers, Monitoring Officers from other AGM authorities (under reciprocal arrangements) or officers from other investigating bodies. The Monitoring Officer may also require any Council officer to provide a statement, answer questions or supply information to assist in the conduct of an investigation and require Councillors and Co-opted members to provide such statement, answer questions or supply information.

8.0 CORPORATE COMPLIANCE WITH LEGISLATION

Monitoring compliance with legislation is carried out by reviewing each Directorate Service Plan, inputting into the business of the Council's Management Board and input by the Monitoring Officer/Legal Services into all reports with legal implications.

Monitoring the implementation of legislation is also done effectively through reviews of performance, especially where this is linked to achieving key service deliverables and performance indicators.

There has been increasing evidence of inter-directorate working in implementing new legislation. Examples include the work of the Corporate Diversity Group to achieve Level 2 of the Diversity Standard and ensure that the Council complies with equalities legislation; the Council's Licensing Policy and the Freedom of Information Act Working Group, which ensures that the Council complies with the requirements of the Freedom of Information Act 2000. This also established a process by which the Monitoring Officer will determine whether information is exempt from disclosure. Additionally, new legislation is implemented via inter-agency groupings such as the Bury Community Safety Partnership.

9.0 MEMBER TRAINING AND DEVELOPMENT

- 9.1 The overall direction and development of the Member Training and Development programme is the responsibility of the Member Training Working Group, which undertakes to assess its accessibility and effectiveness in achieving Council objectives.

New Members induction took place following the election in June 2004

The Members Training programme has been vital in the promotion of good corporate governance and compliance. The programme focuses on training in areas where there is recognised corporate or individual need to facilitate effective member performance in their roles as decision makers, regulators, scrutinisers and community representatives. Four training dates are planned into the diary to deliver afternoon and evening sessions, to ensure maximum attendance. The in-house programme has incorporated the "Excellence through Leadership" programme developed with the IDeA and North West Employers Organisation. The Council is currently seeking to achieve the North West Charter on Elected Member Development (accredited by North West Employers and Municipal Journal) and was assessed on 14 September 2005.

To date the following training has been offered to Members in relation to improving corporate governance:

- Being an Effective Councillor
- Community Leadership
- Evaluation and Monitoring
- Policy Development
- Developing Personal Leadership Capacity
- Imagine Bury – Turning Ambition into Reality
- Computer Workshops
- Ethics, Conduct and Community Leadership

Additionally, Members attend external training and conferences (for example LGA and Standards Board).

The Monitoring Officer is responsible to the Standards Committee for provision of training to Councillors on ethical issues. In 2004/05 three Member training sessions on Standards were held and feedback from Members on these sessions has been largely positive.

9.2 *Members' Bulletin*

Members receive bulletins on Standards issues on a quarterly basis.

10.0 THE INDEPENDENT REMUNERATION PANEL

The role of the Independent Remuneration Panel is to recommend to Council a Scheme of Allowances, for Members in recognition of the time Members spend carrying out their duties under the provisions of the Local Government Act 2000. In summary, the scheme incorporates basic allowances, special responsibility allowances, and the payment of travel and substance

allowances to all Members. The Independent Remuneration Panel carried out a review of the scheme in April 2005 on the following issues:-

- Pensions for Members
- Allowances for co-opted and independent Members
- Childcare and dependent carers allowance
- Car allowance rates
- Attendance at training sessions

(The Panel are to meet in October 2005 to review allowances for Licensing Panels and a recommendation from the Standards Committee.)

11.0 SUPPORT TO COUNCIL, CABINET, SCRUTINY AND COMMITTEE MEETINGS

It is the Monitoring Officer's responsibility to oversee the distribution and publication of Committee reports, agendas and to ensure that these documents comply with statutory and constitutional requirements.

This 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 reasonably available to the public.

- Drafting minutes for agreement by the Chair within three working days.

- Publishing a record of key decisions taken by Cabinet by 10.00 am of the day after the meeting.

- Ensuring that deputations are handled in accordance with the Council's constitution.

- Ensuring that meetings are accessible.

11.1 *Statutory Meetings – Analysis*

One of the explicit aims of the Local Government Act 2000 was to streamline the decision making process to allow Council's to focus on service delivery. Notwithstanding this aim the number of statutory meetings serviced in 2004/05 has increased considerably on numbers in previous years.

In 2004/05 the following were serviced:

Full Council Meetings	9
Executive	25
Scrutiny, Regulatory, Partnerships	143
Area Boards	17

This 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 set out in Article 1 of the Constitution. The effectiveness of meetings needs to be considered in the context of an overall programme of work which takes account of proper forward planning, consultation and public engagement, the need for political debate on issues of importance as well as streamlined decision making at the appropriate level.

There have been significant improvements in the last year with improvements in the Scrutiny process being noted, while the operation of Area Boards has been very well received.

11.2 *Preparing and Publishing the Forward Plan*

The co-ordination and maintenance of the Forward Plan is central to meeting the requirements of good governance as it enhances open and transparent decision making.

In compliance with Access to Information Procedure rules and the constitution, the Forward Plan sets out key decisions which will be taken by the Executive. The forward plan sets out the date/period within which the decision will be taken, principal groups which will be consulted before the decision is taken and the means by which consultation will take place. The Forward Plan is published on the Council's website.

12.0 PROCESSING CALL-IN REQUESTS

The Monitoring Officer received two requests to call-in Executive decisions over the period:-

1. RE:D Centre
2. Funding of Bury REC

Meetings of the relevant Overview and Scrutiny Panels were convened to hear these call-in requests. On the RE:D Centre the Panel made recommendations to the Executive and on the funding of Bury REC the Panel chose not to request the Executive to reconsider the decision.

Copies of the minutes of these meetings are available at:

<http://intranet3/Intranet/CouncilMeetings/default.htm>

13.0 OFFICIAL SIGNING AND SEALING

The Monitoring Officer is responsible for overseeing the signing and sealing of official documents. A check is made that the application of the Council's seal has been duly authorised and a register is kept of all documents signed and sealed. During 2004/05 over 1,130 documents were sealed. Of that number, the majority were transfers/partial transfers of land. There has also been an increase in the number of right to buy transactions.

14.0 CONCLUSION

The Monitoring Officer's role encompasses both proactive and reactive elements. The proactive role centres on raising standards, encouraging ethical behaviour, increasing awareness and utilisation of the elements of good governance and ensuring that robust procedures are in place. The reactive role focuses on taking appropriate action to deal with issues and potential problems as they arise. The Monitoring Officer's effectiveness in this role is in turn dependent on effective systems and procedures being in place to identify problems and ensure that Members, Officers and the public are aware of appropriate channels to raise concerns. Contributions on continued development of the Monitoring Officer role would be welcome.