

STANDARDS COMMITTEE – 2ND NOVEMBER 2006

REPORT OF THE MONITORING OFFICER 2006

Report of the: Monitoring Officer

Status: For consideration and decision

This report supports the Key Aim of accountability in respect of ethical standards.

Portfolio Holder Cllr. Loney

Head of Service Head of Legal and Committee Services – Christine Nuttall

Recommendation: (a) That Members are requested to comment on and endorse the Monitoring Officer's Annual Report; and

(b) that the Full Council notes the Monitoring Officer's Report 2006.

Background

- 1 This is the second Annual Report of the Monitoring Officer as attached as an appendix to this report.

Introduction

- 2 The purpose of the Monitoring Officer's Report is to provide an overview of the work of the Monitoring Officer in the past year and to provide an opportunity to review and learn from experience.

Substance of Report

- 3 The Monitoring Officer's Report sets out the Monitoring Officer's statutory responsibilities, summarises how these duties have been discharged during 2006 in accordance with the Council's Constitution, legislative requirements and draws attention to those issues that will require attention in the next calendar year.

Key Implications

Financial Implications

- 4 The Monitoring Officer's Report has not identified any financial implications for this Council over and above normal requirements.

Legal Implications

- 5 The Monitoring Officer's Report has not uncovered any legal impropriety.

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Sources of Information: Information supplied by various officers and sections of the Council

Contact Officer(s): Christine Nuttall – ext. 7245

Dr. Pav Ramewal
Corporate Resources Director

RISK ASSESSMENT STATEMENT

The Monitoring Officer's report increases awareness of the ethical framework and sets out the good governance arrangements that have been set in place.

**REPORT OF THE
MONITORING OFFICER
2006**

INTRODUCTION

This is the second Annual Report of the Monitoring Officer. The purpose of the report is not only to provide an overview of the work of the Monitoring Officer in the past year, but also 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 2006 in accordance with the Council's Constitution and legislative requirements and draws attention to those issues that will require attention in the next calendar year.

1. RECOMMENDATIONS

That the Standards Committee comments on and endorses the Monitoring Officer's Annual Report.

That the Full Council notes the Monitoring Officer's Annual Report

2. THE ROLE OF THE MONITORING OFFICER

The role of the Monitoring Officer derives from the Local Government and Housing Act 1989. The Act requires local authorities to appoint a Monitoring Officer.

The Monitoring Officer has a broad role in ensuring the lawfulness and fairness of Council decision making, ensuring compliance with Codes and Protocols, promoting good governance and high ethical standards.

A Summary of the Monitoring Officer's Functions is as follows:

Description	Source
Report on contraventions or likely contraventions of any enactment or rule of law	Local Government and Housing Act 1989
Report on any maladministration or injustice where the Ombudsman has carried out an investigation	Local Government and Housing Act 1989
Appoint a Deputy	Local Government and Housing Act 1989
Establish and maintain the Register of Members' interests, and the register of gifts and Hospitality.	Local Government Act 2000
Report on sufficiency of resources.	Local Government and Housing Act 1989
Maintain the Constitution	The Constitution

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Description	Source
Support the Standards Committee. Promote and maintain high standards of conduct.	Local Government Act 2000
Receive reports from Ethical Standards Officers and case Tribunals	Local Government Act 2000
Consulting with, supporting and advising the Head of Paid Service and Chief Finance Officer on issues of lawfulness and probity.	The Constitution
Legal Advisor to the Standards Committee when carrying out a local Determination Hearing.	Local Authorities (Code of Conduct) (Local Determination)(Amendment) Regulations 2003
Receive referrals from Ethical Standards Officers for local Investigations.	Local Authorities (Code of Conduct) (Local Determination)(Amendment) Regulations 2003
Advise on whether executive decisions are within the Budget & Policy Framework.	The Constitution
Provide advice on vires issues, maladministration, financial impropriety, probity, Budget and Policy Framework issues to all members.	The Constitution
Issuing Dispensations to Members regarding prejudicial interests.	The Standards Committee
Considering whether certain Information is exempt from disclosure under the Freedom of Information Act.	Freedom of Information Act 2000

3. THE CONSTITUTION

The Constitution sets out how the Council operates and how decisions are made. It sets out the procedures which are followed to ensure that these decisions are efficient, transparent and that those who make the decisions are accountable to local people. The Monitoring Officer is the guardian of the Council's Constitution and is responsible for ensuring that the Constitution operates efficiently, is properly maintained and is adhered to.

3.1 Constitutional Review and Revision

Work during 2006 is being undertaken to finalise a complete revision of the Constitution and this is likely to include the Financial Procedure Rules. The Scheme of Delegation was amended on the 26th September 2006 by Full Council to take into account the implementation of the powers conferred by the Clean Neighbourhood and Environment Act 2005.

3.2 Fitness for Purpose

The purpose of the Constitution is set out in Article 1 and is as follows:

- enable the Council to provide clear leadership to the community in partnership with residents, businesses and other organisations;
- support the active involvement of residents in the process of local authority decision-making;
- help Councillors represent their constituents more effectively;
- enable decisions to be taken efficiently and effectively;
- create a powerful and effective means of holding decision-makers to public account;
- ensure that no one will review or scrutinise a decision in which they were directly involved;
- ensure that those responsible for decision-making are clearly identifiable to local people and that they explain the reasons for decisions; and
- provide a means of improving the delivery of services to the community.

Except for changes required by statute, changes to the Constitution will only be approved by the full Council.

4. LAWFULNESS AND MALADMINISTRATION

The Monitoring Officer is the Council's lead adviser on issues of lawfulness and the Council's powers and in consultation with the Head of Paid Service and the Chief Financial Officer advises on compliance with the Budget and Policy Framework. Part of this role involves monitoring Committee reports, agendas and decisions to ensure compliance with legislation and the Constitution. The Monitoring Officer ensures that Cabinet decisions are made publicly available. This is done by Officers from Committee Services. Cabinet decisions can be viewed by members of the public through the Council's website: www.sevenoaks.gov.uk

If the Monitoring Officer considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration she must report to the full Council or where appropriate the Cabinet after first consulting with the Head of Paid Service and Chief Financial Officer. Any proposal or

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decision that is subject to such a report cannot be implemented until the report has been considered.

The sound governance arrangements operated by the Council ensure that the power to report potentially unlawful decision making is rarely used and the Monitoring Officer has not had to issue such a report throughout 2005/06

4.1 Reports from the Local Government Ombudsman

The annual letter for 2005/06 from the Local Government Ombudsman sets out his reflections on the complaints received against the Authority and dealt with by his office over the last year. These were as follows:

- He received 19 complaints in 2005/06, a small reduction on the previous year.
- The biggest category was planning with 13 complaints.
- During the year he made decisions on 12 complaints. In two cases he referred the complaints back to the Council as it had not had sufficient opportunity to deal with them. Two other complaints were outside his jurisdiction for other reasons.
- When he completes an investigation he must issue a report. There are a significant proportion of investigations that do not reach the report stage. This is because the complaint is settled during the course of the investigation. These are called “local settlements”.
- He issued no reports against the Authority this year.
- Two complaints were settled. One was about delay in replying to an enquiry about whether a neighbour’s extension should have required planning permission. The Council’s Officers suggested offering the complainant £150 for his inconvenience which the Ombudsman found a sufficient remedy. The complainant was unhappy with this outcome, as he thought that the extension should not have been built but the Ombudsman was unable to uphold his view on this.
- The second complaint the Ombudsman settled. In this case there had been a failure in the consultation process, but the Ombudsman could not find this had affected the decision. The Council offered £100 which the Ombudsman found acceptable, although again the complainant was upset at the decision.
- The Ombudsman identified that these two complaints illustrate a point that is frequently relevant in planning complaints: many complaints are about the merits of a decision, which the Ombudsman cannot question if the decision has been properly made.

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- The Ombudsman made just seven initial enquiries this year, and the average time for the Council's response was 17.4 days, which the Ombudsman considers very good and well within his target of 28 days. The small number of complaints means there is little contact between the Ombudsman's Office and the Council, but the Ombudsman indicated that the Council's Officers are always helpful and courteous. In addition the Ombudsman stated that Officers from the "Planning Department" have always shown a willingness to discuss complaints and general issues, and given the preponderance of planning in the complaints he receives this is particularly useful.

5. GOOD GOVERNANCE

The Monitoring Officer has a pro-active role in ensuring good practice, good procedures and good governance. This involves promoting networking, collaboration and joined-up working practices and decision making as well as ensuring standing orders, codes of practice, procedures are kept under review and up to date. Collaborative working entails regular monthly liaison meetings with the three Statutory Officers, Heads of Service/Management Team as well as working in partnership with other departments to develop and disseminate policies and procedures. Work being carried out to develop and refine the use of resources represents a good current example of collaborative working. The Council this year undertaking a voluntary pilot study under the Corporate Performance Assessment (CPA) which provided excellent feed back for the Council.

Good governance further involves providing procedure notes, guidance, developing and implementing protocols and providing briefings and enabling effective support to Councillors in their different roles including Member training.

The tasks for the year 2007 are to:

- Promote and increase an understanding of the roles and responsibilities of the statutory officers.
- Increase awareness of the ethical framework, and supporting policies and procedures and provide further training to Members and to staff.
- Promote and encourage joined up working and better governance arrangements.
- Monitor and test the operation and effectiveness of the ethical framework.
- To provide information on the implications of the ethical framework to the public, town and parish councils and members of staff.
- Review the effectiveness of governance arrangements based on the CIPFA/Solace framework.
- Work to embed these changes into the culture of the Council.

5.1 Ethical Governance Diagnostic

On 27th June 2006 the Standards Committee received a report from the Monitoring Officer on the purpose of the Ethical Governance Toolkit in helping local authorities to assess how well the ethical agenda was being met and to further improve arrangements. The toolkit had been developed jointly by the Standards Board for England, the IDeA and the Audit Commission. The role of the Standards Board has been to support the development of the tools with the other two organisations. It was noted that the system was looked on with approval by the CPA Inspectors and the light touch health check received Committee approval. Work on this will commence in 2007.

5.2 The Ethical Framework Manual

This year the Monitoring Officer developed an Ethical Framework Manual to strengthen and improve the ethical framework of the authority.

The purpose of the manual is to provide an authoritative source of information, on the Code of Conduct and the work of the Standards Board for England.

The Manual includes information on the role of the Monitoring Officer, advice for Councillors on complying with the Code of Conduct and the Ethical Framework, changes to the Code of Conduct and training material.

It is anticipated that each Member of the Authority will be issued with such a Manual, as well as the Clerks and Members of Parish and Town Councils, on successful completion of a Training Workshop.

6. 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, 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 including those within the Parish/Town Councils on propriety issues, advising the Standards Committee on applications for dispensations and advising the Standards Committee when they determine an allegation of misconduct on the part of a Member including a Member from a Parish/Town Council. Investigations may also be referred to the Monitoring Officer from an Ethical Standards Officer for the Standards Board for England. The maintenance of the Registers of Interests for the District as well as the Parish/Town Councils is also the responsibility of the Monitoring Officer as well as the Register of Hospitality.

Examples of the Standards Committee's work during 2006 is as follows:

- Agreeing a new Procedure for Local Investigations and Local Determination of Allegation about Personal Conduct of Council Members.
- Training Sessions for District Councillors and Parish/Town Councillors and Clerks on the Ethical Framework and Code of Conduct.

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- Annual Monitoring Officer's Report.
- Agreeing a Process and Procedure for interviewing Independent and Town/Parish representatives for the Standards Committee.
- Consulting on the Review of the Code of Conduct.
- Reporting on changes to the Code of Conduct.
- Report on the Fourth Annual Assembly of the Standards Committee.
- Report on Case Review No. 3.
- Participating in a Standards Committee Research Project 2006.
- The Ethical Governance Toolkit examined and the Light Touch Approach agreed for progression and implementation.
- Composition of Hearing Panel for Determination of Allegations of Members Misconduct.
- Review of Independent Members of the Standards Committee with a commitment to increase members.
- Review of sanctions.
- Considering Standards of Conduct in English Local Government: The Future.
- Training and Development.

6.1 Maintaining Register of Member Interests

The Monitoring Officer is responsible for establishing and maintaining a Register of Members' Interests for the District and Parish/Town Councils. Such registers are held with in the Elections and Land Charges Section of the Council. The registers are updated periodically as Members advise.

An annual audit takes place to ensure that the registers are being kept up to date.

6.2 Code of Conduct for Employees

The Council has implemented a new Code this year based on an original draft published by the IDeA and brought up to date in line with the Local Government Act 2000. The Code forms part of the employers' terms and conditions of employment. The Code is well publicised on the Council's internal intranet and is introduced to employees through the induction process.

Under the new Code employees must declare to their Directors any non-financial or financial interests that they or members of their family have which they consider could conflict with the Council's interests. This should also be recorded on a Register of Interest form available on SIMON and forwarded to the Personnel Team.

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Also under the new Code, employees must declare to their Director membership of any organisation not open to the public without formal membership and commitment of allegiance and which has secrecy about rules or membership or conduct. So that there can be no misunderstanding or confusion, membership of Freemasonry and similar organisations should be declared.

All relationships of a business or private nature with external contractors, or potential contractors should be made known to the employees Head of Service and Director and recorded on a Register of Interest form available on SIMON and forwarded to the Personnel Team.

All hospitality received and given should be appropriate and necessary and must, wherever possible, have the prior sanction of the Head of Service or Director and must be recorded in the department's hospitality book.

6.3 Whistle Blowing

The whistle blowing policy of the Council is entitled "Staff Confidential Reporting Policy" and is publicised throughout the organisation on the internal intranet.

As a first step, concerns should be raised with the employee's immediate manager or their superior. This depends however, on the seriousness and sensitivity of the issues involved and who is suspected of the malpractice. For example, if it is believed that management is involved, the employee should approach:

- the Audit and Efficiency Manager
- the Head of Personnel and Development
- any Director
- a Councillor

Where appropriate, the matters raised may:

- be investigated by Management, the Personnel Section, Internal Audit, or through the disciplinary process
- be referred to the police
- be referred to the external auditor
- form the subject of an independent inquiry

The Chief Executive has overall responsibility for the maintenance and operation of this policy. That officer maintains a record of concerns raised and the outcomes (but in a form which does not endanger confidentiality) and will report as necessary to the Council.

In the last calendar year the Chief Executive has had no findings to report.

6.4 Human Resources Strategy and Workforce Plan

In April 2006 a Human Resources Strategy and Workforce Plan were completed which incorporated the following:

- Recruitment
- Learning and Development
- Employment Stability
- Corporate Equalities and Inclusion
- Dignity at work
- Capability
- Disciplinary
- Grievance Procedure
- Sickness Absence
- Violence at Work
- Domestic Violence Policy Statement
- Parental and Family Leave
- Flexible Working
- Maternity Leave
- Relocation Expenses
- Alcohol and Substance Misuse
- Staff Code of Conduct
- Child Protection

6.5 The Standards Board for England, Standards Board Complaints and Determinations

The Monitoring Officer is responsible for establishing and maintaining an effective working relationship with the Standards Board for England. The Monitoring Officer is also responsible for receiving reports from Ethical Standards Officers regarding investigations carried out by the Standards Board into the conduct of Members. Such reports may need to be determined by the Council's Standards Committee. The Ethical Standards Officer can now refer allegations of Member misconduct for local investigation and determination.

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On 20th April 2006 following an investigation by the Standards Board for England, an Ethical Standards Officer found that no action needed to be taken against a Councillor of Dunton Green Parish Council and a member of Sevenoaks District Council on the basis that the Councillor did not misuse his position as a Councillor to secure an advantage for himself.

On 17th July 2006 the Council's Standards Committee determined a case against a District Councillor following an investigation undertaken by an Ethical Standards Officer. The Standards Committee concluded that there had been a number of breaches of the Council's Code of Conduct amounting to seeking to improperly influence a decision and failing to withdraw when there was a personal and prejudicial interest.

The Member was censured and required to undertake training on the Code of Conduct. The Member has since attended one of the Monitoring Officer's Training Workshops and it is considered that the breach is not likely to be repeated.

A number of complaints towards the end of 2005 were received involving Members of both the District Council and/or Swanley Town Council. Results were received in 2006 and in most cases the Ethical Standards Officer reached the view that there was no breach of the Code of Conduct. Where a breach of the Code was identified it was decided that no action needed to be taken.

The number of complaints to the Standards Board for England did rise in 2006.

In respect of Parish Council complaints there have been 12 cases overall. Five of these cases have been referred for local investigation and such investigations have been completed and are soon to be determined by the Standards Committee. Seven cases did not go through to investigation.

In respect of the District Council complaints, there have been four complaints, with only one being sent for local investigation. No action was taken in respect of two such cases and the fourth was determined locally, as set out above.

6.6 Local Investigation & Determination Procedures for Complaints regarding the Conduct of Members

On 27th June 2006 the Standards Committee agreed new procedures for handling local investigations and a revised Local Determination Procedure. The Monitoring Officer may delegate other Council Officers to perform the function of investigation into the conduct of Councillors of the District and Parish/Town Councils. In appropriate cases, the Monitoring Officer will appoint the Deputy Monitoring Officer to undertake the investigation, but in other cases it may be appropriate to appoint an outside investigator, which could involve borrowing from another authority. The Monitoring Officer has entered into a Protocol for Mutual Assistance by the Kent Monitoring Officers.

The Monitoring Officer may require any Council Officer to provide a statement, answer questions or supply information to assist in the conduct of an investigation and require Councillors to provide such statements, answer questions or supply information.

6.7 Reviewing the Effectiveness of the Ethical Framework

One of the key on-going areas of work is to review and assess the impact of the ethical framework on the behaviour of Members of the District, Parish/Town Councils and Council staff. Many of the tools used to assess standards of customer care within the organisation; mystery shopping, interviews, customer feedback also lend themselves to the assessment of ethical health. The Monitoring Officer again anticipates that in the year ahead the Standards Committee's work programme will include substantial work in this area in order to allow it to assess the effectiveness of work to date and to plan for the future.

7. CORPORATE COMPLIANCE WITH LEGISLATION

Legal updates including details of new legislation are circulated by the Legal Team to relevant Officers within the organisation. Those Officers then circulate legal updates including new legislation to Members when they consider this to be appropriate.

Examples of work undertaken in the last year to update and train officers on new legislation are as follows:

- Property Law: Gypsies and Travellers
- Social Welfare: Noise Pollution
- Social Welfare: Housing in Multiple Occupation
- Local Government: Siting Telecom Masts

The Council's Portfolio Holder for Safe Community has attended some of the above training sessions.

Future training topics may include:

- Charities: Tools for Trustees
- Practice Management: Managing to Motivate
- Crime: PACE – Revised Codes of Practice
- Local Government: The Tool to Trade
- Business Law: Data Protection Update
- Employment Law: Under Pressure
- Practice Management: Health and Safety
- Property Law: Planning and Compulsory Purchase Act 2004
- Business Law: Freedom of Information Act 2000 – Pandora's Box

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- Local Government: Behaviour of Members – The New Ethical Framework
- Personal Injury: Liability for Animals
- Local Government: The Licensing act 2003 – Last Orders?
- Employment Law: Bullying in the Workplace
- Local Government: Public Procurement
- Social Welfare; Benefit Overpayments
- Dispute resolution: Pre-Action protocols – Playing your cards right
- Practice Management: Drafting
- Local Government: Licensing – Time for Change

All Cabinet reports and the various committee reports have a compulsory heading in which the author has to consider Legal Implications and Human Rights issues, and if there are likely to be such implications the report is to be sent to the Legal Team for relevant advice.

8. SUPPORT TO COUNCIL, CABINET, SCRUTINY AND COMMITTEE MEETINGS

The distribution and publication of committee reports, agendas and decisions is central to meeting the requirements of a key deliverable. It is the Monitoring Officer's responsibility to oversee the process and ensure that these documents comply with statutory and constitutional requirements.

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 approval by the chair within seven working days.
- Publishing a record of all decisions including key decisions taken by Cabinet within 48 hours (2 working days) after the meeting.
- Ensuring that petitions are handled in accordance with the Council's Constitution.
- Ensuring that meetings are accessible.

8.1 Statutory Meetings Analysis

One of the explicit aims of the Local Government Act 2000 was to streamline the decision making process to allow Councils to focus on service delivery.

In 2005/06 the following were serviced:

Full Council Meetings	7
Cabinet	13
Overview and Scrutiny Board	11
Electoral Arrangement Committee	4
Environment Select Committee	8
Services Select Committee	6
Social Affairs Select Committee	6
Development Control Committee	14
Standards Committee	4 (including determination hearings)
Sevenoaks Joint Transportation Board	4
Licensing Committee	4

Other meetings serviced include Development Control Committee site meetings and Licensing Committee hearings

The volume of meetings represents a substantial commitment of both Councillors' and Officers' time and resources. It is of great importance that meetings constitute an effective use of time and resources; that they add value to corporate effectiveness and help in meeting the aims and objectives set out in Article 1 of the Constitution and the Community Plan.

8.2 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 Cabinet. The Forward plan sets out the date/period within which the decision will be taken. The Forward Plan is published on a monthly basis.

8.3 Call-In requests

There was only one call-in request within 2005/06.

9. MEMBER TRAINING AND DEVELOPMENT

The Monitoring Officer is responsible to the Standards Committee for the provision of training to Councillors within the District and the Parish/Town Councils. An extensive training development programme for Members is also organised by the Personnel Team of the Council.

The Monitoring Officer this year has tailored training to each individual Member's needs and has produced an Ethical Framework Manual for each Member of the District Council and for each Clerk to the Parish/Town Councils. The Manual has also been given to Members of Parish/Town Councils. The Manual includes extensive training material.

The Monitoring Officer has set up weekly training workshops for District Members and for Parish/Town Council Members and Parish/Town Council Clerks.

The training workshops have been rolled out to all 29 parish and town councils and all District Councillors. On occasion the Monitoring Officer has travelled out to the parish and town councils when Members and Clerks are unable to attend the Council Offices.

This pro-active approach to training has resulted in a very high level of Members and Clerks being trained. The training has been very well received with all Members and Clerks indicating on monitoring forms that all their training objectives have been met. No negative feedback has been received and the Monitoring Officer is pleased with the positive response. Over the period of pro-active training the Monitoring Officer has not received any referrals on allegations of Member misconduct from the Standards Board for England.

The Monitoring Officer is about to extend training on the Ethical Framework to Officers within the Council.

The Monitoring Officer is also looking into the possibility of entering into a partnership arrangement with nearby councils for the extension and expansion of Member training.

10. 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

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problems and ensure that Members, Officers and public are aware of appropriate channels to raise concerns.

The work programme for the next year aims to expand on the work carried out this year and to consolidate on and embed the systems, policies and procedures that are at present in place.

Christine Nuttall
Monitoring Officer