

**REPORT OF THE  
MONITORING OFFICER  
2005**

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**INTRODUCTION**

This is the first 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 summaries how these duties have been discharged during 2005 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

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Description	Source
Establish and maintain the Register of Members' interests, and the register of gifts and Hospitality.	Local Government Act Act 2000
Report on sufficiency of resources.	Local Government and Housing Act 1989
Maintain the Constitution	The Constitution
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) Regulations 2003
Receive referrals from Ethical Standards Officers for local Investigations.	Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004
Advise on whether executive decisions are within the Budget & Policy Framework.	The Constitution

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Description	Source
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**

A review of the Constitution took place in July 2004. Since then a number of changes have taken place. In July 2005 the Modern Local Government Group considered a Development Control Protocol, Petition Protocol and the terms of reference of Overview and Scrutiny Board as well as the terms of reference of the Finance Advisory Group.

All the proposed changes were agreed except for some small changes to the Development Control Protocol.

Changes were also agreed in respect of delegations to officers as an interim solution to the departure of the Strategic Services Director. These changes have now been approved by Full Council

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### **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 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 for Councillors either electronically or by way of a paper version. Cabinet decisions can be viewed by members of the public through the Council's website: [www.sevenoaks.gov.uk](http://www.sevenoaks.gov.uk)

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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 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 2004/2005

**5.1 Reports from the Local Government Ombudsman**

The annual letter for 2004/2005 from the Local Government Ombudsman sets out his reflections on the complaints received against this authority and dealt with by his office over the last year. These were as follows:

- He received 22 complaints in 2004/05, a slight increase on the previous year.
- Complaints about planning made up over half of this total. There were 4 local taxation complaints, 3 concerning housing matters and one about housing benefit.
- The number of planning complaints received was more than double compared to the year before, but less than in 2002/03. No adverse inference was drawn from that.

Looking at the 21 decisions on complaints made in 2004/05 the Local Government Ombudsman found that:

- He issued no formal reports on complaints against the Council.
- Of the complaints he received a quarter were referred back to the Council for consideration by our own complaints procedure, as it did not appear that the Council had had a reasonable chance to consider the issues. Only one of these complainants complained to the Ombudsman again and the Ombudsman found no fault with what the Council had done.
- In two cases, one planning and one council tax benefit, the Ombudsman found that there had been significant delays in the Council's response to correspondence from the complainants, five months delay in both cases. The

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Council agreed to pay compensation totalling £175 to the complainants for these delays. For the benefit case the Council also agreed to recall the council tax debt from the bailiffs and credit the fees paid to the bailiffs to the complainant's council tax debt. In both cases the Ombudsman did not find the Council to be at fault in the main items that made up the complaints.

- In more than half of the complaints the Ombudsman investigated he did not find the authority to be at fault. One complaint was outside his jurisdiction, and he used his discretion to investigate three others. In one case the Council had made some minor errors but on balance had not caused any significant injustice to the complainant. In the other two cases, which concerned planning applications, no decision had been made on the application at the time of the complaint and so there was no Council decision to complain about.
- The Ombudsman found that many of the planning complaints involved dissatisfaction with decisions to grant planning permission or not to take enforcement action. As long as there had been no fault in the way the decision had been reached the Ombudsman has no power to consider the merits of the decision. The Ombudsman was pleased to say in no case did he find any faults that would have adversely affected the way the decision was made.

The Ombudsman reported that from the evidence he had the Council's own complaints procedure works well, with complaints being identified quickly and dealt with suitably at an appropriate level.

The Ombudsman was particularly pleased to note the willingness of the Planning Department to take a fresh look at any comments complainants make to ensure that the original decision was correct.

At all times the Ombudsman found that the staff responded quickly to all his requests and provided the information that he needed.

## **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

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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.

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 2006 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.

**6.1 Ethical Governance Diagnostic**

The Council will take close notice of the information given by the Audit Commission and the IDeA to enable the Council to test its ethical health and take any necessary remedial action and, with sufficient commitment, will contribute to improving the Council's position within the CPA framework.

**6.2 The Ethical Framework Manual**

The development of an Ethical Framework Manual is to be led by the Monitoring Officer to strengthen and improve the ethical framework of the authority.



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The purpose of the manual is to provide an authoritative source of information, setting out how things are done within the Council.

The Manual will include information on the role of the Monitoring Officer, advice for Councillors and procedures for local investigation and determination of complaints about the conduct of Council Members. Training material will be included.

Each member of the authority will be issued with such a Manual as well as the clerks to the Parish/Town Councils.

**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 is as follows:

- Agreeing a Procedure for Local Determination of Allegation about Personal Conduct of Council Members.
- Training Sessions for District Councillors and Parish/Town Councillors on the Code of Conduct.
- Detailed Procedure for Local Standards Hearings.
- Review of Dispensation Granted.

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- Report on the Kent and Medway Independent Standards Committee Members Liaison Group.
- Report on Lobby Groups, Dual-Hatted Members and the Code of Conduct.
- Report on the Third Annual Assembly of the Standards Committee.
- Report on the Local Authority (Code of Conduct) (Local Determination)(Amendments) Regulations 2004.
- Adoption of a Procedure for Local Investigations.
- Report on possible revisions to the Code of Conduct.
- Report on the Standards Board for England's Road Show 2005.
- Members' views canvassed on the Review of the Code of Conduct and a response from the Standards Committee of Sevenoaks District Council was submitted to the Standards Board for England.
- Considering the Report on Standards in Public Life
- Training and Development

**7.1 Maintaining Register of Member Interests**

The Monitoring Officer is responsible for establishing and maintaining a Register of Members interests for the District, Parish/Town Councils. The Parish/Town Council Register of Members interests is held within the Elections and Land Charges Section of the Council. The register is updated periodically as Members advise, usually through the Parish/Town Clerk. The District Council Register of Members interests is currently held within the Committee Section of the Council. Again the register is updated periodically as Members advise.

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

**7.2 Code of Conduct for Employees**

The Council has adopted a Code based on a draft published by the IdeA. It was drawn up in consultation with the National Employee Representatives. The Code has been amended only to better suit our local circumstances. The Code is well

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publicised on the Council's internal intranet and is introduced to employees through the induction process.

A new Code is to be introduced and should be adopted before the close of 2005. The new Code will encompass a registration process supervised by the Chief Executive and the Directors.

### **7.3 Overseeing Registration of Officer Interests**

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.

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.

Employees who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, should declare their relationship to their Head of Service and Director.

### **7.4 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 Head of Internal Audit
- the Head of Personnel

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- 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.

### **7.5 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. 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.

The Standards Committee determined a complaint against a Councillor from Chevening Parish Council on the 20<sup>th</sup> February 2004. The Committee resolved that the Councillor failed to comply with the Code of Conduct for Chevening Parish Council on three occasions. He failed to withdraw from a meeting of the Parish Council on two occasions when a planning application was considered despite having a personal and prejudicial interest in the application and gave a report to the Parish magazine thus seeking to improperly influence a decision about the matter. The breach was considered serious with aggravated circumstances. The Committee imposed a one-month suspension against the Councillor.

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On the 14<sup>th</sup> December 2004 the Monitoring Officer reported to the Standards Committee the decision given by The Adjudication Panel for England in respect of an allegation of a failure to comply with the Code of Conduct by a Councillor of Ash-cum-Ridley Parish Council when she failed to declare an interest at a serious of meetings whilst being aware that she was not covered by a dispensation and that there was doubt as to her eligibility to a dispensation. The Adjudication Panel decided that the nature of the failure to comply with the Code was such that the Councillor should be disqualified for 1 year from being or becoming a member of the relevant authority or of any other relevant authority within the meaning of the Local Government Act 2000.

Following the decision of the Adjudication Panel the Council's Monitoring Officer visited Ash-cum-Ridley Parish Council to give guidance to the Parish Clerk and the Chairman and another Councillor from the Parish on the Code of Conduct and the New Ethical Framework. Discussion centred around the granting of dispensations to Members, personal and prejudicial interests and the obligations of Members who are appointed by their authority to serve on outside bodies. Guidance notes were also given to the Parish Clerk including details of the Richardson case.

Again on the 14<sup>th</sup> December 2004 the Monitoring Officer reported to the Standards Committee that The Adjudication Panel for England had decided that a Councillor of Halstead Parish Council had failed to declare a prejudicial interest as well as a personal interest and had failed to withdraw from the meeting. The Panel imposed a suspension from participation in all business of the relevant authority for a period of six months. The Panel recommended that before the period of his suspension was to end the Councillor should take part in further training on the implementation of the Code of Conduct and that should also be offered to other Councillors.

The number of complaints to the Standards Board for England has dramatically reduced this year. To date there has been only two referrals dealt with by the Standards Board for England where no action was taken although the Standards Board for England is currently investigating one case regarding the conduct of a District Council Member.

This reduced picture of concluded referrals contrasts dramatically from previous years. In 2002 there were seven referrals where no action was taken by the Standards Board for England. All the referrals were in respect of Parish/Town Council complaints.

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In 2003 there were thirteen referrals where no action was taken by the Standards Board for England. Out of those thirteen referrals three related to the District Council and ten related to the Parish/Town Councils.

In 2004 there were fifteen referrals where no action was taken by the Standards Board for England. Two related to the District Council and thirteen to the Parish/Town Councils.

## **7.6 Training**

After the May 2003 elections, training was provided for all new Members and for those existing Members who wished to attend. The training included training in the Council's Code of Conduct and the New Ethical Framework.

Training at Dover District Council was offered to Members of the Standards Committee. The training session allowed for an interactive session, with plenty of scope for specific questions and the programme covered the following topics:

The Role and Purpose of the Committee – theory and reality

Procedural Fairness – the basics

The Pre-hearing process – tips and guidance

Pre and post hearing publicity and public access

Proportionate sanctions

The giving of reasons

The role of the Monitoring Officer

In 2004 the Monitoring Officer provided a detailed procedure for determination hearings and the Standards Committee rehearsed the procedure prior to carrying out a determination.

The Standards Committee have taken part in a training session to help Councillors review the contents of the Code of Conduct and identify how it applies to particular aspects of their work. The Standards Board for England's training video and training notes were used.

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Again in 2004 the Council's Monitoring Officer spoke to the Kent Association of Parish Councils on the background to Sevenoaks District Council's Standards Committee. A training session took place covering the following topics.

- Declaration of interests and the duty to inform
- Appropriate allegations
- Personal and prejudicial interests
- Dual-hatted members
- The investigation

There was a question and answer session at the end and a commitment given that the Monitoring Officer would be willing to give guidance and advice on an individual basis to any Parish Council Clerk. Parish Council Clerk's regularly contact the Monitoring Officer for advice and a record is kept of the advice given.

On the 17<sup>th</sup> March 2005 a training session was conducted for the Parish Councillors and on the 18<sup>th</sup> March a similar training session took place for the District Councillors entitled The Code of Conduct.

On the 28<sup>th</sup> September 2005 a training session took place at Halstead Parish Council. The Monitoring Officer will be offering similar training sessions to other parish councils upon request.

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

The Standards Committee has agreed procedures for local investigations and the conduct of hearings to take account of new powers to refer complaints about the conduct of Members back to the Council. 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. 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.

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**7.8 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 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.

**8. CORPORATE COMPLIANCE WITH LEGISLATION**

Legal updates including details of new legislation are circulated by the Legal section 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 and Members on new legislation is the work undertaken in the area of the Freedom of Information Act 2000, the Licensing Act 2003 and Planning Development.

All Cabinet Reports and the various Committee Reports have a compulsory heading in which the author has to consider legal implications and if there are likely to be legal implications the Report is to be sent to the Legal section for relevant advice. Financial implications are similarly dealt with except that they are referred to the Accountancy Section.

In order to improve the way in which new legislation is communicated to relevant officers and Members in the Council it is proposed that in the next Calendar Year the legal section will provide a summary on new legislation and its potential in the Council's in house newsletter "In Shape People" in addition to providing additional information in Members' Bulletins.

**9. PROTOCOL ON COUNCILLOR/OFFICER RELATIONS**

The Protocol on Councillor/Officer Relations is contained within the Constitution. This sets out what is expected of Officers and what is expected of Members.

When the relationship between Members and Officers breaks down, or becomes strained, attempts should be made to resolve matters informally through



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conciliation by an appropriate senior manager or Members. Officers will have recourse to the Council's Grievance Procedure or to the Council's Monitoring Officer, as appropriate to the circumstances.(As set out in the Constitution.)

In the last calendar year there have been no complaints to the Monitoring Officer and the Council's Grievance Procedure has not been utilised. No referrals have been made to the Chief Executive.

**10. 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 agreement by the chair within five working days.
- Publishing a record of all decisions including key decisions taken by Cabinet within 48 hours after the meeting.
- Ensuring that petitions are handled in accordance with the Council's constitution.
- Ensuring that meetings are accessible.

**10.1 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.

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In 2004/05 the following were serviced:

Full Council Meetings	7
Cabinet	13
Overview and Scrutiny	13
Electoral Arrangements Committee	2
Environment Select Committee	8
Services Select Committee	5
Social Affairs Select Committee	5
Development Control	13
Standards Committee	3 plus determination hearings
Licensing Committee Hearings	5 plus numerous 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.

## **10.2 The Forward Plan**

The coordination 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.

## **10.3 Call in requests**

There were only two call-in requests in the last twelve months.

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**11. 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. The training that has taken place is set out under section 7.6 above. An extensive training development programme for Members is also organised by the Personnel Section of the Council.

The Monitoring Officer is planning in the coming year with the approval of the Standards Committee to tailor training to each individual member's needs and to produce a Ethical Framework Manual for each member of the District Council and for each Clerk to the Parish/Town Councils. The Manual will include training material.

The Monitoring Officer is planning to set up training workshops that Councillors can drop into on a regular basis.

The training proposed will include:

Ethical Framework – Topics will include personal & prejudicial interests, the Richardson case and its effects on the roles and functions of Members, the decision making and advocacy roles of Members. The training material produced by the Standards Board for England including case Reviews. When and how to apply for a dispensation. The Code of Conduct and new arrangements for investigation and local adjudication on complaints against Councillors.

The Monitoring Officer is looking into the possibility of entering into a partnership arrangement with nearby Tandridge District Council in respect of specialist Ethical Standards training for April 2006.

**12. 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

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identify 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