

MONITORING OFFICER PROTOCOL

1. Introduction to Statutory Responsibilities

- 1.1 The Monitoring officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged.
- 1.2 The role of the Monitoring Officer rests with the Service Director – Legal, Governance and Commissioning.
- 1.3 The Monitoring Officer has a broad role in ensuring the lawfulness and fairness of corporate decision making, ensuring compliance with Codes and Protocols, promoting good governance and high ethical standards.
- 1.4 A summary list of the Monitoring Officer’s responsibilities appears in the Annex attached. The Monitoring Officer’s ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:-
 - (a) complying with the law (including any relevant Codes of Conduct);
 - (b) complying with any general guidance, codes or protocols issued from time to time, by the Standards Committee and the Monitoring Officer;
 - (c) making lawful and proportionate decisions: and
 - (d) generally, not taking action that would bring the Council, their offices or professions into disrepute.

2. Working Arrangements

- 2.1 Having excellent working relations with Members and officers will assist in the discharge of the statutory responsibilities by the Monitoring Officer. Equally, a speedy flow of relevant information and access to debate (particularly at the **early stages** of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and officers must, therefore, work with the Monitoring Officer (and his/her staff) to discharge the Council’s statutory and discretionary responsibilities.
- 2.2 The following arrangements and understandings between the Monitoring Officer, Members and Directors are designed to ensure the effective discharge of the Council’s business and functions. The Monitoring Officer will:-
 - 2.2.1 **Resources**
 - (a) report to the Council, as necessary on the staff, accommodation and resources s/he requires to discharge his/her statutory functions,
 - (b) have sufficient resources to enable him/her to address any matters concerning his/her Monitoring Officer functions;
 - (c) have control of a budget sufficient to enable him/her to seek Counsel’s opinion on any matter concerning his/her functions.

- (d) appoint a deputy and keep him/her briefed on any relevant issues that s/he may be required to deal with in the absence of the Monitoring Officer.

2.2.2 Access to information/meetings

- (a) be alerted by Members and officers to any issue(s) that may become of concern to the authority, including, in particular issues around legal powers to do something or not, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise:
- (b) have advance notice, (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the authority (including meetings at which officer delegated decisions are taken) at which a binding decision may be made (including a failure to take a decision where one should have been taken);
- (c) have the right to attend (including the right to be heard) any meeting of the authority (including meetings at which officer delegated decisions are taken) before any binding decision is taken (including a failure to take a decision where one should have been taken).
- (d) be a member of the Corporate Management Team and will have advance notice of those meetings, agenda and reports and the right to attend and speak.
- (e) in carrying out any investigation(s), have unqualified access to any information held by the Council and to any officer who can assist in the discharge of his/her functions:

2.2.3 Relationships

- (a) ensure the other statutory officers (Head of Paid Service and the Section 151 Officer) are kept up to date with relevant information regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (b) meet regularly with the Head of Paid Service and the Section 151 Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (c) have a close working relationship of respect and trust with the Mayor and the chairs of the Cabinet, Standards Committee, Scrutiny Committee and District Committees with a view to ensuring the effective and efficient discharge of Council business;
- (d) develop effective working liaison and relationship, with the Local Audit Framework and the Local Government and Social Care Ombudsman (including having the authority, on behalf of the Council, to complain to the same, refer any breaches or give and receive any relevant information,

whether confidential or otherwise, through appropriate protocols, if necessary);

- (e) in consultation, as necessary, with the Leader, Cabinet and Standards Committee, defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved;
- (f) make arrangements to ensure effective communication between his/her office and clerks to parish councils on Monitoring Officer and Standards Committee issues.

2.2.4 **Standards Matters**

- (a) give informal advice and undertake relevant enquiries into allegations of misconduct and, if appropriate, make a written report to the Standards Committee (unless the Chair of Standards Committee agrees a report is not necessary) if, in the opinion of the Monitoring Officer, there is a serious breach of the Members Code of Conduct,
- (b) subject to the approval of the Standards Committee, be responsible for preparing any training programme for Members on ethical standards and Code of Conduct issues.
- (c) provide information in response to a contact from a member of the public about an elected member(s) provided that it would not compromise the Monitoring Officer should a formal complaint be made subsequently by the member of the public.

2.2.5 **Constitution**

Review and monitor the Constitution in accordance with Article 15.1 of the Constitution and consult with the Chief Finance Officer and Head of Paid Service before taking any report to the relevant committee to approve amendments to the Constitution

3. Member and Officer Responsibilities

To ensure the effective and efficient discharge of the arrangements set out in paragraph 2 above, Members and officers will report any breaches of statutory duty procedures and other vices or constitutional concerns to the Monitoring Officer, as soon as practicable.

4. Advice

The Monitoring Officer is also available for Members and officers to consult on any issues relating to the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (eg Council Procedure Rules, Policy Framework, Terms of Reference, Scheme of Delegations, etc).

4.1 Working Arrangements

The following arrangements and understandings between the Monitoring Officer and colleagues and members are designed to help ensure the effective discharge of their functions:-

Meetings

- 4.1.1 The Monitoring Officer will have advance notice of all meetings whether informal or formal between Chief Officers and members of the Cabinet or Chairs of Committees, where any procedural, vires or other constitutional matters are likely to arise;
- 4.1.2 The Monitoring Officer will have advance notice (including receiving Agendas, Minutes, Reports and related papers) of all relevant meetings of the Council at which a binding decision of the Council may be made (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, Cabinet Member, Committee meetings or Executive Management Team;
- 4.1.3 The Monitoring Officer will have the right to attend any meeting of the Council (including the right to be heard) before any binding decision is taken by the Council (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, Cabinet Member, Committee meetings or Executive Management Team.

Miscellaneous

The Monitoring Officer will:-

- (a) establish and maintain the Register of Members' Interests, and the Register of Gifts and Hospitality.
- (b) receive copies of certificates under the Local Authorities (Contracts) regulations 1997.
- (c) be the Proper Officer for Access for Information.
- (d) advise on whether executive decisions are within the Budget & Policy Framework.
- (e) be the primary Qualified Person for considering whether certain information is exempt from disclosure under the Freedom of Information Act.

5. Monitoring the Protocol

Annually, the Monitoring Officer will report to the Standards Committee regarding whether the arrangements set out in the Protocol have been complied with and will include any proposals for amendments in the light of any issues that have arisen during the year.

6. Sanctions for Breach of Protocol

Complaints of a breach of this Protocol by an Officer will be referred to the relevant Strategic Director and/or the Chief Executive for appropriate action to be considered, including disciplinary investigation if appropriate.

SUMMARY OF MONITORING OFFICER FUNCTIONS

Description		Source
1	Report on contraventions or likely contraventions of any enactment or rule of law.	Section 5 and 5A Local Government and Housing Act 1989.
2	Report on any maladministration or injustice where Ombudsman has carried out an investigation.	Section 5 and 5A Local Government and Housing Act 1989.
3	Appointment of Deputy.	Section 5 Local Government and Housing Act 1989.
4	Report on sufficiency of resources.	Section 5 Local Government and Housing Act 1989.
5	Establish and maintain registers of Members' interests and gifts and hospitality.	Section 81 Local Government Act 2000, and Members' Code of Conduct
6	Receive copies of certificates under the Local Authorities (Contracts) Regulations 1997.	Local Authorities (Contracts) Regulations 1997.
7	Maintain, review and monitor the Constitution.	Constitution - Articles 12.3 and 15.1
8	Support the Standards Committee - key role in promotion and maintenance of standards of conduct.	Section 27 Localism Act
12	Proper Officer for access to information	Constitution - Article 12, and DETR guidance.
13	Advise whether executive decisions are within the budget and policy framework	Constitution Article 12
14	Advise on vires issues, maladministration, financial impropriety, probity budget and policy framework issues to all Members.	Constitution Article 12 and DETR guidance