

**Standards Committee : 30 September 2009**

**Title of report: Review of Monitoring Officer Protocol**

<b>Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	<b>N/A</b>
<b>Is it in the Council's Forward Plan?</b>	<b>N/A</b>
<b>Is it eligible for "call in" by Scrutiny?</b>	<b>N/A</b>
<b>Cabinet member portfolio</b>	<b>Corporate</b>

**Electoral wards affected and ward councillors consulted: All**

**Public or private: Public**

## **1. Purpose of Report**

To undertake the annual review of the monitoring officer protocol, reporting on its operation and making appropriate recommendations for change.

## **2. Key Points**

The Committee will recall that there is a Monitoring Officer Protocol (attached at Appendix 1) which sets out the duties and responsibilities of the Monitoring Officer, as well as how that role should be undertaken. This report is the annual review of how that has been operated.

The Monitoring Officer would report as follows:

1. There have been no instances where the Monitoring Officer has considered or had to consider using her powers to formally report on matters she considers to be *ultra vires*. The Monitoring Officer's relationship with members and officers is such that where there is an issue of concern about the *vires* of a particular course of action, a conversation can be held at an early stage so that alternative action can be considered and taken, or where that is not possible that the matter is closed. The staff in Legal Services regularly advise officers and members on *vires* issues, and will only refer the most difficult cases to the Monitoring Officer to deal with personally.

2. Relationships between the Monitoring Officer and her staff with members and officers are very good. Whilst the Monitoring Officer is not a member of the Council's Executive Management Group (EMG), she does receive the agendas in advance and if she asks for papers then those are provided promptly. The Monitoring Officer has the right to attend meetings of EMG to discuss matters should she consider that appropriate. Similarly, the Monitoring Officer has good relationships with group leaders, and speaks to and meets with them on an individual and a group basis as and when required. Communication is on a two-way basis and is constructive and professional.
3. The Monitoring Officer has good relationships with the Chief Executive and the Section 151 Officer, and regularly discusses issues with them. The Chief Executive will regularly refer matters to the Monitoring Officer where he is considering a particular course of action to ensure that she is satisfied that that is an appropriate course of action. Where she makes a suggestion of alternative action, that is discussed in a professional manner and an agreed way forward is reached.
4. One of the roles of the Monitoring Officer is to provide advice to individual members on compliance with the Member Code of Conduct. This is particularly done in relation to declarations of interest. In the last twelve months, there have been some difficult and complex issues discussed by members at Council, Cabinet and other committee arenas. There have been difficult decisions for members to make on declarations of interests which they have found particularly challenging. However, the advice given by the Monitoring Officer and her staff has been considered by members and, in the main, accepted. There has been one challenge by way of a Standards Committee complaint where a member did not accept the Monitoring Officer's advice. However, it should be remembered that the issue of declarations of interests is for individual members to consider for themselves, although they should of course take into account the advice given by the Monitoring Officer.
5. The Monitoring Officer is satisfied that she has sufficient resources to adequately undertake her responsibilities.
6. The Monitoring Officer has had no cause to refer any matter to the Ombudsman, the Standards Board for England or the District Auditor.
7. The Monitoring Officer is satisfied that members have considered and updated their Register of Interests annually and that the Register of Gifts and Hospitality is being used appropriately.
8. The Monitoring Officer and her staff are currently reviewing what training should be provided for staff on ethics and governance generally. Two training sessions are being trialled, one based

on general governance and the principles of it as they are applied through the Council's Constitution, and one on ethics including this and other codes and also the Standards process. These will be trialled in late October on staff within the Directorate of Corporate Services and if successful will be rolled out across other directorates.

9. One of the functions of the Monitoring Officer is to undertake reviews which are requested following the refusal to provide information under the Freedom of Information Act. In the last twelve months the Monitoring Officer has considered two reviews and in both cases has upheld the officer decision to refuse to provide information.
10. The Monitoring Officer, Susan Betteridge, has been the Head of Legal Services with day to day management responsibility for Legal Services and the staff working within it. In that role, she has good access to a wide range of issues that may arise and which she needs to be aware of to undertake her role as the Monitoring Officer.
11. With effect from 21 September, she no longer has responsibility for the operational management of Legal Services as she is working on the Council's Innovation & Efficiency agenda. Vanessa Redfern, the Deputy Monitoring Officer, will have acting responsibility for the day to day operation of Legal Services. Susan Betteridge will retain the role of Monitoring Officer, and has put into place appropriate arrangements which will enable her to receive the information that she needs to undertake the role of Monitoring Officer. Senior members and officers will still have access to her as the Monitoring Officer, as well as to the Deputy Monitoring Officer and the two will ensure that their work is co-ordinated appropriately.
12. The Monitoring Officer has no suggestions for amendments to this Protocol.

### **3. Implications for the Council**

The Monitoring Officer's responsibilities are set by statute. It is important that the Monitoring Officer is able to carry out her functions satisfactorily. The existence of the Protocol is helpful in setting out what those responsibilities are and how they should be undertaken. It is in the interests of good governance of the Council generally that the Protocol is observed and operated well.

### **4. Consultees and their opinions**

N/A

### **5. Officer recommendations and reasons**

The Committee is asked to consider the points raised by the Monitoring Officer and consider what, if any, amendments they would make to the Protocol.

**6. Cabinet portfolio holder recommendation**

N/A

**7. Next steps**

N/A

**8. Contact officer and relevant papers**

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Background Papers:

N/A

**MONITORING OFFICER PROTOCOL**

## 1.0 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 Head of Legal Services.

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.

## 2.0 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 Area Committees with a view to ensuring the effective and efficient discharge of Council business;

(d) develop effective working liaison and relationship with the Standards Board for England, the District Auditor and the Local Government 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, Standards Committee and the Standards Board for England, 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 (in the absence of a written complaint being received by the Standards Board for England) and, if appropriate, make a written report to the Standards Committee (unless the Chair of Standards Committee agrees a report is not necessary) or to the Standards Board for England 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 Council Business Committee.

### **3.0 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 vires or constitutional concerns to the Monitoring Officer, as soon as practicable.

### **4.0 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.

## **5.0 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.

## **6.0 SANCTIONS FOR BREACH OF PROTOCOL**

Complaints of a breach of this Protocol by an Officer will be referred to the relevant 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.	Local Government Act 2000 Part III and DETR guidance paragraph 8.20
9	Receive reports from ethical standards offices and decisions of case tribunals	Local Government Act 2000 Part III.
10	Conduct investigations into misconduct.	Local Government Act 2000 Section 66
11	Perform ethical framework functions in relation to Parish Councils.	Section 83(12) Local Government Act 2000
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