

PART 5 (SECTION D)

PROTOCOL ON THE MONITORING OFFICER

1 INTRODUCTION

This Protocol describes the principal functions of the Monitoring Officer and the manner in which the authority expects him/her to discharge those functions.

2 FUNCTIONS

The principal functions of the Monitoring Officer shall be:

- (a) To report to the Council or the Cabinet in any case where it appears to him/her that any proposal, decision or omission by the authority in respect of any reportable incident has given rise to or is likely to or would give rise to any illegality, maladministration or breach of statutory code under Sections 5 and 5A of the Local Government and Housing Act 1989;
- (b) To investigate any matter which he/she has reason to believe may constitute, or where he/she has received an allegation that a matter may constitute, a reportable incident;
- (c) To maintain the registers of Members' and officers interests and the associated gifts/hospitality registers;
- (d) To act as the proper officer for the preparation, publication and retention of records of decisions taken by or on behalf of the Council and the Cabinet;
- (e) Responsibility for complaints, Local Commissioner (Ombudsman) and whistle-blowing functions of the authority;
- (f) Appointment as Proper Officer for the Freedom of Information Act 2000;
- (g) To consult regularly with the Head of Paid Service, the Chief Finance Officer and the Internal Auditor to identify areas where the probity of the authority can be improved or better protected, and to take appropriate actions;
- (h) A power to grant any application for a dispensation and to report any dispensations granted to the Audit and Governance Committee;

- (i) To ensure that Members and officers of the authority are fully aware of their obligations in relation to probity;
- (j) To report to the Cabinet and to the Council on the resources which he/she requires for the discharge of his functions;
- (k) To undertake all statutory Monitoring Officer functions in respect of Parish Councils within the area of the authority and to provide support and advice to such Parish Councils in maintaining policy, including:
 - (i) advice on the requirement for them to adopt a Local Code within 6 months of the publication of the relevant Model Code;
 - (ii) advice on the requirement for Members to notify the Monitoring Officer of any financial or other interests and of any changes in such interests, that such declarations will form part of a public register, means of gaining access to that register, and of any arrangements to ensure that Parish Council Clerks are kept informed of any such declarations;
 - (iii) advice on the need to apply to the Monitoring Officer for any dispensations and for maintaining a register of such dispensations and advising the applicant and the Council of any dispensations which are granted; and
 - (iv) advice on any provisions under which individual complaints of misconduct by Members may be referred or delegated to the Monitoring Officer and the Standards Committee for investigation and determination, and any arrangements agreed by the Monitoring Officer and the Standards Committees for dealing with such complaints.
- (l) To determine requests for the use of the full version of the Electoral Roll in accordance with statutory requirements;
- (m) To act as Council co-ordinator for the purposes of the Regulatory and Investigatory Powers Act 2000 (RIPA)
- (n) To ensure that the Council's Constitution is updated on a regular basis to reflect best practice and statutory requirements.

3 RESOURCES

For the purpose of carrying out these functions, the Monitoring Officer shall be provided with the following resources:

- (a) The right of access to all documents and information held by or on behalf of the authority, including documents and information held by any officer or Member of the authority. For the purpose of clarification,

this right does not extend to documents and information held by or on behalf of any political party represented on the Council;

- (b) The right of access to any meetings of officers or Members (or both) of the authority, whether or not such meetings include any other persons. For the purpose of clarification, this right does not extend to any meetings held by or on behalf of any political party represented on the Council;
- (c) The right to require any officer or Member of the authority, or any contractor of the authority, to provide an explanation of any matter under investigation;
- (d) A right to report to the Council and to the Cabinet, including a right to present a written report and to attend and advise verbally;
- (e) The right to require the assistance of any officer of the authority in carrying out an investigation and to delegate to that officer any of the powers of the post of Monitoring Officer;
- (f) A power to agree a local resolution to any complaint of maladministration or of breach of the authority's Code, in consultation with the Head of Paid Services and the Chief Finance Officer;
- (g) The right of access to the Head of the Paid Service and to the Chief Finance Officer;
- (h) The right, even after consultation and objection from either the Head of Paid Service and/or the Chief Finance Officer, to notify the Police, the authority's auditors and other regulatory agencies of his/her concerns in respect of any matter and to provide them with information and documents in order to assist them with statutory functions.
- (i) The right to obtain at the authority's expense legal advice, either internally or from an independent external solicitor or barrister, on any matter which he/she believes may be a reportable incident, and sufficient financial resource to enable him/her to do so.

4 DISCHARGE OF FUNCTIONS

- (a) It is recognised that the Monitoring Officer will be most effective if he/she is able to advise on any issue at an early stage of policy formulation or implementation. Accordingly, officers and Members of the authority should routinely inform and consult the Monitoring Officer in respect of new policy proposals and action programmes. The Monitoring Officer will automatically be included as a consultee on all Council reports;
- (b) The Monitoring Officer will seek to resolve potential reportable incidents by avoiding the illegality etc or by identifying alternative and

legitimate means of achieving the objective of the proposal. Accordingly, officers and Members of the authority may consult the Monitoring Officer in confidence in respect of any proposal, and the Monitoring Officer will only need to make a public report on the matter if the proposal were to be a potential reportable incident and the officer or Member subsequently took any action to progress that proposal despite being advised to the contrary by the Monitoring Officer;

- (c) Where the Monitoring Officer receives a complaint of a potential reportable incident, he/she shall in appropriate cases seek to resolve the matter amicably, by securing that any illegality, failure of process or breach of code is rectified, that the complainant is informed of the rectification, with or without a compensation payment and/or apology. However, it is recognised that the Monitoring Officer may determine that the matter is of such significance that a statutory report is the only appropriate response;
- (d) In appropriate cases, the Monitoring Officer may rely upon existing processes within the authority (such as internal appeals procedures or insurance arrangements) to resolve any potential reportable incident, but may intervene in such processes to identify that the particular matter is a potential reportable incident and to ensure the satisfactory resolution of the issue;
- (e) In appropriate cases, and to secure the rapid resolution of a potential reportable incident or avoid a separate statutory report, the Monitoring Officer shall be entitled to add his written advice to the report of any other officer of the authority;
- (f) Notwithstanding the above, the Monitoring Officer retains the right to make a statutory report where, after consultation with the Chief Executive and the Chief Finance Officer, he/she is of the opinion that such is necessary in order to respond properly to a reportable incident.

5 CONFLICTS OF INTEREST

Where the Monitoring Officer is in receipt of a complaint or is aware of a potential reportable event relating to a matter upon which he/she has previously advised the authority, he/she shall consult the Chief Executive who may then either refer the matter to the Deputy Monitoring Officer for investigation and report back to the Chief Executive or request a neighbouring authority to make their Monitoring Officer available to the authority to investigate the matter and report to the Chief Executive and/or the authority as appropriate.