



# CONSTITUTION OF THE COUNCIL

## Part 5 Section 6

### MONITORING OFFICER PROTOCOL

This protocol has been produced according to the model, introduced following the recommendation of the former District Auditor Service, that guidelines be produced for the benefit of Members and Senior Officers on the role of the Monitoring Officer.

#### 1. Introduction

This Protocol explains the role and functions of the Council's Monitoring Officer and the arrangements for ensuring this role is effectively carried out. It is based on the understanding that the ability of the Monitoring Officer to undertake this role effectively depends on excellent working relations with colleagues and Members and on the flow of information and access to debate particularly at early stages.

#### 2. Functions

The specific functions of the Council's Monitoring Officer are detailed in Article 12 of this Constitution. The chief responsibilities can be summarised as these:-

- (a) a duty to report to the Council in any case where the Monitoring Officer is of the opinion that any proposal or decision is or is likely to be illegal or to constitute maladministration. These matters are referred to in this Protocol as "reportable incidents";
- (b) a range of functions relating to Members' conduct; and
- (c) specific functions under the Council's Constitution.

#### 3. Discharge of Functions

3.1 In order to ensure the effective undertaking of these duties, the Monitoring Officer will:-

- (a) have regular meetings with each of the Head of Paid Service and Chief Finance (S.151) Officer in order to review current and likely future issues with legal, constitutional or ethical implications.
- (b) maintain good liaison and working relations with the Head of Internal Audit and the external audit service.
- (c) ensure that the Council is kept up to date on new legislation and changes in the law which are relevant to the carrying out of the Council's activities. This will generally take the form of reports to Members and briefing notes to Chief

Officers but where appropriate will involve training sessions for relevant Members and officers. These activities will be carried out in consultation and conjunction with relevant Chief Officers.

3.2 In addition, Chief Officers will ensure that:-

- (a) The Monitoring Officer or his/her Senior Staff are consulted at an early stage on new policy proposals and on matters which have potentially significant legal implications. Where there is any doubt, the Chief Officer should always consult.
- (b) All draft reports to the Council and Committees should as a matter of routine be cleared with the Monitoring Officer or his/her senior staff.
- (c) The Monitoring Officer is informed of all emerging issues of concern of a legal, ethical or constitutional nature. Similarly, Members should ensure that the Monitoring Officer is routinely informed and consulted in respect of new policy proposals.

The Monitoring Officer will always seek to resolve any potential illegality by identifying alternative and legitimate means of achieving the objective of the purpose. (See also para. 3.5(a)).

3.3 Also, in cases where external lawyers are acting for the Council, it will be necessary for the Monitoring Officer to appoint a client officer from within Legal Services and to agree with the relevant Chief Officer arrangements for ensuring that vires and constitutional issues are satisfactorily addressed.

3.4 These working arrangements will mean that:

- (a) The Monitoring Officer will seek to resolve potential reportable incidents (as defined in para 2(a)) by avoiding the illegality, etc., or by identifying alternative and legitimate means of achieving the objective of the proposal. Accordingly, and given that Council officers and Members are encouraged to consult the Monitoring Officer in respect of any proposal, 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.
- (b) Where the Monitoring Officer receives a complaint of a potential reportable incident, he/she must in appropriate cases seek to resolve the matter amicably, by securing that any illegality or failure of process is rectified. However, it is recognised that the Monitoring Officer may decide that the matter is of such importance that a statutory report is the only appropriate response.
- (c) In appropriate cases, and to secure the rapid resolution of a potential reportable incident or avoid a separate statutory report, the Monitoring Officer will be entitled to add his/her written advice to the report of any other Council officer.
- (d) Notwithstanding the above, the Monitoring Officer retains the right to make a statutory report where, after consultation with the Head of Paid Service and the

S.151 Officer, he/she is of the opinion that such is necessary in order to respond properly to a reportable incident.

- 3.5 In pursuance of his or her duties, and to assist in effective and efficient undertaking of these working arrangements, the Monitoring Officer will have the right:-
- (a) To receive advance notice of meetings, whether formal or informal between Chief Officers and Members of the Council or Committee Chairs where any procedural, vires or other constitutional issues are likely to arise, together with the right to attend such meetings.
  - (b) To receive advance notice of meetings of the Senior Leadership Team and the agenda and reports together with the right to attend and speak.
  - (c) To see all documents and information held by or on behalf of the Council, including documents and information held by any Council officer or Member. However, this right does not extend to documents and information held by or on behalf of any political party represented on the Council.
  - (d) To attend any meetings of officers or Members (or both), whether or not such meetings include any other persons. However, this right does not extend to any meetings held by or on behalf of any political party represented on the Council.
  - (e) To require any Council officer or Member, or any contractor to provide an explanation of any matter under investigation.
  - (f) To report to the Council, and its Committees, including a right to present a written report and to attend and advise orally.
  - (g) To have access to the Chief Executive (Head of the Paid Service) and to the S.151 Officer.
  - (h) After consultation with the Chief Executive and the S.151 Officer, to notify the Police, the Council's Auditors and other regulatory agencies of concerns in respect of any matter and to provide them with information and documents in order to assist them with their statutory functions.
  - (i) To obtain, at the Council's expense, legal advice, either internally or from an independent external solicitor, barrister or forensic consultant, on any matter which it is believed may be a reportable incident.

#### 4. **Conflicts**

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 Council, he/she must consult the Head of the Paid Service who may then either refer the matter to the Deputy Monitoring Officer for investigation and report back to the Head of the Paid Service or request a neighbouring authority to make their Monitoring Officer available to the Council to investigate the matter and report to the Head of the Paid Service and/or the Council as appropriate.

5. **Insurance and indemnity arrangements**

The S.151 Officer will ensure adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the interests of the Council, and the proper discharge of the Monitoring Officer role.

6. **Sanctions for breach of the Council's Codes of Conduct and this Protocol**

Complaints relating to any breach of the Council's Code of Conduct for Members must be dealt with in accordance with the arrangements adopted by Council. Complaints relating to any breach of this Protocol by a Member may be referred to the relevant leader and/ or whip of the political party group and as a breach of the members Code of Conduct to the Constitution and Standards Committee. Complaints relating to any breach of this Protocol by an officer may be referred for disciplinary action.