

Part 5.6 Monitoring Officer Protocol

1. Introduction

- 1.1 Section 5 of the Local Government and Housing Act 1989 (the 1989 Act) requires local authorities to appoint a Monitoring Officer. This protocol provides some general information on the statutory role the Monitoring Officer undertakes and how the functions will be discharged within Slough Borough Council.
- 1.2 A summary list of the Monitoring Officer's functions appear in Appendix A to this protocol. The Monitoring Officer's ability to discharge these responsibilities will depend, to a large extent, on Members and Officers:-
- (a) complying with statute and common law (including any relevant Codes of Conduct which form part of the Ethical Framework Section of the Council's Constitution).
 - (b) complying with any statutory guidance and other guidance/advice issued by the Audit & Corporate Governance Committee and the Monitoring Officer from time to time.
 - (c) not doing anything that would bring the Council or their offices into disrepute.
 - (d) making lawful and proportionate/reasonable decisions.
- 1.3 The role of the Monitoring Officer within the Council rests with the Service Lead Governance.
- 1.4 The Monitoring Officer undertakes to discharge the responsibilities outlined in this protocol with determination and fairness and in a manner which will enhance the reputation of the Council. He is assisted from time to time by staff within Legal Services and Democratic Services but the responsibility of discharging the functions is a personal one. In general terms his ability to discharge his duties depends on good working relations with Members and Officer colleagues, particularly Directors, and also access to information and debate during the decision making process.
- 1.5 The term 'Director' in this protocol means the members of the Corporate Management Team ('CMT') which includes the Head of Paid Service (the Chief Executive) and the Chief Financial Officer (Section 151 Officer).

2. Working Arrangements/Understandings

- 2.1 The following arrangements and understandings between the Monitoring Officer, Members and Directors are designed to help ensure the effective discharge of the Council's statutory powers and duties.
- (a) **Appointment of Deputy** – The Monitoring Officer will appoint a Deputy and keep him/her briefed on any relevant issues that s/he may be required to deal with where he is unable to act.

- (b) **Resources** – The Monitoring Officer will make a report to the Council from time to time on the staff, accommodation and resources required to discharge his functions.
- (c) **Counsel's Opinion** – Where the Monitoring Officer requires specialist advice on any matter concerning his statutory responsibilities he will seek Counsel's Opinion and must have control of a budget to enable him to do so.
- (d) **Training** – The Monitoring Officer is responsible for preparing and implementing a training programme for Members on the Council's ethical framework subject to the approval of the Audit & Corporate Governance Committee.
- (e) **Registers** – The Monitoring Officer will compile and maintain the Council's Registers for Members' Interests and Gifts and Hospitality (offered and received).
- (f) **The Council's Constitution** – The Monitoring Officer will monitor and review the operation of the Constitution in consultation with the Head of Paid Service and the Chief Financial Officer where appropriate to ensure that the aims and principles of the Constitution are given full effect.
- (g) **General Advice** – The Monitoring Officer will give general advice on the interpretation and application of the Council's Constitution to Members and Officers alike (i.e. responsibility for functions, procedural rules, codes and protocols and member allowances scheme).
- (h) **Lawfulness etc** – Members and Directors must alert the Monitoring Officer to all emerging issues that may become a concern to the Council e.g. lawfulness (ultra vires), probity, procedural or other constitutional matters and give advance notice of meetings (whether formal or informal) where these issues are likely to arise.
- (i) **Attendance at meetings** – The Monitoring Officer will have the right to attend and be heard at any meeting of the Council (including CMT) before any binding decision is taken (including a decision not to take action).
- (j) **External Relations** – The Monitoring Officer will develop good and effective working relations with the Standards Board for England, the Audit Commission/District Audit, the Local Government Ombudsman and the Clerks to the three Parish Councils within the Borough (including the giving and receiving of relevant information whether confidential or otherwise).
- (k) **Internal Relations** – The Monitoring Officer will have a special relationship of mutual trust and respect with the Mayor, Deputy Mayor and the Chairs of the Cabinet, Audit and Corporate Governance Committee, Regulatory and Overview and Scrutiny Committees with a view to ensuring the effective and efficient discharge of the Council's functions.

- (l) **Complaints/Investigations** – The Monitoring Officer will
- Consider complaints against Members in accordance with the Councillor's Code of Conduct.
 - have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of his functions when carrying out any investigation.
- (m) **Deferral of Report** – In consultation with the Mayor of the Council and the Standards Board for England the Monitoring Officer may defer the making of a formal report under Section 5 of the 1989 Act where another investigative body is involved.
- (n) **The Statutory Officers** – The Monitoring Officer will meet with the Head of Paid Service and the Chief Finance 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.
- (o) **Maladministration** - Directors must consult the Monitoring Officer prior to making any compensation payments for alleged or actual maladministration found against the Council.
- 2.2 To ensure the effective and efficient discharge of the above working arrangements/understandings Members and Directors will report any breach of statutory duty or material breach of Council policy/procedures and other vires or constitutional concerns to the Monitoring Officer as soon as practicable.
- 2.3 The Directors agree to inform and explain the terms of this protocol to their senior managers so that they understand the issues highlighted in paragraph 2.1 above and report concerns accordingly.
- 2.4 The Chief Financial Officer will ensure that adequate insurance and indemnity arrangements are in place to protect and safeguard the interests of the Council and the proper discharge of the Monitoring Officer's role.

3. **Breach of the Local Code of Conduct for Members and this Protocol**

- 3.1 Complaints against any breach of the Council's Local Code of Conduct for Members must be referred to the Monitoring Officer in accordance with the Council's Code of Conduct procedures. Complaints against any breach of this protocol by a Member will be referred to the Audit and Corporate Governance Committee and to the relevant Leader and/or the Political Party Group Whip.
- 3.2 Complaints against any breach of this protocol by an Officer may be referred to the relevant Director and/or the Chief Executive.

4. **Approval of this Protocol**

- 4.1 This Monitoring Officer protocol was approved by the Standards Committee at its meeting on 27th November 2003.
- 4.2 The Council adopted the protocol at its meeting on 16th December 2003.

SUMMARY OF MONITORING OFFICER FUNCTIONS

Description		Key Source
1.	Appointment of Deputy	Section 5 1989 Act
2.	Report on resources	Section 5 1989 Act
3.	Establish and maintain Registers of Members' Interests and Gifts and Hospitality	Section 81 LGA 2000 and Local Code of Conduct
4.	Advice to Members and Officers on the interpretation and application of the Constitution	Article 11, SBC Constitution
5.	Receive copies of whistleblowing allegations of misconduct	Article 11, SBC Constitution
6.	Key role in promoting and maintaining high standards of conduct through support to the Audit & Corporate Governance Committee	Statutory Guidance paragraph 8.20
7.	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members.	DETR guidance
8.	Report on contraventions or likely contraventions of any enactment or rule of law	Section 5 1989 Act
9.	Report on any maladministration or injustice where Ombudsman has carried out an investigation	Section 5 1989 Act
10.	Liaison with Standards Board for England and Ethical Standards Officers	Section 66 LGA 2000
11.	Investigate misconduct in compliance with Regulations (when made) and directions of Ethical Standards Officers	Section 66 (1) + (6) LGA 2000 and Regulations made thereunder
12.	New ethical framework functions in relation to Parish Councils.	Section 83(12) LGA 2000
13.	Compensation for maladministration	Section 92 LGA 2000