

Report to the Constitution and Member Services Standing Scrutiny Panel



Date of Meeting: 11 January 2010

Subject: Role of Monitoring Officer - Draft Protocol

Responsible Officer: Colleen O'Boyle (01992 56 4475)
(Monitoring Officer)

Democratic Services Officer: Mark Jenkins (01992 56 4607)

Recommendations:

- (1) To consider the attached draft Monitoring Officer Protocol; and
- (2) To consider recommending that the Protocol be approved by the Council as part of the Constitution.

Executive Summary:

This report responds to a request made by the Chairman of the Audit and Governance Committee for a report on the need for a Protocol between the Council and the Monitoring Officer regarding the roles and responsibilities of that statutory officer. This was with a view to managing the relationship between the authority and the Monitoring Officer on a mutually agreed basis. The Audit and Governance Committee has now referred the protocol to this Panel for consideration.

Reason for Proposed Decision:

The report has been submitted to this meeting at the request of the Audit and Governance Committee.

Other Options for Action:

None.

Report:

1. The Monitoring Officer is a designation which was introduced in the Local Government and Housing Act 1989. The functions of the Monitoring Officer are set out in Article 13 (Officers) of the Council's Constitution (Pages B36-B40).
2. The functions of the Monitoring Officer may be summarised below:
 - (a) maintaining the Council's Constitution;
 - (b) ensuring lawfulness and fairness of decision making;
 - (c) supporting the Standards Committee;

- (d) receiving reports on the results of investigations as part of the ethical framework;
- (e) conducting investigations on behalf of the Standards Committee;
- (f) acting as Proper Officer for access to information matters;
- (g) advising on Executive decisions and whether these are within the budget and policy framework of the Constitution; and
- (h) providing advice on the scope of powers and authority to take decisions, on maladministration, on financial impropriety, on probity and budget and policy framework issues to all Councillors.

3. The Monitoring Officer cannot also be the Chief Finance Officer or the Head of Paid Service. The latter positions are held by Mr R Palmer and Mr P Haywood respectively in their roles as Director of Finance and ICT and Chief Executive.

Need for Protocol

4. The request by the Chairman of the Audit and Governance Committee for a report to its meeting on 30 November 2009 was occasioned by concerns expressed at an extraordinary Council meeting held in August 2009 at which a private session item concerning the contractual position of a member of staff was discussed. The specific issue which arose related to the rights (or otherwise) of the Monitoring Officer to attend any meeting of the Council, the Cabinet or any other body for the purpose of advising the authority regarding lawfulness and fairness of decision making (see above). On that occasion, the Monitoring Officer had decided to issue a report under Paragraph 13.03(b) of Article 13 and had indicated that in order to present that report and answer questions, it was necessary for her to attend the meeting both for the purpose of presentation of the report, answering queries from Councillors and advising on any suggested decision that was going to be made.

5. The discussion on this item was held in private session and, for the most part, in the absence of all officers except an external legal adviser who had been appointed by the Leader of Council. At the meeting, the Monitoring Officer made a presentation, answered questions about the report and about her own role in presenting it and, by agreement, withdrew from part of the meeting so that the Council could receive its legal advice from the external Solicitor who remained in the meeting throughout. The Monitoring Officer returned to the meeting once the Council had completed its private discussions and was present during the formulation of the resolutions concerned.

6. As the ability of the Monitoring Officer to remain present at a meeting had been questioned, the need for a Protocol governing relations between the Monitoring Officer and the Council has been identified. It should be stressed that at the Council meeting in question the Deputy Monitoring Officer advised on the position concerning the Monitoring Officer's powers and responsibilities and advised on good practice advice which had been received from the Audit Commission which indicates that the Monitoring Officer is entitled to attend all meetings and see all documents relating to any forthcoming Council decision.

The Protocol

7. The enclosed Protocol has been based on the statutory requirements of Section 5 of the Local Government and Housing Act 1989, the advice from the Audit Commission and good practice examples obtained from other authorities. The Panel is invited to consider this document and determine how it should be progressed.

8. The Protocol was discussed by the Audit and Governance Committee which suggested that the pronoun referring to the Monitoring Officer should be de-personalised. This change has been made in the revised draft now submitted.

Resource Implications:

None.

Legal and Governance Implications:

Although receipt by the Council of a Monitoring Officer's report has been a very rare event since the designation took effect, the Council's governance framework needs to take account of the statutory role of the Monitoring Officer and that, to avoid any misunderstandings of those rights, a Protocol of the kind now being proposed would benefit all parties.

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

There has been consultation with the Council's Corporate Governance Group and the Audit and Governance Committee which both support the need for a protocol.

Impact Assessment:

Risk Management

With clear guidelines for managing the relationship between the Monitoring Officer and the Council, risk of unfair or illegal decisions being made will be reduced.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?

N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?

The role of the Monitoring Officer places on the designated postholder a responsibility to ensure the Council's decision making and governance framework is based on the requirements of probity, legality and fairness and as such embrace the Council's duties in respect of equalities. These principles are applied in the proposed Protocol.

Z:/C/CONSTITUTION & MEMBERS SERVICES SCRUTINY STANDING PANEL\2010\11 JANUARY 2010 ROLE OF MONITORING OFFICER REPORT.doc