

## **MONITORING OFFICER PROTOCOL**

### **1. 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 in Epping Forest District Council.
- 1.2 The current responsibilities of the Monitoring Officer role rest with the Director of Corporate Support Services, Colleen O'Boyle, who undertakes to discharge the statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. In doing so, the Monitoring Officer will provide appropriate and, if necessary, strong advice to Members so as to protect and safeguard, so far as is possible, Members and Officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.
- 1.3 A summary list of the statutory responsibilities appears in the table annexed to this document. In general terms, 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 of the land (including any relevant Codes of Conduct);
  - (b) complying with any general guidance issued, from time to time, by the Standards Committee and/or advice of 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. WORKING ARRANGEMENTS**

- 2.1 It is important that Members and Officers work together to promote the corporate health of the Council. The Monitoring Officer plays a key role in this and it is vital therefore, that Members and Officers work with the Monitoring Officer (and staff of the Monitoring Officer) to enable the discharge of the statutory responsibilities and other duties.
- 2.2 The following arrangements and understandings between the Monitoring Officer, Members and Chief Officers (Management Team) are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will:
- (a) be alerted by Members and Officers to any issue(s) that may become of concern to the Council, 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 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, a

Portfolio Holder, Committee meetings and/or Chief Officers (or equivalent arrangements);

- (c) have the right to attend and be present throughout the debate on any item relevant to the Monitoring Officer's functions at 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, a Portfolio Holder, Committee meetings and/or Chief Officers (or equivalent arrangements);
- (d) in carrying out any investigation(s) have unqualified access to any information held by the Council and to any Member or Officer who can assist in the discharge of the Monitoring Officer's functions;
- (e) ensure the other statutory officers (Head of Paid Service and the Chief Finance 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;
- (f) meet regularly with the Chief Executive and Head of Paid Service, the Chief Finance Officer, the Deputy Chief Executive, the Deputy Monitoring Officer and the Chief Internal Auditor (Corporate Governance Group) 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;
- (g) report to the Council, from time to time, on the Constitution and any necessary or desirable changes following consultation, in particular, with the Leader, Head of Paid Service and Chief Finance Officer;
- (h) in accordance with statutory requirements, make a report to the Council, as necessary on the staff, accommodation and resource required to discharge the Monitoring Officer's statutory functions;
- (i) have a special relationship of respect and trust with the Leader, Deputy Leader and the Chairmen of the Standards, Overview and Scrutiny and regulatory Committees with a view to ensuring the effective and efficient discharge of Council business;
- (j) develop effective working liaison and relationship with the Standards Board for England, the External Auditor and the Local Government Ombudsman (including having the authority, on behalf of the Council, after consultation with the Chairman of the Standards Committee, if appropriate, to complain to the same, refer any breaches to them or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary);
- (k) maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality;
- (l) give informal and, if necessary, strong advice to Members and Officers and undertake relevant enquiries into allegations of misconduct and, if appropriate, make a written report to the Standards Committee;

- (m) in consultation, as necessary, with the Leader and the Chairmen of the Standards Committee, defer the making of a formal report under Section 5 of the Local Government and Housing Act 1989 where another investigative body is involved;
  - (n) make arrangements to ensure effective communication between the Monitoring Officer's office and the Clerks of Parish/Town Councils in the District on Monitoring Officer and Standards Committee issues;
  - (o) have sufficient resources to enable any matters concerning the Monitoring Officer functions to be addressed;
  - (p) 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;
  - (q) appoint a deputy and keep the deputy briefed on any relevant issues that the deputy may be required to deal with in the absence of the Monitoring Officer; and
  - (r) deal with any formal complaints for local assessment, investigation and/or determination.
- 2.3 To ensure the effective and efficient discharge of the arrangements set out in paragraph 2.2 above, Members and Officers will report any breaches of statutory duty or Council policies or procedures and other vices or constitutional concerns to the Monitoring Officer, as soon as practicable.
- 2.4 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.
- 2.5 Where the Monitoring Officer receives a complaint of a potential reportable incident, the Monitoring Officer 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 importance that a statutory report is the only appropriate response.
- 2.6 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.
- 2.7 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 written advice to the report of any other officer of the authority.
- 2.8 Notwithstanding the above, the Monitoring Officer retains the right in all cases to make a statutory report where, after consultation with the Head of Paid Service and the Chief Finance Officer, the Monitoring Officer is of the opinion that this is necessary in order to respond properly to a reportable incident. In addition, in

appropriate cases, the Monitoring Officer may refer matters to the Police for investigation.

- 2.9 The Monitoring Officer is available for Members and Officers to consult on any issues of the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (e.g., Standing Orders, policy framework, terms of reference, scheme of delegations).
- 2.10 The Monitoring Officer will ensure that executive decisions, together with the reasons for these decisions and relevant officer reports and background papers are made publicly available as soon as possible.
- 2.11 The Monitoring Officer cannot be the Head of Paid Service or the Chief Finance Officer.
- 2.12 To ensure the effective and efficient discharge of this Protocol, the Chief Finance Officer will ensure 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 role.

**APPENDIX**

<b>SUMMARY OF MONITORING OFFICER FUNCTIONS</b>		
	<b>Description</b>	<b>Source</b>
1	Report on contraventions or likely contraventions of any enactment or rule of law	Section 5 Local Government and Housing Act 1989
2	Report on any maladministration or injustice where Ombudsman has carried out an investigation	Section 5 Local Government and Housing Act 1989
3	Appointment of Deputy	Section 5 Local Government and Housing Act 1989
4	Report on resources	Section 5 Local Government and Housing Act 1989
5	Establish and maintain registers of members interests and gifts and hospitality	Section 81 LGA 2000 and Code of Conduct for Members (and Employees, once introduced)
6	Advice to members on interpretation of Code of Conduct	Code of Conduct for Members
7	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	Statutory Guidance
8	Liaison with Standards Board and Adjudication Panel for England	New ethical framework
9	New ethical framework functions in relation to Parish Councils	Section 83(12) LGA 2000
10	Compensation for maladministration	Section 92 LGA 2000
11	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members	DCLG guidance
12	Investigate and report on any misconduct	Local Government Act 2000 and Regulations

13	Refer relevant matters to Standards Committee for initial assessment, review and hearing	Local Government Act 2000 as amended and Regulations
14	Advise on any indemnities and insurance issues for Members/Officers	Regulations under LGA 2000