

**STANDARDS COMMITTEE**

**REPORT for meeting to be held on 2 September 2009**

**Monitoring Officer Protocol**

**Purpose**

To consider the draft Monitoring Officer Protocol.

**Recommendations**

That the Standards Committee:

- (1) consider and endorse the attached draft Monitoring Officer Protocol;
- (2) recommend to the Council that it be included as an appendix to the Council's Constitution.

**Financial Consequences**

There are no financial consequences of this report.

**Strategic Priority and Outcome/Service Priorities**

The Monitoring Officer Protocol improves the Council's Corporate Governance Framework and helps to protect the interests of the Council.

**Risk**

There are no perceived risks to implementing such protocol. In fact the incorporation of the protocol in the Constitution should help reduce risk across the Council by creating further clarity in respect of Corporate Governance.

**Contact Officers**

John Jones, Monitoring Officer

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**Background Documents**

None

## Report

1. Corporate Governance is an important element of maintaining high standards in local government. It is the responsibility of each elected member and officer within the authority to ensure that they comply with their respective codes as well as acting within the law and the Council's own internal rules contained within the Constitution. Responsibility for ensuring that high standards are maintained falls to the three statutory officers (the Head of Paid Services, the Chief Finance Officer and the Monitoring Officer).
2. Therefore, the protocol set out in Appendix A has been drafted which explains the statutory role of the Monitoring Officer, his/ her relationship with the Head of Paid Service and the Chief Financial Officer and the duties and responsibilities of officers and members to assist the Monitoring Officer in his/her role.

## **Appendix A**

# **Monitoring Officer Protocol**

## **General Introduction to Statutory Responsibilities**

The Monitoring Officer is a statutory appointment under Section 5 of the Local Government and Housing Act 1989. This protocol provides some general information on how those statutory requirements will be discharged at Norwich City Council.

The current responsibilities of the Monitoring Officer role rest with the Head of Legal and Democratic Services who undertakes to discharge his/her statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. In doing so s/he will also safeguard, so far as is possible, members and officers whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.

The main functions of the Monitoring Officer at Norwich City Council are:

1. To report to the Council and to the Executive in any case where s/he is of the opinion that any proposal or decision of the authority 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; (LGHA 89).
2. To investigate any matter which s/he has reason to believe may constitute, or where s/he has received an allegation that a matter may constitute, a reportable incident under Sections 5 and 5A of the LGHA 89.
3. To act as the principal adviser to the authority's Standards Committee.
4. To act as the principal adviser to the authority's Standards Panel.
5. To maintain the Register of Members' Interests.
6. 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 Executive.
7. To have responsibility for responding to complaints to the Local Government Ombudsman.
8. To undertake, with others, investigations in accordance with the Council's whistleblowing procedures.
9. To act as Proper Officer for the Data Protection Act 1998 and the Freedom of Information Act 2000.

In general terms, the Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on members and officers:

1. Complying with the law (including any relevant Codes of Conduct).
2. Complying with any general guidance issued, from time to time, by the Standards Committee and the Monitoring Officer.
3. Making lawful and proportionate decisions.
4. Complying with the Council's Constitution and standing orders.
5. Generally not taking action that would bring the Council, their offices or professions into disrepute.
6. Communicating effectively with the Monitoring Officer and seeking advice on any issues relating to constitutional or ethical matters.

The main statutory references for the Monitoring Officer's functions are set out in Appendix 1.

### **Working Arrangements**

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 his/her staff) to enable him/her to discharge his/her statutory responsibilities and other duties.

The following arrangements and understandings between the Monitoring Officer, members and the Corporate Management Team are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will:

1. 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.
2. 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, Executive, committee meetings and/or Strategic Directorate (or equivalent arrangements).
3. Have the right to attend 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, Executive, committee meetings and/or Strategic Directorate (or equivalent arrangements).

4. 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 his/her functions.
5. Ensure the other statutory officers (Head of Paid Service and the Chief Finance Officer otherwise known as Section 151 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.
6. Meet regularly 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 (discharged through the Corporate Governance Working Group).
7. Report to the Council, from time to time, on the Constitution and any necessary or desirable changes following consultation, in particular, with the Constitution Working Party, Leader of the Council, the Head of Paid Service and Chief Finance Officer.
8. In accordance with statutory requirements, make a report to the Council as necessary on the staff, accommodation and resources s/he requires to discharge his/her statutory functions.
9. Have an appropriate relationship with the Leader of the Council, other Group Leaders and the Chair of Standards and Scrutiny Committees with a view to ensuring the effective and efficient discharge of Council business.
10. Develop effective working liaison and relationship with the Standards Board for England, the District Auditor and the Local Government Ombudsman (including having the authority, on behalf of the Council, to complain to them, refer any breaches to them or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary) and settle any compensation payments for alleged or actual maladministration found against the Council in consultation with the Chief Executive and the appropriate Corporate Director.
11. Maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality.
12. Give informal advice and undertake relevant enquiries into allegations of misconduct (in the absence of a written complaint being received by the Standards Committee) and, if appropriate, make a written report to the Standards Committee.
13. In consultation, as necessary, with the Leader of the Council, Group Leaders, Standards Committee and the Standards Board for England,

defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved.

14. Undertake statutory Monitoring Officer investigations if requested to support another Norfolk Local Authority.
15. 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.
16. Advise on all applications from Council employees (or prospective employees) for exemption from political restriction in respect of their posts and where appropriate sign the certificate of opinion required by the independent adjudicator.
17. Appoint a Deputy and keep him/her briefed on any relevant issues that s/he may be required to deal with in the absence of the Monitoring Officer. The Deputy will only act in the absence of the Monitoring Officer if urgent action is required which cannot await the return of the Monitoring Officer.

To ensure the effective and efficient discharge of the arrangements set out 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.

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.

Where the Monitoring Officer receives a complaint of a potential reportable incident, s/he 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.

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.

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/her written advice to the report of any other officer of the authority.

Notwithstanding the above, the Monitoring Officer retains the right in all cases to make a statutory report where, after consultation with the Chief Executive

and the Chief Finance Officer, s/he 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.

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 (eg Standing Orders, policy framework, terms of reference, scheme of delegations etc).

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 1

### Monitoring Officer Protocol

#### Summary of Main Monitoring Officer Functions

|    | <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  | Receive copies of whistleblowing and allegations of misconduct  | Code of Conduct for Members                         |
| 6  | Investigate misconduct in compliance with Regulations (when made) and directions of Ethical Standards Officers                  | LGA 2000 Section 66(1)+66(6)                        |
| 7  | Establish and maintain registers of members interests and gifts and hospitality   | Section 81 LGA 2000 and Code of Conduct for Members |
| 8  | Advice to members on interpretation of Code   | Code of Conduct for Members                         |
| 9  | Key role in promoting and maintaining high standards of conduct through support to the Standards Committee                      | DETR Guidance                                       |
| 10 | Liaison with Standards Board and Ethical Standards Officers   | New ethical framework, practical implications       |
| 11 | New ethical framework functions in relation to Parish Councils  | Section 83(12) LGA 2000                             |
| 12 | Compensation for maladministration  | Section 92 LGA 2000                                 |
| 13 | Advice on vices issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members | DETR guidance                                       |