

# **PART 5 - CODES AND PROTOCOLS**

## **SECTION E**

### **MONITORING OFFICER PROTOCOL**

#### **GENERAL INTRODUCTION TO STATUTORY RESPONSIBILITIES**

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 Surrey Heath Borough Council.
2. The current responsibilities of the Monitoring Officer role rest with the Head of Legal Services, who undertakes to discharge his statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. In doing so, he will provide appropriate advice to Members so as to protect and safeguard, so far as is possible, Members and Officers, whilst acting in his official capacities.
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 Council and/or advice of the Monitoring Officer;
  - c) making lawful and proportionate decisions; and
  - d) generally, not taking action that would bring the Council, his offices or professions into disrepute.
4. The Monitoring Officer duties also encompass responsibility for the Bisley, Chobham, West End and Windlesham Parish Councils.
5. The Monitoring Officer will appoint the Deputy Monitoring Officer(s) in accordance with Section 5 of the Local Government and Housing Act 1989. The Deputy Monitoring Officer(s) will support the Monitoring Officer generally and perform the functions of the Monitoring Officer where he is unable to act. The Monitoring Officer will keep him or her briefed on any relevant issues that they may be required to deal with in the absence of the Monitoring Officer. The responsibility of discharging the functions of Monitoring Officer is a personal one but he will be assisted from time to time by other staff.

## WORKING ARRANGEMENTS

6. Having excellent working relations with Members and Officers will assist in the discharge of the statutory responsibilities on the Monitoring Officer and ensure that the Council operates lawfully. Equally, a speedy flow of relevant information and access to debate (particularly at the early stages of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and Officers must, therefore, cooperate with the Monitoring Officer (and his staff) to discharge the Council's statutory and discretionary responsibilities.
7. The following arrangements and understandings between the Monitoring Officer, Members and Chief Officers 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, Leader/Executive, Portfolio Holder, Committee meetings and/or Management Board/(or equivalent arrangements);
  - (c) 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, the Leader/Executive, Portfolio Holder, Committee meetings and/or Management Board/(or equivalent arrangements);
  - (d) in carrying out any investigation(s) have unqualified access to any information held by the Borough Council and to any Officer who can assist in the discharge of his functions;
  - (e) ensure the other statutory officers (Head of Paid Service and the Executive Head of Finance) 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 Leader of the Council, Head of Paid Service and the Executive Head of Finance 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, through the Governance Working Group, from time to time, on the Constitution and any necessary or desirable changes following consultation, in particular, with the Head of Paid Service and Executive Head of Finance;
  - (h) have sufficient resources to enable him to address any matters concerning his Monitoring Officer functions and make a report to the Council, as necessary on the staff, accommodation and resources needed to discharge his statutory functions;
  - (i) have a special relationship of respect and trust with the Mayor, Deputy Mayor, the Leader and other Group Leaders and the Executive and the Chairmen of Standards Hearing and Determination, Regulatory and Scrutiny Committees with a view to ensuring the effective and efficient discharge of Council business;
  - (j) develop, where necessary, effective working liaison and relationship with, the External Auditor and the Local Government Ombudsman.
  - (k) maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality;
  - (l) in consultation, as necessary, with the Leader/Executive, defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved;
  - (m) make arrangements to ensure effective communication between his office and the Clerk to the Parish Council's on standards issues;
  - (n) be responsible for preparing any training programme for members on ethical standards and Code of Conduct issues inclusive;
8. The Monitoring Officer is also 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 etc.).

8. To protect and safeguard the interests of the Council and the proper discharge of the Monitoring Officer role and to ensure the effective and efficient discharge of this Protocol, the Executive Head of Finance will ensure adequate insurance and indemnity arrangements are in place.

## SUMMARY OF MONITORING OFFICER FUNCTIONS

	Description	Source
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(ies)	Section 5 Local Government and Housing Act 1989
4	Report on resources	Section 5 Local Government and Housing Act 1989
5	Receive copies of whistle blowing allegations of misconduct	Whistle blowing Code
6	Investigate and report on any misconduct	Section 28 Localism Act 2011
7	Establish and maintain registers of members' interests.	Section 29 Localism Act 2011
8	Advice to members on interpretation of Code	Members Code of Conduct at Part 5
9	Key role in promoting and maintaining high standards of conduct by members	Section 27 Localism Act 2011
10	Ethical framework functions in relation to parish councils	Chapter 7 Localism Act 2011
11	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members	DCLG guidance
12	Deal with any Complaints against Borough and Parish Members	Section 28 Localism Act 2011
13	Advise on any indemnities and insurance for members / officers	Regulations under LGA 2000