

## **EAST HERTFORDSHIRE DISTRICT COUNCIL**

### **MONITORING OFFICER PROTOCOL**

#### **A 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 East Hertfordshire District Council.
- 2 The current responsibilities of the Monitoring Officer role rest with the Assistant Director (Law & Control), who undertakes to discharge these statutory responsibilities in a positive way and in a manner that enhances the overall reputation of the Council. In doing so, the Monitoring Officer will also safeguard, so far as is possible, Members and Officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.
- 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 (including any relevant Codes of Conduct and Protocols);
  - b) complying with any general guidance issued, from time to time, by the Standards Board, Standards Committee and the Monitoring Officer;
  - c) making lawful and proportionate decisions; and
  - d) generally, not taking action that would bring the Council, their post or professions into disrepute.

#### **B WORKING ARRANGEMENTS**

- 4 Having excellent working relations with Members and Officers will assist in the discharge of the statutory responsibilities of the Monitoring Officer. 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 should, therefore, work with the Monitoring Officer to discharge the Council's statutory and discretionary responsibilities.

- 5 The following arrangements and understandings between the Monitoring Officer, Members and Assistant Directors 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 decision 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 Sub-Committee meetings (or equivalent arrangements);
  - c) have the right to attend any meeting of the Council (including the right to be heard) before any Decision is taken (including a failure to take a decision where one should have been taken) at or before the Council, Executive, Committee meetings and Sub-Committee meetings (or equivalent arrangements);
  - d) in carrying out any investigation(s) have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of any 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 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;
- g) report to the Council, from time to time, on the Constitution and any necessary or desirable changes following consultation, in particular, with the Head of Paid Service and Chief Finance Officer;
  - h) as per the statutory requirements, make a report to the Council, as necessary on the staff, accommodation and resources required to discharge his statutory functions;
  - i) have a special relationship of respect and trust with the Leader, Deputy Leader and the Chairmen of the Standards, Regulatory and Overview and Scrutiny 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, to complain to the same, refer any breaches to the same 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;
  - k) maintain and keep up-to-date relevant statutory registers for the declaration of Members' interest, gifts and hospitality;
  - l) give informal advice and undertake relevant enquiries into allegations of misconduct (in the absence of a written complaint being received by the Standards Board for England) and, if appropriate, make a written report to the Standards Committee (unless the Chairman of Standards Committee agrees a report is not necessary) or to the Standards Board for England if, in the opinion of the Monitoring Officer, there is a serious breach of the Code of Conduct for Members;
  - m) in consultation, as necessary, with the Chairman of the Council, the Executive, the Standards Committee and the Standards Board for England, 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 with the Town and Parish Councils within the District on Monitoring Officer and Standards Committee issues;
  - o) have sufficient resources to address any matters concerning his Monitoring Officer functions;
  - 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; and
  - 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. Appoint an appropriate external adviser in cases where the Monitoring Officer is precluded from offering advice and the Deputy is unable to advise.
- 6 To ensure the effective and efficient discharge of the arrangements set out in paragraph 5 above, Members and Officers will report any breaches of statutory duty or Council policies or procedures and other legal or constitutional concerns to the Monitoring Officer, as soon as practicable.
- 7 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 ensure the effective and efficient discharge of this Protocol, the Chief Finance Officer will ensure adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the interests of the Council and the proper discharge of the Monitoring Officer role.
- 9 The Monitoring Officer or the Deputy Monitoring Officer will record details of any advice given.

**C SANCTIONS FOR BREACH OF THE COUNCIL'S CODE OF CONDUCT FOR MEMBERS AND THIS PROTOCOL**

- 9 Complaints against any breach of the Council's Code of Conduct for Members must be referred to the Standards Board for England, which could lead, ultimately, to the disqualification of a Member. Complaints against any breach of this Protocol by a Member will be referred to the Standards Committee and to the relevant Leader of the political party group. Complaints against any breach of this Protocol by an officer may be referred to the relevant Executive Director.

## SUMMARY OF 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 allegations of misconduct.	Draft Model Code.
6	Investigate misconduct in compliance with Regulations (when made) and directions of Ethical Standards Officers.	Regulations when made. Directions when made in individual cases. LGA 2000 Section 66(1)+66(6).
7	Establish and maintain registers of Members' interests and gifts and hospitality.	Section 81 LGA 2000 and draft Model Code.
8	Advice to Members on interpretation of Code.	Draft Model Code and consultation paper.
9	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee.	Statutory Guidance paragraph 8.20.
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 vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members.	ODPM guidance.
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