

5.4 Monitoring Officer Protocol



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SCARBOROUGH BOROUGH COUNCIL MONITORING OFFICER PROTOCOL

For further information, please contact:

Ian Anderson MBA Barrister,
Head of Legal and Support Services & Monitoring Officer

Tel: 01723 232348

E-mail: ian.anderson@scarborough.gov.uk

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 Scarborough Borough Council.
- 2** The current responsibilities of the Monitoring Officer role rest with the Head of Legal and Democratic 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 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);
 - b) complying with any General Guidance issued, from time to time, by the Standards Committee and 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.

B WORKING ARRANGEMENTS

- 4** 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, Cabinet, Cabinet Member, Committee meetings and/or Chief Officers Group / Executive Management Team (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, Cabinet, Cabinet Member, Committee

meetings and/or Chief Officers Group / Executive Management Team (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 Chief Financial 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 Financial Officer;
- (h) as per the statutory requirements, make a report to the Council, as necessary on the staff, accommodation and resources he requires to discharge his statutory functions;
- (i) have a relationship of respect and trust with the Mayor and the Chairs of the Cabinet, 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 District Auditor and the Local Government Ombudsman (including having the authority, on behalf of the Borough 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 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' interests, 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 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 Scarborough's Code of Conduct for Members;

- (m) in consultation, as necessary, with the Mayor, Cabinet, 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;
- (n) make arrangements to ensure effective communication between his office and Parish Council's within the Borough on Monitoring Officer and Standards Committee issues;
- (o) have sufficient resources to enable him 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 one or more deputies and keep him or her briefed on any relevant issues that s/he may be required to deal with in the absence of the Monitoring Officer.

5 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 vires or constitutional concerns to the Monitoring Officer, as soon as practicable.

6 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.).

7 To ensure the effective and efficient discharge of this Protocol, the Chief Financial Officer will ensure adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the interests of the Borough Council and the proper discharge of the Monitoring Officer role.

C SANCTIONS FOR BREACH OF SCARBOROUGH BOROUGH COUNCIL CODE OF CONDUCT FOR MEMBERS AND THIS PROTOCOL

8. Complaints against any breach of Scarborough'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. Complaints against any breach of this Protocol by an Officer may be referred to the relevant Chief Officer and/or the Chief Executive.

Ian Anderson
Head of Legal and Democratic Services & Monitoring Officer

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.	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.	DETR guidance.