

LONDON BOROUGH OF HARROW

PROTOCOL FOR MONITORING OFFICER RESPONSIBILITIES

1. Introduction

- 1.1 This protocol describes the principal functions of the Monitoring Officer and the way in which the Council expects him or her to discharge those functions.
- 1.2 The Monitoring Officer is a statutory appointment required by section 5 of the Local Government and Housing Act 1989 ('the Act').
- 1.3 A summary list of the statutory responsibilities of the Monitoring Officer appears in the table annexed to this document.
- 1.4 The current responsibilities of the Monitoring Officer rest with the Director of Legal Services, Hugh Peart, who shall appoint a deputy, (should he be unable to act) and who shall keep him briefed on any relevant issues that he/she may be required to deal with in his absence.

2. Roles and responsibilities

- 2.1 Under the Act, the Monitoring Officer has a duty to prepare a report if it appears to him/her that any proposal, decision or omission by the Authority would:
 - breach any enactment or rule of law; or
 - constitute maladministration or injustice as defined by the Local Government Act 1974.

In order to determine whether to prepare such a report, the following arrangements and principles will operate between Members and officer colleagues on the one hand, and the Monitoring Officer on the other.

2.2 Reports and decision-making

- (a) As a member of the Corporate Management Team, the Monitoring Officer will have advance notice of those meetings, their agenda and reports, and the right to attend and speak;
- (b) The Monitoring Officer or his/her staff will be provided with copies of all reports to Members in good time (i.e. at least 10 working days) before the reports are submitted for printing in order to confirm whether the proposal, decision or omission, by the Authority as outlined in the report would breach any enactment or rule of law; or constitute maladministration or injustice.

- (c) Officers are obliged to incorporate the comments of the Monitoring Officer into reports. If this is not observed the Monitoring Officer reserves the right to recommend the withdrawal of the report or issue a separate report to Members explaining his/her views on the matter for consideration;
- (d) Officers and Members must alert the Monitoring Officer to any informal or formal meeting between Cabinet Members or Committee Chairs and senior officers where procedural, vires or constitutional issues are likely to arise;
- (e) The Monitoring Officer will have the right to attend any meeting of the Council, featuring either Members or officers, (including the right to be heard) before any binding decision of the Council is made;
- (f) The Monitoring Officer will act as the Proper Officer in relation to the preparation, publication and retention of records of decisions taken by or on behalf of the Executive;
- (g) As required by statute, the Monitoring Officer will report to Council as necessary on the staff, accommodation and resources he/she requires to discharge his statutory duties;
- (h) In consultation with the Mayor, Cabinet, Standards Committee and the Standards Board for England, the Monitoring Officer may defer the making of a formal report under section 5 of the Local Government and Housing Act 1989 (a Monitoring Officer Report), where another investigative body is involved.

2.3 Legality, vires and constitutional issues

- (a) Senior Officers will alert the Monitoring Officer to all emerging issues of concern including legality, vires and constitutional issues;
- (b) The Monitoring Officer will meet regularly with the Chief Executive and the Chief Finance Officer (the Section 151 Officer) to consider and recommend action in connection with corporate governance issues and other matters relating to legal, procedural, impropriety or other constitutional issues that are likely to, or do, arise;
- (c) The Monitoring Officer will be available for Members and officers to consult on any issues relating to the Council's legal powers, possible maladministration, propriety and probity issues and for advice on the Constitution;
- (d) After consulting with the Chief Executive and Chief Finance Officer, the Monitoring Officer will have the right to notify the Police, the Council's Auditors and other regulatory agencies of his concerns in respect of any matter and to provide them with the documents to assist them in their statutory functions;

2.4 Ethics and probity

- (a) The Monitoring Officer will ensure the Standards Committee is supported in its mission to maintain high standards of ethics and probity;
- (b) The Monitoring Officer will develop good working relationships with the Standards Committee, Ombudsman, the District Auditor and the Standards Board for England;
- (c) In carrying out investigations of any kind, the Monitoring Officer will have unqualified access to any information held by the Council and to any officer who can assist in the discharge of his functions;
- (d) The Monitoring Officer will be expected to support the Standards Committee in the local determination of complaints against Members where allegations of misconduct are referred to him by the Standards Board for investigation, or where investigations are referred for local determination by an Ethical Standards Officer;
- (e) The Monitoring Officer may give informal advice and undertake relevant enquiries into allegations of misconduct by Members in the absence of a written complaint received by the Standards Board for England, and if appropriate will make a written report to the Standards Committee, unless the Chair of the Standards Committee, the Chief Executive and the Monitoring Officer decide that a report is unnecessary;
- (f) The Monitoring Officer will carry out investigations of misconduct allegations in compliance with any direction of Ethical Standards Officers;
- (g) The Monitoring Officer will have the power to delegate any part of his role in relation to investigations in compliance with directions of Ethical Standards Officers to another appropriately qualified officer within the Legal Services Department or externally;
- (h) The Monitoring Officer will be responsible for preparing a training programme for Members on the ethical framework, subject to approval of the Standards Committee;
- (i) The Monitoring Officer will maintain the registers of Members' Financial and other Interests, Gifts and Hospitality;
- (j) The Monitoring Officer will investigate any application for a dispensation and report as necessary to the Standards Committee for decision;
- (k) Officers and Members will alert the Monitoring Officer to any issues of concern to the Council concerning ethics and probity;
- (l) The Monitoring Officer has the right to obtain external legal advice, from an independent barrister or solicitor, on any matter. He/she shall be given sufficient resources to enable this to be done;

- (m) The Monitoring Officer will be able to appoint an independent legal adviser to assist the Council in relation to an investigation where a Member is alleged to be in breach of the Code of Conduct. He/she shall be given sufficient resources to enable this to be done;
- (n) To ensure the effective and efficient discharge of this Protocol, the Chief Finance Officer will ensure that adequate insurance and indemnity arrangements are in place in order to protect and safeguard the interests of the Council and the proper discharge of the role of the Monitoring Officer.

3. Conflicts

- 3.1 Where the Monitoring Officer receives a complaint or becomes aware of a potentially reportable issue or event relating to a matter on which he/she has already advised, the matter shall be dealt with by the Deputy Monitoring Officer who will report to the Chief Executive and/or the authority as appropriate.

4. Sanctions for breach of this Protocol

- 4.1 Complaints about a breach of any matters in this Protocol by Members may be referred to the Standards Committee of the Council and the relevant Leader and/or Chief Whip of the Party Group concerned.
- 4.2 Complaints about breaches of this Protocol by officers will be referred to the relevant Chief Officer and/or the Chief Executive.

Summary of Monitoring Officer functions

Function	Source of Function
1. Report on contravention or likely contravention 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 Monitoring Officer.	Section 5 Local Government and Housing Act 1989.
4. Report on resources needed to undertake Monitoring Officer functions.	Section 5 Local Government and Housing Act 1989.
5. Investigate misconduct in compliance with Regulations and directions of Ethical Standards Officers (ESO).	Regulations under Section 66(1) and 66(6) Local Government Act 2000. Direction from ESO in individual cases.
6. Establish and maintain registers of members interests and gifts and hospitality.	Section 81 Local Government Act 2000 and Members' Code of Conduct.
7. Advice to Members on interpretation of the Code.	Members' Code of Conduct
8. Key role in the framework for local determination of complaints. Advice to Members, officers and the public on the operation of the Code and how alleged breaches should be investigated.	S66 of the LGA 2000 Statutory guidance para. 8.20
9. Liaison with Standards Board for England and Ethical Standards Officers.	Regulations under sections 54(4), 57(3) and 66 of the LGA 2000.
10. Compensation or remedy for maladministration.	S.92 Local Government Act 2000.
11. Advice on vices issues, maladministration, financial impropriety, probity, budget and policy framework to all members.	DCLG guidance.