

EXTRACT FROM STANDARDS COMMITTEE 7<sup>TH</sup> OCTOBER 2008

**13      Monitoring Officer Protocol**

**INFORMATION:**    The Monitoring Officer outlined her report and advised that the Monitoring Officer Protocol had previously been on the Standards Committee's work programme and formalises the arrangements which exists for Monitoring Officers. The Monitoring Officer advised that her report summarised the Protocol and the actual Protocol was contained on pages 3 to 6 of the report.

The Monitoring Officer took the Committee through the Protocol and advised that she believed that the leadership and the Chief Executive would welcome the functions of the Monitoring Officer being clearly set out in the Protocol.

The Monitoring Officer advised that the Protocol reflects the current working practices established by the previous Monitoring Officer with 2 exceptions; namely meeting regularly with the Head of Paid Service and the Chief Finance Officer (paragraph 6 of the working arrangements) and the Sanctions for breach of the Protocol.

When discussing the protocol, the Standards Committee considered that the wording of paragraph 4 of the Working Arrangements should be amended to read "unlimited" access rather than unqualified access.

**RECOMMENDATION TO COUNCIL:**    That the protocol as amended by the Standards Committee be adopted and included in Part 5 of the Constitution.

**MONITORING OFFICER PROTOCOL**

**Agenda Item 4**

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**Designation:-** Monitoring Officer  
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**Background Papers:-** Local Government and Housing Act 1989 and the Local Government Act 2000 (as amended by the Local Government and Public Involvement in Health Act 2007)

**Financial Implications:-** None arising directly out of this report. The Council is required by the Local Government and Housing Act 1989 to provide the Monitoring Officer with the resources necessary to carry out the functions of that role and a report may be made in the future if further resources are required.

**Equalities Implications:-** None arising directly out of this report.

**Legal Implications:-** None arising directly out of this report. It is considered that the attached protocol will make an important contribution to the Council's ethical framework and Constitution.

**Options:** To adopt as drawn, to make amendments or to reject it.

**Risks:** Should help ensure that the public has confidence that issues of lawfulness, maladministration and Member conduct are addressed across all of the Council's functions/services.

**EXECUTIVE SUMMARY**

The protocol is an item from the Standards Committee work programme for 2008/09 and its purpose is to set out the working arrangements/understandings between the Monitoring Officer, Members and senior officers. Effective working arrangements, particularly in relation to ethical issues support all of the Council's priorities.

The attached protocol is being submitted for approval by the Standards Committee prior to its submission to Council for adoption and inclusion in the Council's Constitution in December 2008.

**DECISION**

That the Standards Committee approve the attached protocol and that it be recommended to Council for adoption and inclusion in Part 5 of the Council's Constitution at its meeting on 15<sup>th</sup> December 2008.

# MONITORING OFFICER PROTOCOL

## 1. **BACKGROUND**

The Local Government and Housing Act 1989 required the appointment of a statutory Monitoring Officer with a responsibility to produce a report should any possible illegality, maladministration or injustice come to his/her attention. Once a Monitoring Officer's report has been issued, the action proposed cannot be carried out until it has been approved by a meeting of the whole Council. The Local Government Act 2000 extended the role and responsibilities of the Monitoring Officer with the introduction of an ethical framework. During the last two years, there has been a gradual shift from a central managed framework to a framework that is now managed locally and it is now considered an appropriate time to adopt a written protocol to reflect the practical working arrangements of the role. This should aid greater understanding by Members and officers alike.

## 2. **PROPOSALS**

2.1 The draft protocol has four main features, namely:-

- It summarises the key responsibilities that the Monitoring Officer has to undertake under the 1989 and 2000 Acts;
- It makes clear that the Monitoring Officer's functions are often performed by staff within Law and Governance but it makes clear that the discharge of the functions is a personal one;
- It sets out the working arrangements/understandings that are required by Members and officers to ensure the efficient discharge of the statutory responsibilities imposed on the Council's Monitoring Officer; and
- It sets out the consequences if Members and officers fail to abide by the protocol.

2.2 The working arrangements/understandings set out in the protocol reflect the existing arrangements that have evolved through custom and practice at Braintree. There are only two notable additions and these are:-

- the recommendation that the Head of Paid Service, the S.151 Officer and the Monitoring Officer meet at least once a year to discuss legal, probity and constitutional issues and where appropriate recommend changes to Council; and
- the explicit reference to consequences for breaches of the protocol.

## **MONITORING OFFICER PROTOCOL DRAFT**

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 Braintree District Council.

The current responsibilities of the Monitoring Officer role rest with the Head of Law and Governance 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 Braintree District 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 Allegations 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;

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; and
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 the table produced at the end of this protocol.

### **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 Senior Officers 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, Cabinet, Committee meetings and/or meetings conducted by the Head of Paid Service/Management Board which concern matters having reference to the responsibilities of the Monitoring Officer;
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, Cabinet, Committee meetings and/or meetings conducted by the Head of Paid Service/Management Board which concern matters having reference to the responsibilities of the Monitoring Officer;
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;
7. report to the Council, from time to time, on the Constitution and any necessary or desirable changes following consultation, in particular, with the 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 and the Chairmen of Council, Standards Committee, Overview and Scrutiny Committee and Audit Committee 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;
11. maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality;
12. in consultation, as necessary, with the Head of Paid Service, the Chief Finance Officer and the Leader of the Council, defer the making of a formal report under

Section 5 Local Government and Housing Act 1989 where another investigative body is involved;

13. undertake all statutory Monitoring Officer functions in respect of all the parish and town councils within the Braintree District and make arrangements to ensure effective communication between his/her office and the parish and town clerks on Monitoring Officer and Standards Committee issues;
14. 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;
15. oversee the implementation and monitor the operation of the Code of Corporate Governance and report annually to the Audit and Standards Committees on compliance with the Code;
16. 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 Head of Paid Service 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.

## **Sanctions for Breach of this Protocol**

Complaints about any breach of this Protocol by a Member will be referred to the Standards Committee and to the relevant Group Leader. Complaints about any breach of this Protocol by an Officer may be referred to the relevant senior officer and/or the Chief Executive.

## **Table - 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 allegations of misconduct	Monitoring Officer Local Assessment Protocol
6	Establish and maintain registers of members interests and gifts and hospitality	Section 81 LGA 2000 and Code of Conduct for Members
7	Advice to members on interpretation of Code	Code of Conduct for Members
8	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	Standards Board for England guidance
9	Liaison with Standards Board and Ethical Standards Officers	Standards Board for England guidance
10	New ethical framework functions in relation to Parish Councils	Section 83(12) LGA 2000
11	Compensation for maladministration	Section 92 LGA 2000
12	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members	Constitution