



## **Standards Committee – June 2007**

### **Monitoring Officer Protocol**

#### **Purpose of report**

Corporate governance is an important element of maintaining high standards in local government. It is the responsibility of each elected member and officer within the authority to ensure that they comply with their respective codes as well as acting within the law and the council's own internal rules contained within the Constitution. Responsibility for ensuring that high standards are maintained falls to the three statutory officers (the Head of Paid Service (HoPS), the Chief Finance Officer (CFO) and the Monitoring Officer (MO))

The MO has become aware that in some quarters his corporate governance role is misunderstood, particularly with respect to senior managerial and operational issues, but also wider.

Therefore, a protocol has been drafted which explains the statutory role of the MO, his/her relationship with the HoPS and the CFO, the duties and responsibilities of officers and members to assist the MO in performing his/ her role.

#### **Recommendations**

That the Standards Committee,

- (1) consider and endorse the attached draft Monitoring Officer Protocol.
- (2) recommend to Council that it be included as an appendix to Council's Constitution.

#### **Resource and legal considerations**

##### Financial

The only resource implication is for the inclusion and printing costs of the Protocol being inserted in the Council's Constitution (should the protocol be approved by Council). This can be funded in the normal cycle of reviewing and updating the Council's Constitution.

## Legal

When the protocol has been approved by the Standards Committee it will need to be approved by Council as it is proposing an amendment to the Constitution.

## **Citizen impact**

It is important that in delivering all of its policies the Council acts in a lawful manner at all times. The citizens of the Borough must have confidence in the ability of the Council to act lawfully and in accordance with legislation.

## **Environmental impact**

None arising from this report.

## **Performance and risk management issues**

### Risk Management

There are no perceived risks to implementing such a document. In fact the incorporation of such a document should help reduce risk across the Council by creating further clarity in respect of corporate governance.

By enshrining a MO Protocol within the Council's Constitution, it will provide greater clarity across the Council as to the role of the MO by ensuring that both Officers and Members are fully aware of the extent of the statutory role of the MO. In addition, this will assist in service delivery.

This is a cross-cutting Council wide improvement on the corporate governance already in place. For the Council as a statutory body it is important that there is clarity around the role of the MO which will ensure that the Council acts in a lawful manner at all times. The MO has a key role in ensuring the Council wide values of respect, integrity, equality, listening and excellence. It is also a key element in ensuring that the Council remains an excellent employer to its staff as well as assisting in transforming Walsall into an excellent authority.

### Performance Management

The inclusion of a MO Protocol should strengthen the Council's governance for the purpose of continued CPA inspections.

## **Equality implications**

None

## **Consultation**

The requirement for consultation would be with SLT, Standards Committee and Elected Members in general. The protocol was considered by SLT on 15 March 2007 and approved in the form attached to this report.

## **Background papers**

All published.

**Signed:**

**Assistant Director of Legal and Constitutional Services**

**Date:** 30 May 2007

## **Contact officer**

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## Monitoring Officer Protocol

- General Introduction to Statutory Responsibilities
- Working Arrangements
- Appendix 1

### General Introduction to Statutory Responsibilities

The Monitoring Officer is a statutory appointment under S 5 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged at Walsall Metropolitan Borough Council.

The current responsibilities of the Monitoring Officer role rest with the Assistant Director of Law and Constitutional Services, as assigned under the Constitution at Article 11.01 (c) 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 Walsall Metropolitan Borough Council are:

1. To report to the Council and/or the Executive in any case where she/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, act of unlawfulness, 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 Standards 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;
7. To undertake, with others, investigations in accordance with the Council's Whistle blowing procedures;
8. To act as Proper Officer, as well as the Chief Executive, for the Data Protection Act 1998 and the Freedom of Information Act 2000.

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. The taking of timely legal advice and 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;
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 [Appendix 1](#).

### **Working Arrangements**

It is important that members and officers work together to promote the corporate health of the Council, and advance good governance. 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 Chief Officers (Strategic Leadership Team) are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will:

1. Be informed by Members and Officers of issue(s) that may become of concern to the Council in relation to issues involving 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 reasonable 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 Strategic Leadership Team (or equivalent arrangements);
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 Strategic Leadership Team (or equivalent arrangements);
4. In carrying out any investigation(s) and inquiries 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 Executive Leader, 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, Deputy Leader and the Chair of Council, Cabinet Members, Standards, Regulatory Overview and Scrutiny Committees 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 (including having the authority, on behalf of the Council, to complain to them, refer any breaches to them 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 in consultation with the Chief Executive and the appropriate Executive Director and/or Head of Service;
11. Maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality;
12. 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 Chair of 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 Walsall's Council's Code of Conduct for Members;
13. To inform the Leader of the Council and the relevant group leader of any allegations received by the Monitoring Officer of an alleged breach of the Code of Conduct for Elected Members by an Elected Member;
14. In consultation, as necessary, with the Leader of the Council, 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;

15. 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;
16. Oversee the implementation and monitor the operation of the Code of Corporate Governance and report annually to the Standards Committee on compliance with the Code;
17. Advise on all applications from Council employees (or prospective employees) for exemption from political restriction in respect of their posts and where appropriate sign the certificate of opinion required by the independent adjudicator;
18. Appoint a deputy or deputies 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, or with his prior authorisation, or in the case of incapacity for whatever reason from the date of the said incapacity;
19. Have the consent of the authority to disclosure of information and documents to the Standards Board or an Ethical Standards Officer, even where such disclosure would otherwise be in breach of the Monitoring Officer's duty of confidentiality to the authority;
20. Have the right, after consultation with the Head of the Paid Service and the Chief Finance Officer, to notify the Police, the authority's auditors and/or other regulatory agencies of his/her concerns in respect of any matter and to provide them with information and documents in order to assist them with their statutory functions;
21. Have the right to obtain at the authority's expense legal advice, either internally or from an independent external solicitor or barrister, on any matter which he/she believes may be a reportable incident, and sufficient financial resource to enable him/her to do so;
22. Carry out investigations and arrange the conduct of local hearings in conformity with the Protocol for Local Investigation of Allegations about the Personal Conduct of Council members, the Procedure for Local Investigation of Allegations about the Personal Code of Conduct of Council Members and the Procedure for Local Determination of Allegations about the Personal Code of Conduct of Council Members.

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 vices or constitutional concerns to the Monitoring Officer, as soon as practicable. A speedy flow of relevant information and access to debate is essential to enable the Monitoring Officer to fulfil his/her responsibilities.

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, he/she 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 any report of any officer/Member presented to any forum 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 (Chief Executive) and the Chief Finance Officer, he/she 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 FCRs, 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 to protect and safeguard the interests of the Council and the proper discharge of the Monitoring Officer role.

### **Conflicts**

Where the Monitoring Officer is in receipt of a complaint or is aware of a potential reportable event relating to a matter upon which he/she has previously advised the authority, he/she shall consult the Chief Executive who may then either refer the matter to the Deputy Monitoring for investigation and report back to the Chief Executive or request a neighbouring authority to make their Monitoring Officer available to the authority to investigate the matter and report back to the Chief Executive and/or the authority as appropriate, or appoint an Independent Investigator.

### **Sanctions for Breach of Walsall Council's Code of Conduct for Members and this Protocol**

Complaints about any breach of Walsall Council's Code of Conduct for Members may be referred to the Standards Board for England depending on severity, which could lead, ultimately, to the disqualification of a Member. The Councillor and the respective group leader will be informed of the complaint. Complaints about any breach of this Protocol by a Member will be referred to the Standards Committee and to the relevant Leader and/or Chief Whip of the Political Party Group. Complaints about any breach of



this Protocol by an Officer may be referred to the relevant Chief Officer and/or the Chief Executive.

## Appendix 1 - Summary of Main Monitoring Officer Functions

Description	Source
1 Report on contraventions or likely contraventions of any enactment or rule of law	Section 5 Local Government & Housing Act 1989
2 Report on any maladministration or injustice where Ombudsman has carried out an investigation	Section 5 Local Government & Housing Act 1989
3 Appointment of Deputy	Section 5 Local Government & Housing Act 1989
4 Report on resources	Section 5 Local Government & Housing Act 1989
5 Receive copies of “whistleblowing” and allegations of misconduct	Code of Conduct for Members and Co-opted Members of Walsall Metropolitan Borough Council, “whistle blowing” policy
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 Code of Conduct for Members and Co-opted Members of Walsall Council
8 Advice to members on interpretation of Code	Code of Conduct for Members and Co-opted Members and regulations when made
9 Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	DETR Guidance
10 Liaison with Standards Board and Ethical Standards Officers	New ethical framework, practical implications
11 Compensation for maladministration	Section 92 LGA 2000
13 Advice on vices issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members	DETR guidance, ODPM
14 Primary Qualified Person for considering whether information is exempt from disclosure under the Freedom of Information Act 2000	S36 FOI Act 2000
15 Advise on any indemnities and insurance issues for Members/Officers	Regulations under LGA 2000