

Crawley Borough Council

	Report No: LDS/9	C
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Report to General Purposes Committee

16 March 2009

Review of Democratic Structures and Constitutional Changes

1. Key Points

- 1.1 This report considers whether any changes are required in 2009/10 to the Council's Democratic Structures.
- 1.2 It is also usual, at this time of year, for a full review of the Constitution to be carried out prior to the start of the new municipal year and this report proposes certain revisions (including changes to Part 3 of the document – Responsibility for Functions).
- 1.3 Finally, the requirement to monitor the operation of the provisions relating to call in and urgency on an annual basis as required in Scrutiny Procedure Rule 14(k) is also addressed in this report. The purpose of such monitoring is to ensure that the procedure is not being abused.

2. Recommendations

2.1 To recommend to the Council:

- (a) **that, subject to any comments received from the Cabinet with regard to its functions, the amendments to the Constitution proposed in Appendix 1 to this report be agreed with a view to their implementation immediately after the Annual Meeting of the Council.**
- (b) **to agree that, since the provisions relating to call in and urgency have not been used during the past twelve months, no change to the provisions is necessary at this stage.**

ANN-MARIA BROWN
Head of Legal and Democratic Services

3. Background

- 3.1 To fulfil the requirements of Article 15.01 of the Constitution, the Council must monitor and review the operation of the Council's Democratic Structures and the Constitution to ensure that its aims and principles are given full effect.
- 3.2. In addition, Scrutiny Procedure Rule 14(k) requires that the operation of the provisions relating to call-in and urgency should be monitored annually and a report submitted to the Council with proposals for review, if necessary.

4. Review of Structure and Constitutional Changes

- 4.1 At its meeting on 24 November 2008 (minute 15), the General Purposes Committee considered recommendations resulting from a review of the Council's democratic decision making processes carried out on behalf of the Council by the IDeA. Certain changes to the Democratic Structures were introduced at that time and, therefore, no further changes to the structure are proposed at this stage.
- 4.2 This having been said, as part of the overall annual review of the Constitution, Appendix 1 to this report proposes certain changes to the document for consideration by the Committee.

5. Call In and Urgency

- 5.1 There have been no cases, during the period since the last report, where an item has been protected from the call in procedure on grounds of urgency as provided in Scrutiny Procedure Rule 14(j).
- 5.2 In view of the fact that the procedure has not been used, there would appear to be no reason to change the provisions relating to call in and urgency.

6. Staffing, Equalities, Financial and Legal Implications/Powers

- 6.1 There are no staffing or financial implications arising from these changes to the Constitution.

7. Risk Implications

- 7.1 None.

8. Links to the Sustainable Community Strategy and Corporate Plan

8.1 The proposals contained in this report relate to the following key areas of the Sustainable Community Strategy

Community Cohesion	Community Safety	
Young People and Children	Health and Well Being	
Older People	The Environment	
The Local Economy	Social Inclusion	y

The following key principles are applicable:-

- (i) Working together y
- (ii) Dignity, respect and opportunities for all
- (iii) Involving People y
- (iv) Making it last

The report relates to the following areas in which the Council operates to enhance the town and the quality of life of local people:-

- (i) Our Communities: (ensuring they are safe, healthy, cohesive and enjoyable)
- (ii) Our Environment: (ensuring that it is attractive, clean, protected and sustainable)
- (iii) Our Economy: (ensuring it is thriving, vibrant and prosperous)
- (iv) Our Council: (ensuring it is engaging, transparent, business-like with a social conscience, cost-effective and a place-shaping community leader) y

9. Reasons for the Recommendation

9.1 To comply with Article 15.01 and Scrutiny Procedure Rule 14(k) of the Constitution.

10. Background Papers

The Council's Constitution.

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AMENDMENTS TO THE CONSTITUTION

Function	Proposed amendment	Reason for amendment
Contents – Page iii	Add the Monitoring Officer Protocol to Part 5 – Codes and Protocols	Update
Article 2 – Members of the Council – Page 13	Add the following wording: “2.08 If any member of the Council fails for six consecutive months to attend any Committee, Sub-Committee or a meeting of the authority as defined in section 85 of the LGA 1972, then, unless the failure is due to some reason approved by the local authority, she or he will cease to be a member of the local authority.”	For purposes of clarification.
Article 12 – Employees – Page 36	Add the following under functions and areas of responsibility for the Chief Executive (and Head of Paid Service): “Overall responsibility for communications, legal and democratic services (such as elections, committees, scrutiny and member services) and policy and performance improvement.”	To reflect the departments for which the Chief Executive is responsible.
Article 12 – Employees – Page 38	Add the following paragraph: “(j) Monitoring Officer Protocol The Monitoring Officer Protocol is set out in Part 5 of this Constitution.	Update

Function	Proposed amendment	Reason for amendment
Local Choice Functions – Page 63	<p>Amend bullet point (n) of paragraph 6 to read as follows:</p> <p><u>“The following function is delegated to the Head of Environmental Services:-</u></p> <p>(n) the authorisation of officers for the purpose of inspecting Waste Transfer Notices under the Environmental Protection (Duty of Care) Regulations 1991 and associated legislation.”</p>	<p>To reflect the change in Directorate responsibilities.</p> <p>Amended wording in bold.</p>
Local Choice Functions – Page 64	<p>Add the following delegation to paragraph 6:</p> <p><u>“The following functions are delegated to the Head of Environmental Services:</u></p> <p>(q) Power to fulfil the following duties in relation to the quality of private water supplies (under Sections 81 and 85 of the Water Industry Act 1991):</p> <ul style="list-style-type: none"> ▪ Remedial power of local authority regarding private water supplies ▪ Enforcement and variation of private water supply ▪ Appointment of authorised officers ▪ Power to obtain information in connection with water quality” 	<p>Additional delegation.</p>

Function	Proposed amendment	Reason for amendment
Functions of the Development Control Committee – Page 81	<p>Add the following delegation:</p> <p><u>“The following function is delegated to the Head of Planning Services:</u></p> <p>Power to issue a certificate under Article 5 of a Tree Preservation Order when refusing consent (or granting consent subject to conditions) under a Tree Preservation Order made before 2 August 1999.”</p>	Additional delegation.
Functions of the Development Control Committee – Page 84	<p>Insert the following functions:</p> <p>(55) – Registration of common land and town or village green under Part 1 of the Commons Act 2006 (c.26) and the Commons Registration (England) Regulations 2008 (S.I. 2008/1961)</p> <p>(56) – Power to apply for an enforcement order against unlawful works on common land under Section 41 of the Commons Act 2006</p> <p>(57) – Power to protect unclaimed registered common land and unclaimed town or village greens against unlawful interference under Section 45(2)(a) of the Commons Act 2006</p> <p>(58) – Power to institute proceedings for offences in respect of unclaimed registered common land and unclaimed town and village greens under Section 45(2)(b) of the Commons Act 2006</p>	To reflect the requirements of The Local Authorities (Functions and Responsibilities) (England) (Amendment No.3) Regulations 2008

Function	Proposed amendment	Reason for amendment
Functions of the Licensing Committee – Page 91	<p>Amend function 24 to read as follows:</p> <p>“24. Power to license pet shops and other establishments where animals are bred or kept for the purpose of carrying on a business (including the power to license guard dogs):</p> <p><u>The following functions are delegated to the Head of Environmental Services:</u></p> <p>(a) Determination of applications for licences under the Animal Boarding Establishments Act 1963</p> <p>(b) Determination of applications for licences under the Riding Establishments Act 1964</p> <p>(c) Determination of applications for licences under the Pet Animals Act 1951</p> <p>(d) Appointment of authorised officer to act under the Guard Dogs Act 1975.”</p>	<p>New delegation.</p> <p>Amended wording in bold.</p>
Functions of the Licensing Committee – Page 92	<p>Add the following delegation:</p> <p>“24a.<u>The following function is delegated to the Head of Environmental Services:</u></p> <p>Appointment of authorised officers to act under the Animal Welfare Act 2006.”</p>	<p>New delegation.</p>

Function	Proposed amendment	Reason for amendment
Functions of the Licensing Committee – Page 92	<p>Amend function 29 to read as follows:</p> <p>“29. Power to license persons to collect for charitable and other causes:</p> <p><u>The following functions are delegated to the Head of Environmental Services:</u></p> <p>(a) Determination of applications for Street Collection Permits</p> <p>(b) Determination of applications for House to House Collection Permits</p> <p>(c) Appointment of authorised officers to act under the House to House Collections Act 1939.”</p>	<p>New delegation.</p> <p>Amended wording in bold.</p>
Functions of the Licensing Committee – Page 95	<p>Amend function 42 to read as follows:</p> <p>“42. Appointment of authorised officers</p> <p><u>The following function is delegated to the Head of Environmental Services:</u></p> <p>(a) Appointment of authorised officer under the Food Safety Act 1990; Regulation (EC) no. 178/2002; Regulation (EC) no. 852/2004; Regulation (EC) no. 853/2004 and Regulation (EC) no. 854/2004.”</p>	<p>To reflect Regulations.</p> <p>Amended wording in bold.</p>

Function	Proposed amendment	Reason for amendment
Functions of the Licensing Committee – Page 96	<p>Add the following delegation:</p> <p>“46a. <u>The following function is delegated to the Head of Environmental Services:</u></p> <p>Appointment of authorised officers to act under the Transport Act 1980 and Transport Act 1985.”</p>	New delegation.
Functions of the Licensing Committee – Page 98a	<p>Add the following delegations:</p> <ul style="list-style-type: none"> ▪ “(55c) <u>The following function is delegated to the Head of Environmental Services and the Head of Legal and Democratic Services:</u> <p>Power to issue and cancel closure notices under Section 19 of the Criminal Justice and Police Act 2001.</p> <ul style="list-style-type: none"> ▪ (55d) <u>The following function is delegated to the Head of Environmental Services and the Head of Legal and Democratic Services:</u> <p>Power to make a complaint for a closure order under Section 20 of the Criminal Justice and Police Act 2001.</p> <ul style="list-style-type: none"> ▪ (55e) <u>The following function is delegated to the Head of Environmental Services and the Head of Legal and Democratic Services:</u> <p>Power to certify that the need for a closure order has ceased under Section 22 of the Criminal Justice and Police Act 2001.</p>	New delegations

Function	Proposed amendment	Reason for amendment
<p>Functions of the Licensing Committee – Page 98a continued...</p>	<ul style="list-style-type: none"> <li data-bbox="869 316 1626 411"> <p>▪ <u>(55f) The following function is delegated to the Head of Environmental Services and the Head of Legal and Democratic Services:</u></p> <p>Power to nominate authorised persons to enforce a closure order under Section 25 of the Criminal Justice and Police Act 2001.</p> <li data-bbox="869 587 1626 683"> <p>▪ <u>(55g) The following function is delegated to the Head of Environmental Services and the Head of Legal and Democratic Services:</u></p> <p>Power to bring a prosecution for obstructing an authorised person in the course of enforcing a closure notice under Section 25 of the Criminal Justice and Police Act 2001.</p> <li data-bbox="869 858 1626 954"> <p>▪ <u>(55h) The following function is delegated to the Head of Environmental Services and the Head of Legal and Democratic Services:</u></p> <p>Power to bring a prosecution for contravening a closure notice under Section 25 of the Criminal Justice and Police Act 2001.”</p> 	

Function	Proposed amendment	Reason for amendment
Environmental matters delegated to Cabinet Members and officers – Page 139	<p>Amend the functions below as follows:</p> <p>“(A7) <u>The following function is delegated to the Head of Environmental Services or any employee authorised by him/her:-</u></p> <p>In respect of land owned by the Council:-</p> <p>(i) The issue of a Direction under the provisions of Section 77(1) of the Criminal Justice and Public Order Act, 1994, which gives powers to local authorities to direct unauthorised campers to leave land;</p> <p>(ii) Referral to the Head of Legal and Democratic Services of possible cases for prosecution proceedings in respect of any travellers sited on such land under the provisions of Section 77 (3) of the Criminal Justice and Public Order Act 1994;</p> <p>(iii) Authorisation (subject to the approval of the Head of Legal and Democratic Services) of an application for an order for the removal of travellers under the provisions of Section 78 of the Criminal Justice and Public Order Act, 1994 when a Direction is not complied with and to arrange for all necessary steps to implement any order obtained;</p>	<p>To reflect the change in Directorate responsibilities.</p> <p>Amended wording in bold.</p>

Function	Proposed amendment	Reason for amendment
<p>Environmental matters delegated to Cabinet Members and officers – Page 139 continued...</p>	<p>(iv) Authorisation (subject to the approval of the Head of Legal and Democratic Services) of applications to the County Court for Orders for possession of land owned by the Council occupied by travellers.</p> <p>(A8) <u>The following function is delegated to the Head of Environmental Services, after consultation with the Cabinet Member:-</u></p> <p>Taking any of the action set out in paragraph (i), (ii) and (iii) above in respect of privately owned land where the circumstances set out below are satisfied;- Where a private landowner can be traced and appears to have sufficient funds to evict travellers themselves then the Council should only offer assistance where the travellers are camped on a sensitive site within the Borough or if they are causing a severe nuisance or the case is one of extreme urgency and where the landowner agrees to reimburse the Council's costs.</p> <p>(A10) <u>The following function is delegated to the Head of Environmental Services</u></p> <p>(i) The exercise of the Council's powers under Section 35A of the Road Traffic Regulation Act, 1984, as amended (offences and proceedings in connection with off-street car parks)</p> <p>(ii) The service of notices under Section 112 of the Road Traffic Regulation Act 1984, as amended (obtaining information as to the identity of drivers and riders of motor vehicles);</p>	

Function	Proposed amendment	Reason for amendment
<p>Environmental matters delegated to Cabinet Members and officers – Page 139 continued...</p>	<p>(iii) The management and administration of the Council's car parks'.</p> <p>(A11) <u>The following function is delegated to the Head of Environmental Services:-</u></p> <p>The variation of car parking charges in respect of the temporary Saturday car parks</p> <p>(A12) <u>The following function is delegated to the Head of Environmental Services after consultation with the Cabinet Member:-</u></p> <p>The authorisation to publish notices advising proposed amendments to the traffic orders regulating the use of the Council's car parks.</p> <p>(A13) <u>The following function is delegated to the Head of Environmental Services:-</u></p> <p>Removal and disposal of abandoned vehicles</p> <p>(A14) <u>The following function is delegated to the Head of Environmental Services:-</u></p> <p>Entering into agreements for the sale of any abandoned vehicle of marketable value by the Council's contractor.</p>	

Function	Proposed amendment	Reason for amendment
<p>Environmental matters delegated to Cabinet Members and officers – Page 139 continued...</p>	<p>(A15) <u>The following function is delegated to the Head of Environmental Services:-</u> Discharge of functions for dealing with stray dogs under Section 149 of the Environmental Protection Act 1990</p> <p>(A16) <u>The following function is delegated to the Head of Environmental Services:-</u> The increase of dog microchip implant fees to reflect any reasonable future price increase from the microchip suppliers.</p> <p>(A17) <u>The following function is delegated to the Head of Environmental Services and Head of Crawley Homes in consultation with the Head of Legal and Democratic Services:-</u> Appointment of authorised officers for the purposes of the Dogs (Fouling of Land) Act, 1996 (including employees of the Council's contractors).</p>	

Function	Proposed amendment	Reason for amendment
<p>Environmental matters delegated to Cabinet Members and officers – Page 139 continued...</p>	<p>(A18) <u>The following function is delegated to the Head of Environmental Services In consultation with the Head of Legal and Democratic Services:-</u></p> <p>Appointment of Authorised Officers for the purpose of enforcing offences and the issue of fixed penalty notices of the following provisions contained in the Clean Neighbourhood and Environment Act 2005 :-</p> <ul style="list-style-type: none"> ○ Vehicles ○ Abandoned Vehicles ○ Illegally Parked Vehicles ○ Litter and Refuse ○ Graffiti and Other Defacement ○ Waste Collection and Disposal ○ Dogs ○ Stray Dogs <p>(A21) <u>The following function is delegated to the Head of Environmental Services and Head of Amenity Services jointly with the Head of Legal and Democratic Services:-</u></p> <p>Appointment of authorised officers under the Environmental Protection Act for the purpose of the trolley recovery scheme and arrangements for trolley disposal, where not reclaimed, and for the issue of fixed penalty notices relating to litter.</p>	

Function	Proposed amendment	Reason for amendment
Environmental matters delegated to Cabinet Members and officers – Page 139 continued...	<p>(A32) <u>The following function is delegated to the Head of Environmental Services</u>:-</p> <p>Authorisation of officers for the purpose of enforcing all litter and waste related powers granted to local authorities under the Environmental Protection Act 1990.</p> <p>(A33) <u>The following function is delegated to the Head of Environmental Services</u>:-</p> <p>The appointment of authorised officers for the purpose of exercising powers contained in section 5 of The Dangerous Dogs Act 1991.”</p>	
Environmental matters delegated to Cabinet Members and officers – Page 142	<p>Amend delegation (A27) as follows:</p> <p>(A27) <u>The following functions are delegated to the Head of Environmental Services</u>:-</p> <ul style="list-style-type: none"> (a) Appointment of officers to carry out the Council’s responsibilities under the Products of Animal Origin (Third Country Imports) (England) Regulations 2006 (as amended) (b) Appointment of authorised officers under the Official Feed and Food Controls (England) Regulations 2007 (c) Appointment of officers to carry out the Council’s responsibilities under the Products of Animal Origin (Import and Export) Regulations 1996 (as amended) 	<p>To reflect new and updated regulations.</p> <p>Amended wording in bold.</p>

Function	Proposed amendment	Reason for amendment
Housing matters delegated to Cabinet Members and officers – Page 157	<p>Add the following delegation:</p> <p><u>“The following function is delegated to the Cabinet Member for Housing in consultation with the Head of Finance and Procurement:</u></p> <p>Power to vary the rent of dwellings and garages held in the Housing Revenue Account.”</p>	Additional delegation.
Planning matters delegated to Cabinet Members and officers – Page 166	<p>Amend function E11 to read as follows:</p> <p><u>“The following function is delegated to the Head of Planning Services in consultation with the Portfolio Holder for Planning and Economic Development:</u></p> <p>The approval of documents for pre-submission consultation under regulation 25 of the Town and Country Planning (Local Development) (England) (Amendment) Regulations 2008”</p>	<p>Amendment due to revised regulations. Function formerly delegated to the Director of Environment and Housing.</p> <p>Amended wording in bold.</p>
Property matters delegated to Cabinet Members and officers - Page 168	(F9) – amend ‘Head of Legal Services’ to read ‘Head of Legal and Democratic Services’	To reflect the change of job title

Function	Proposed amendment	Reason for amendment
Property matters delegated to Cabinet Members and officers – Page 169b	<p>Add the following delegation:</p> <p><u>“The following function is delegated to the Head of Property in consultation with the Leader and Ward Members and the Head of Finance and Procurement:</u></p> <p>Acquisition of land or property on behalf of the Council on the best terms reasonably obtainable, where:</p> <ul style="list-style-type: none"> - the market value of the acquisition does not exceed £500,000 in the case of an individual plot (or £750,000 in the case of more than one plot); and - the offer is not more than the estimated value of the site. <p>If the Leader, or one or more Ward Members are not in agreement with the proposed acquisition, the matter will be referred to the Cabinet for a decision.”</p>	New delegation.
General matters delegated to Cabinet Members and officers – Page 171	<p>Delete the following delegation:</p> <p>“(G8) <u>The following function is delegated to the Chair of the Cabinet:</u></p> <p>The approval of the writing off of debts of between £2,500 and £10,000 in any one case, in accordance with the agreed protocol for debt collection.”</p>	Delegation G8 has been superseded by delegation G51.

Function	Proposed amendment	Reason for amendment
Proper Officers – Page 188	Amend responsibility for the second statute as follows: “Statute: Section 351 Housing Act 1985 Duty / Responsibility: To keep a register of houses in multiple occupation etc. Designation: Proper Officer Responsible employee: Head of Housing Strategic Services	To align the responsibility with the most relevant officer. Amended wording in bold.
Cabinet Procedure Rules – Page 260	Transfer responsibility for “Concessionary travel” from the Cabinet Member for Planning and Economic Development to the Chair of the Cabinet / Leader of the Council.	To reflect the transfer of the responsibility for Concessionary Fares from Forward Planning to Customer Services.
Cabinet Procedure Rules – Page 260	Transfer responsibility for “Community Wardens” from the Cabinet Member for Leisure and Cultural Services to the Cabinet Member for Environmental Services.	To reflect the transfer of responsibility for Community Wardens from the Community Services Directorate to the Environment and Housing Directorate.
Cabinet Procedure Rules – Cabinet Portfolios - Page 264	Include the following under the responsibilities of the Cabinet Member for Environmental Services: “Civil Parking Enforcement”	New responsibility.

Function	Proposed amendment	Reason for amendment
Scrutiny Procedure Rules – Page 270	<p>Add the following wording to the end of paragraph 8.01:</p> <p>“Excluded Matters as defined by Order include:</p> <p>(a) any matter relating to a planning decision;</p> <p>(b) any matter relating to a licensing decision;</p> <p>(c) any matter relating to an individual or entity in respect of which that individual or entity has a right of recourse to a review or right of appeal conferred by or under any enactment;</p> <p>(d) any matter which is vexatious, discriminatory or not responsible to be included in the agenda for, or to be discussed at, a meeting of the Overview and Scrutiny Commission or at a meeting of a Sub-Committee of that Commission.</p> <p>However, a matter which consists of an allegation of systematic failure to discharge a function for which it is responsible may be referred to the Overview and Scrutiny Commission, notwithstanding the fact that the allegation specifies matters which would otherwise be excluded by virtue of the above.”</p>	To reflect the requirements of the Overview and Scrutiny (Reference to Councillors) (Excluded Matters) (England) Order 2008.
Codes and Protocols – Page 392a (before the Protocol on Member / Employee Relations)	Include the Monitoring Officer’s Protocol (attached as Appendix 1a to this report)	Update

MONITORING OFFICER PROTOCOL

General Introduction to Statutory Responsibilities

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 Crawley Borough Council.

The current responsibilities of the Monitoring Officer role rest with the Head of Legal and Democratic Services who undertakes to discharge his/her statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. This means that the Monitoring Officer must act as a “watchdog” over all of the Council’s activities to ensure their legality and propriety. In doing so he/she 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 Crawley Borough Council are:

- a) To report to the Council and to the Cabinet in any case where he/she 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)
- b) To investigate any matter, which he/she has reason to believe may constitute, or where he/she has received an allegation that a matter may constitute, a reportable incident under Sections 5 and 5A of the LGHA 89;
- c) To act as the principal adviser to the authority’s Standards Committee;
- d) To maintain the register of members’ interests;
- e) 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 Cabinet;
- f) To have responsibility for responding to complaints to the Local Government Ombudsman
- g) To undertake, with others, investigations in accordance with the Council’s Whistleblowing procedures

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) complying with the Council’s Constitution;

- e) generally, not taking action that would bring the Council, their officers or professions into disrepute
- f) communicating effectively with the Monitoring Officer and seeking advice on any issues relating to constitutional or ethical matters

It is essential that all staff whether employed by the Council, its partners or its agents are aware of the role of the Monitoring Officer and co-operate with him/her in ensuring that the Council's processes and procedures are constantly monitored to avoid illegality or maladministration.

The Chief Executive, Corporate Directors and Heads of Services will ensure that:

- a) The Monitoring Officer is alerted to any situation where an issue of legality, probity, propriety or procedure has arisen or is likely to arise;
- b) All employees comply with any instructions or advice given by the Monitoring Officer and understand or seek timely advice about legal requirements.
- c) The Monitoring Officer is informed immediately of any complaint received about the conduct of a Member or of any information which indicates that a breach of the Members' Code of Conduct might have taken place.

The main statutory references for the Monitoring Officer's functions are set out in **Appendix 1 to 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 Chief Officers (Corporate Management Team) 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 including joint bodies, partnerships etc of which a binding decision of the Council may or 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 Corporate 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 Corporate Management Team (or equivalent arrangements);

- d) 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;
- e) ensure the other statutory officers (Head of Paid Service and the Chief Finance Officer otherwise know as Section 151 Officer and/or Head of Finance and Procurement) 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 Services 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) in accordance with statutory requirements, make a report to the Council, as necessary on the staff, accommodation and resources he/she requires to discharge his/her statutory functions;
- i) have a special relationship of respect and trust with the Leader, Deputy Leader, Mayor, Group Leaders and the Chairs of Committees and Sub-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 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 as set out in the Constitution.
- k) maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality
- l) give guidance to members on the interpretation of the Council's Code of Conduct and Code on Gifts and Hospitality
- m) deal with the receipt of a written complaint which contains allegations that a member has failed or may have failed to comply with the Councillors' Code of Conduct, including acknowledging receipt of the written complaint and notifying the member of the allegation unless in the opinion of he/she it would be contrary to public interest or might prejudice the proper investigation of the complaint, referring the matter to the Assessment Sub-Committee of the Standards Committee, to deal with matters referred to the Monitoring Officer for action or investigation

- n) in consultation as necessary with the Mayor, the Leader of the Council, 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;
- o) have sufficient resources to enable him/her to address any matters concerning the Monitoring Officer function.
- 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;
- q) oversee the implementation and monitor the operation of the Code of Corporate Governance and report annually to the Audit and Governance Committee;
- r) 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;
- s) appoint a deputy and keep him/her briefed on any relevant issues that he/she be required to deal with in the absence of the Monitoring Officer.
- t) ensure that members and officers of the authority are fully aware of their obligation in relation to probity.

To ensure the effective and efficient discharge of the arrangements set out in 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.

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 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 Chief Executive 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 (e.g. The Constitution, 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 Crawley Borough Council's Code of Conduct for Members and this Protocol

Complaints about an alleged breach of the Councillors' Code of Conduct should be made in writing to the Chair of the Standards Committee C/O of the Monitoring Officer.

Complaints about any breach of this protocol by a member will be referred to the Monitoring Officer and to the leader or Group Leader. Complaints about any breach of this Protocol by an Officer may be referred to the relevant Director and/or the Chief Executive by the Monitoring Officer.

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 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 and allegations of misconduct	Code of Conduct for Members and Co-opted members of Crawley Borough Council
6.	Deal with matters that have been referred to Monitoring Officer for other steps and investigation	Local Government Act 2000 as amended Regulations made there under.
7.	Establish and maintain registers of members interests and gifts and hospitality	Section 81 Local Government Act 2000 and Code of Conduct for Members and Co-opted Members of Crawley Borough Council
8.	Advice to members on interpretation of Code	Code of Conduct for Members and Co-opted Members
9.	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	Guidance issued by Standards Board
10.	Liaison with Standards Board and Ethical Standards Officers	Local Government Act 2000 as amended Regulations made there under.
11.	Compensation for maladministration	Section 92 Local Government Act 2000
12.	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members	Department for Communities and Local Government, Local Government Ombudsman and Standards Board for England

	Description	Source
13.	Review and arrange for the updating of the Constitution	
14.	Under Executive Arrangements being the Proper Officer for ensuring that Cabinet decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available.	Local Government Act 2000