

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, Democracy and HR who undertakes to discharge their 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 they 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 they are 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 they have reason to believe may constitute, or where they have 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 on Standards matters;
- 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 Audit Committee, Governance 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 them in ensuring that the Council’s processes and procedures are constantly monitored to avoid illegality or maladministration.

The Chief Executive, Deputy Chief Executive 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 the Appendix 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 their staff) to enable them to discharge their 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 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 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 their functions;
- e) ensure the other statutory officers (Head of Paid Service and the Chief Finance Officer otherwise known as Section 151 Officer and/or Head of Corporate Finance) 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 Finance Officer;
- h) in accordance with statutory requirements, make a report to the Council, as necessary on the staff, accommodation and resources they require to discharge their 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 relationships with 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, such a complaint will be dealt with in accordance with the Council's arrangements for dealing with Code of Conduct complaints
- n) in consultation as necessary with the Mayor 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;
- o) have sufficient resources to enable them to address any matters concerning the Monitoring Officer function.
- p) to be responsible for preparing any training programme for members on ethical standards and Code of Conduct issues;
- q) 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;
- r) appoint a deputy and keep them briefed on any relevant issues that they may be required to deal with in the absence of the Monitoring Officer.
- s) 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 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, they 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 their 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, they are 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 arising from 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 Delegation 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.

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 Monitoring Officer. All complaints will be dealt with under the Council's arrangements for dealing with Code of Conduct complaints.

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 Chief Executive or Deputy Chief Executive by the Monitoring Officer.

**APPENDIX TO MONITORING
OFFICER PROTOCOL**

Monitoring Officer Protocol

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, and Regulations made thereunder
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 Governance Committee	
10.	Compensation for maladministration	Section 92 Local Government Act 2000
11.	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
12.	Review and arrange for the updating of the Constitution	
13.	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