

## **STATUTORY OFFICERS – PROTOCOL**

### **Background**

- 1 In 1996/97 the District Auditor reviewed the role of the Monitoring Officer. In his management letter to Members of November 1997 he recommended that the arrangements to prevent the Council acting unlawfully are set out formally.

### **Statutory Officers**

#### **(i) Head of Paid Service (and Chief Executive)**

- 2 The Head of Paid Service is responsible for the corporate and overall strategic management of the authority as a whole. He/she must report to and provide information for the policy committees, the full council, the overview and scrutiny committee and other committees. He/she is responsible for establishing a framework for management direction, style and standards and for monitoring the performance of the organisation. The Head of Paid Service is also responsible, together with the Monitoring Officer, for the system of record keeping in relation to all the full council's decisions.

#### **(ii) Monitoring Officer**

- 3 Pursuant to Section 5 of the Local Government and Housing Act 1989 the Council is under a duty to designate one of its officers (to be known as the Monitoring Officer) as the officer responsible for performing the duties imposed by that Section.
- 4 The Monitoring Officer is under a duty to prepare a report to the Council if at any time it appears to him/her that any proposal, decision or omission by the Council or one of its committees, sub-committees or officers, or by a joint committee on which the Council is represented, constitutes or may give rise to a contravention of any enactment, rule of law or statutory Code of Practice, or maladministration under Part III of the Local Government Act 1974. The Monitoring Officer must consult, so far as practicable, with the Head of Paid Service and the Chief Financial Officer and arrange for a copy of the report to be sent to each Member. These duties cannot be delegated. The Monitoring Officer's duties must be performed personally or, when he/she is absent or ill, personally by a nominated deputy.
- 5 The officer designated as Monitoring Officer may not be the Head of Paid Service nor the Chief Financial Officer.

(iii) **Chief Financial Officer**

- 6 Pursuant to Sections 113 to 116 of the Local Government Finance Act 1988, the officer referred to in the Local Government Act 1972 as the Chief Financial Officer must make a report if it appears to him/her that the authority has made or is about to make a decision to incur unlawful expenditure, or has taken or is about to take unlawful action likely to cause a loss or deficiency, or is about to enter an unlawful item of account, or will incur expenditure in excess of its resources. The Council is required to consider the report within 21 days. During the time between the report being issued and its consideration the Council is prohibited from making any payments other than those where there are contractual commitments.
- 7 The Chief Finance Officer has further duties arising from Section 151 of the Local Government Act 1972, The Local Government and Housing Act 1989 and The Accounts and Audit Regulations 1996.

He/she is responsible for the proper administration of the authority's financial affairs; setting and monitoring compliance with financial management standards; advising on the corporate financial position and on the key financial controls necessary to secure sound financial management; providing financial information and preparing the revenue budget and capital programme.

**Postholders**

- 8 The Council's Monitoring Officer is Joy Postings, the Head of Legal Services. The Deputy Monitoring Officer is John Mercer, the Head of IT and Audit Services. The Chief Financial Officer is John Dickson, Director of Resources. The Deputy Chief Financial Officer is Mike Dellow, Chief Accountant.
- 9 Reference in this note to the Monitoring Officer also includes the Deputy Monitoring Officer and, with the exception of paragraphs 3, 4 and 10, the Chief Financial Officer and the Deputy Chief Financial Officer.
- 10 The Council is under a duty to provide the Monitoring Officer with such staff, accommodation and other resources as are, in his/her opinion, sufficient to allow his/her duties to be performed.

**Protocol**

- 11 The Council recognises that the role of the Monitoring Officer is a positive and preventative one, relating to the avoidance of illegality and maladministration and to the observance of Codes of Practice.

- 12 The Council shall publish the existence and nature of the role, by including reference to it in Members' and Staff Handbooks and in training or induction sessions for Members and Officers.
- 13 Each Member and Officer shall use his/her best endeavours to ensure the Council does not act unlawfully or against any Code of Practice or so as to give rise to maladministration or injustice.
- 14 Each Member and Officer shall co-operate in every way possible so as to reduce the chance of a need for the Monitoring Officer to issue a formal report.
- 15 The Council recognises that it will provide the Monitoring Officer with such resources as he/she requires to carry out his/her responsibilities.
- 16 The Council acknowledges the Monitoring Officer's entitlement to see all reports, agendas, minutes, documents and any other information he/she requires in furtherance of his/her duties.
- 17 The Council recognises that there is no general need for the Monitoring Officer to report on:
  - (i) Minor procedural irregularities
  - (ii) Matters which have already been reported to Members by another Officer and where Members are fully aware of the illegality or maladministration involved.
  - (iii) Matters which are being resolved by other means eg most matters which have been referred to the Council's insurers.
  - (iv) Litigation in which the Council is involved, provided the Council's case is arguable.
  - (v) Cases where the Council has been convicted of some offence and a full report on the circumstances has already been submitted to Members.
  - (vi) Most matters dealt with through the Council's complaints procedure unless these raise issues of illegality or maladministration which is inherently present in the Council's systems and therefore will recur unless corrected.
  - (vii) Most cases in which the Ombudsman has made a finding of maladministration as this would duplicate a report which has, in any event, to be considered by Members.

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