

## **Part 5 -(F) Monitoring Officer Protocol**

### **A. General Introduction to Statutory Responsibilities**

1. 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 Tameside Borough Council.
2. The current responsibilities of the Monitoring Officer role rests with the Assistant Director (Legal Services) who undertakes to discharge their statutory responsibilities in a manner that enhances the overall reputation of the Council. In doing so they will also safeguard, so far as is possible, Members and Officers who are acting in their official capacities from legal difficulties and/or criminal sanctions.
3. The main functions of the Monitoring Officer at Tameside 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 to the authority's Standards Committee in respect of standards and conduct issues;
  - d) To act as the principal adviser to the authority's Hearings Sub-Committee;
  - e) To maintain the register of members' interests;
  - g) To undertake, with others, investigations in accordance with the Council's Whistleblowing procedures
4. 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;
  - d) Complying with the Council's Constitution and Procedure Rules
  - e) Generally, not taking action that would bring the Council, their offices or professions into disrepute
  - f) Communicating effectively with the Monitoring Officer and seeking advice on any issues relating to constitutional or ethical matters
5. The main statutory references for the Monitoring Officer's functions are set out in the Appendix.

## **B. Working Arrangements**

1. 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.
2. The following arrangements and understandings between the Monitoring Officer, Members and Senior Managers 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 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 or Committee meetings;
  - 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, Committee meetings;
  - 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 (the Head of Paid Service and the Chief Finance Officer, otherwise known as the 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;
  - 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 Leader of the Council, the Head of Paid Service and the 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 an appropriate relationship with the Executive Leader, Deputy Leader and the Chairs of Committees with a view to ensuring the effective and efficient discharge of Council business;
  - j) Develop effective working liaison and relationship 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 in consultation with the Head of Paid Service and the appropriate Director;

- k) Maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality;
  - l) Give informal advice and undertake relevant enquiries into allegations of misconduct;
  - m) In consultation, as necessary, with the Leader of the Council, Cabinet and the Standards Committee, defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved;
  - n) 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;
  - o) Oversee the implementation and monitor the operation of the Code of Corporate Governance and report annually to the Cabinet on compliance with the Code;
  - p) 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;
  - q) Appoint one or more deputies and keep them briefed on any relevant issues that they 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.
3. 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.
  4. 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.
  5. Where the Monitoring Officer receives a complaint of a potential reportable incident, they will 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.
  6. 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.
  7. 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.
  8. 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, 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.

9. 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 (for example, Procedure Rules, policy framework, terms of reference, scheme of delegation etc).
10. 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.

**C. Sanctions for Breach of Council's Code of Conduct for Members and this Protocol**

1. Complaints about any breach of the Council's Code of Conduct for Elected Members must be referred to the Monitoring Officer. Complaints about any breach of this Protocol by a Member will be referred to the Standards Committee and to the relevant Leader of the Political Group. Complaints about any breach of this Protocol by an Officer may be referred to the relevant Director and/or the Chief Executive.

## Appendix

### Monitoring Officer Protocol

#### Summary of Main Monitoring Officer Functions

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<b>Description</b>	<b>Source</b>
Report on contraventions or likely contraventions of any enactment or rule of law	Section 5 Local Government and Housing Act 1989
Report on any maladministration or injustice where Ombudsman has carried out an investigation	Section 5 Local Government and Housing Act 1989
Appointment of Deputy	Section 5 Local Government and Housing Act 1989
Report on resources	Section 5 Local Government and Housing Act 1989
Exercising responsibilities in respect of submitted complaints against elected members and voting co-opted members	Code of Conduct for Elected Members and Voting Co-Opted Members
Establish and maintain registers of members interests and gifts and hospitality	Section 81 LGA 2000 and Code of Conduct for Elected Members and Voting Co-opted Members
Advice to members on interpretation of the Code of Conduct for Members.	Code of Conduct for Elected Members and Voting Co-opted Members
Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	Statutory Guidance paragraph 8.20.
Compensation for maladministration	Section 92 LGA 2000
Advice on vices issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members	Department for Communities & Local Government, Local Government Ombudsman guidance