

**BABERGH DISTRICT COUNCIL**

**FROM: The Monitoring Officer**

**REPORT NUMBER H138**

**TO: STANDARDS COMMITTEE**

**DATE OF MEETING: 17 November 2008**

**REVIEW OF THE MONITORING OFFICER PROTOCOL**

**1. PURPOSE OF REPORT**

To undertake a review of the Monitoring Officer Protocol contained within Part 8 of the Council's Constitution and to update the Protocol if necessary.

**2. RECOMMENDATION TO COUNCIL**

That the Monitoring Officer Protocol be updated as provided within paragraphs 5.2 and 5.3 of this report.

The Committee is able to resolve this matter as minor amendments and/or pursuant to statutory provisions.

**3. FINANCIAL IMPLICATIONS**

3.1 None.

**4. RISK MANAGEMENT**

4.1 This report is most closely linked with the Council's Significant Business Risk No. 4 (Governance). Key risks are set out below:

| <b>Risk Description</b>   | <b>Likelihood</b> | <b>Seriousness<br/>or Impact</b> | <b>Mitigation<br/>Measures</b> |
|---|-------------------|----------------------------------|--------------------------------|
| The Protocol is out-of-date and/or does not reflect current practices | Low               | Low                              | Undertake periodical reviews.  |

**5. KEY INFORMATION**

5.1 It is a function of the Standards Committee to oversee the Council's constitutional arrangements to ensure propriety. This extends to a review of the Council's protocols contained within its Constitution. Reviews are generally undertaken every three years or as the need otherwise arises. The Monitoring Officer Protocol requires review in light of the legislative changes operative from 8 May 2008.

5.2 The provisions contained within the Protocol itself remain accurate and the only suggestion of the Monitoring Officer is that paragraph (n) includes reference to ‘Clerks to Town Councils’ as well as Parish Councils.

5.3 The table containing the ‘Summary of Monitoring Officer Functions’ is however in need of amendment to reflect the current statutory provisions. In particular:-

| Item number | Amendment<br>(shown in bold italics)   | Reason   |
|-------------|--|--|
| 1.          | <u>Description:</u><br>Report on contraventions or likely contraventions of any enactment or rule of law <b><i>or any code of practice made or approved under any enactment</i></b>  | Function set out within section 5, Local Government & Housing Act 1989                           |
| 2.          | <u>Description:</u><br>Report on any maladministration or injustice where Ombudsman <b><i>or auditor</i></b> has carried out an investigation  | Could equally be disclosed in internal/external audit  |
| 5.          | <u>Source:</u><br>Replace “Model Code” with <b><i>“Anti-Fraud &amp; Corruption Policy”</i></b>   | Incorrect reference  |
| 6.          | <u>Description:</u><br>Investigate misconduct <b><i>or take steps other than investigation</i></b> in compliance with Regulations and directions of <b><i>Standards Committee and report on the outcome.</i></b><br><br><u>Source:</u><br><b><i>Section 57A &amp; 66 LGA 2000, Standards Committee (England) Regulations 2008 and Directions when made in individual cases</i></b> | Introduction of local complaints regime from Standards Board to Standards Committees in May 2008 |
| 8.          | <u>Source:</u><br>Delete reference to “and Consultation Paper”   | Out-of-date reference  |
| 9.          | <u>Source:</u><br>Delete reference to “Statutory Guidance paragraph 8.20” and replace with <b><i>“Standards Board Guidance”</i></b>  | Out-of-date reference  |
| New         | <u>Description:</u><br><b><i>Advise Standards Committee before referral to Monitoring Officer to take steps other than investigation</i></b><br><br><u>Source:</u><br><b><i>Standards Committee (England) Regulations 2008</i></b>   | Function introduced by Regulation 13, Standards Committee (England) Regulations 2008             |

| Item number | Amendment<br>(shown in bold italics)   | Reason  |
|-------------|--|---|
| New         | <u>Description:</u><br><b><i>Refer allegation back to Standards Committee where new information/evidence or death, illness or injury of member, and investigation no longer appropriate</i></b><br><br><u>Source:</u><br><b><i>Section 66(2)(f) LGA 2000<br/>Regulation 16, 2008 Regulations</i></b> | Introduced under 2008 Regulations   |
| New         | <u>Description:</u><br><b><i>Disclose Ethical Standards Officers reports to relevant persons where it assists in promoting high standards of conduct by members</i></b><br><br><u>Source:</u><br><b><i>Section 65A LGA 2000</i></b>  | Function introduced by Local Government & Public Involvement in Health Act 2007 |
| New         | <u>Description:</u><br><b><i>Refer ESO reports to member and standards committee</i></b><br><br><u>Source:</u><br><b><i>Standards Committee (England) Regulations 2008</i></b>   | Function introduced by Regulation 15, 2008 Regulations                          |
| New         | <u>Description:</u><br><b><i>Receive notification of development proposals concerning members and officers. Consider and confirm whether applications processed normally.</i></b><br><br><u>Source:</u><br><b><i>Planning Protocol</i></b>   | To correspond with Planning Protocol  |

6. **APPENDICES**

Appendix 1 – Monitoring Officer Protocol.

7. **BACKGROUND PAPERS REFERRED TO:**

None.

**CONTACT:** KATHRYN SAWARD

**DIRECT LINE:** kathryn.saward@babergh.gov.uk

# **PART 8**

## Monitoring Officer Protocol

This Protocol is under review – October 2008



## **Monitoring Officer Protocol**

1. The Monitoring Officer undertakes to discharge his or her responsibilities outlined in this paper with determination and a manner which will enhance the reputation of the Council. In general terms his or her ability to discharge these duties depends on excellent working relations with colleagues and Members but also the flow of information and access to debate particularly at early stages.
2. The following arrangements and understandings between Monitoring Officers and colleagues and Members are designed to help ensure the effective discharge of their functions:
  - (a) The Monitoring Officer will have advance notice of Management Team meetings and agenda and reports and the right to attend and speak.
  - (b) Advance notice of meetings whether formal or informal between Chief Officers and Members of Strategy Committee or Chairmen will be given to the Monitoring Officer where any procedural, vires or other constitutional issues are likely to arise.
  - (c) Chief Officers will alert the Monitoring Officer to all emerging issues of concern including legality, probity, vires and constitutional issues.
  - (d) The Monitoring Officer or his or her staff will have copies of all reports to Members.
  - (e) The Monitoring Officer is expected to develop good liaison and working relations with the Standards Board, the District Auditor and the Ombudsman including the giving and receiving of relevant information whether confidential or otherwise.
  - (f) The Monitoring Officer will have a special relationship with the Chairman of the Council, Chairmen of the Standards and Overview and Scrutiny Committees and will ensure the Head of Paid Service and Chief Finance Officer have up-to-date information regarding emerging issues.
  - (g) The Head of Paid Service, Chief Finance Officer and Monitoring Officer will consider and recommend action in connection with current governance issues and other matters of concern regarding probity.
  - (h) In carrying out any investigation (whether under Regulations or otherwise) the Monitoring Officer will have unqualified access to any information held by the Council and any employee who can assist in the discharge of their functions.
  - (i) The Monitoring Officer will have control of a budget sufficient to enable him or her to seek Counsel's opinion on any matter concerning their functions.
  - (j) The Monitoring Officer will be responsible for preparing a training programme for Members on the ethical framework subject to the approval of the Standards Committee.

- (k) In consultation with the Chairman of the Council and Standards Board the Monitoring Officer may defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved.
- (l) The Monitoring Officer will make a report to the Council from time to time as necessary on the staff, accommodation and resources they require to discharge his/her functions.
- (m) The Monitoring Officer will appoint a deputy and keep him or her briefed on emerging issues.
- (n) The Monitoring Officer will make arrangements to ensure good communication between his/her office and Clerks to Parish Councils.

## Summary of 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 allegations of misconduct.   | Model Code.  |
| 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 Model code.  |
| 8.          | Advice to Members on interpretation of Code.  | Model Code and Consultation Paper.   |
| 9.          | Key role in promoting and maintaining high standards of conduct through support to the Standards Committee.     | Statutory Guidance paragraph 8.20.   |
| 10.         | Liaison with Standards Board and Ethical Standards Officers.  | New ethical framework, practical implications.   |

| <b>DESCRIPTION</b> |   | <b>SOURCE</b>                       |
|--------------------|---|-------------------------------------|
| 11.                | New ethical framework functions in relation to Parish Councils.                                 | Section 83(12) LGA 2000.            |
| 12.                | Compensation for maladministration.   | Section 92 LGA 2000.                |
| 13.                | Advice on vires issues, maladministration, financial impropriety, probity and policy framework. | DCLG and Standards Board of England |

H:\DOCS\Committee\ConstitutionDoc\Constitution 2008 version\PART EIGHT-2008-v1.doc