

SOUTH DERBYSHIRE DISTRICT COUNCIL

MONITORING OFFICER PROTOCOL

A GENERAL INTRODUCTION TO STATUTORY RESPONSIBILITIES

1. The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged in South Derbyshire District Council.
2. The current responsibilities of the Monitoring Officer role rest with the Head of Legal & Democratic Services, Andrea McCaskie, who undertakes to discharge her statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. In doing so, she will provide appropriate and, if necessary, strong advice to Members so as to protect and safeguard, so far as is possible, Members and Officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.
3. A summary list of the statutory responsibilities appears in the table annexed to this document. 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 of the land (including any relevant Codes of Conduct);
 - (b) complying with any General Guidance issued, from time to time, by the Standards Committee and/or advice of the Monitoring Officer;
 - (c) making lawful and proportionate decisions; and
 - (d) generally, not taking action that would bring the Council, their offices or professions into disrepute.

B WORKING ARRANGEMENTS

4. Having excellent working relations with Members and Officers will assist in the discharge of the statutory responsibilities of the Monitoring Officer and keep the Council out of trouble. Equally, a speedy flow of relevant information and access to debate (particularly at the **early stages** of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and Officers must, therefore, co-operate with the Monitoring Officer (and her staff) to discharge the Council's statutory and discretionary responsibilities.

5. The following arrangements and understandings between the Monitoring Officer, Members and Chief Officers 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, 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, 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 District Council and to any Officer who can assist in the discharge of her functions;
 - (e) ensure the other statutory officers (Head of Paid Service and the Chief Finance Officer (Director of Corporate Services)) 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) as per the statutory requirements, make a report to the Council, as necessary, on the staff, accommodation and resources she requires to discharge her functions;

- (i) have a special relationship of respect and trust with the Chairman of the Authority, Vice-Chairman of the Authority and the Chairmen of the Policy, Standards, Regulatory and Overview and Scrutiny 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 District Council, after consultation with the Chairman of the Standards Committee, if appropriate, to complain to the same, refer any breaches to the same or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary);
- (k) maintain and keep up-to-date relevant statutory registers for the declaration of Members' interests, gifts and hospitality;
- (l) give informal and, if necessary, strong advice to Members and Officers – but not so as to issue any formal warning notices – and undertake relevant enquiries into allegations of misconduct (in the absence of a written complaint being received by the Standards Committee) and, if appropriate, make a written report to the Standards Committee (unless the Chairman of Standards Committee agrees a report is not necessary) if, in the opinion of the Monitoring Officer, after consultation with the Chairman of the Standards Committee, there is a serious breach of South Derbyshire District Council's Code of Conduct for Members;
- (m) in consultation, as necessary, with the Chairman of the Council and 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) make arrangements to ensure effective communication between her office, the Derbyshire Association of Local Councils and the Clerks to the 31 Parishes within the District of South Derbyshire on Monitoring Officer and Standards Committee issues;
- (o) have sufficient resources to enable her to address any matters concerning her Monitoring Officer functions;
- (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) appoint a deputy and keep him or her briefed on any relevant issues that he/she may be required to deal with in the absence of the Monitoring Officer; and

- (r) deal with any formal complaints referred by the Standards Committee to the Monitoring Officer and/or the Standards Committee for local investigation and/or determination.
- 6. To ensure the effective and efficient discharge of the arrangements set out in paragraph 5 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.
- 7. The Monitoring Officer is also 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. Council Procedure Rules, policy framework, terms of reference, scheme of delegations, etc).
- 8. To ensure the effective and efficient discharge of this Protocol, the Chief Finance Officer will ensure adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the interests of the District Council and the proper discharge of this Monitoring Officer role.

C SANCTIONS FOR BREACH OF SOUTH DERBYSHIRE DISTRICT COUNCIL'S CODE OF CONDUCT FOR MEMBERS AND THIS PROTOCOL

- 9. Complaints against any breach of South Derbyshire District Council's Code of Conduct for Members must be referred to the District Council's Standards Committee, which could lead, ultimately, to the suspension of a Member or, if the matter is dealt with by the Adjudication Panel for England, disqualification. Complaints against any breach of this Protocol by a Member will be referred to the Standards Committee and to the relevant Leader and/or Chief Whip of the Political Party Group. Complaints against any breach of this Protocol by an Officer may be referred to the relevant Chief Officer and/or the Chief Executive.

Andrea McCaskie
Head of Legal & Democratic Services and
Monitoring Officer

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	Appointment of Deputy	Section 5, Local Government and Housing Act 1989
3	Report on resources	Section 5, Local Government and Housing Act 1989
4	Receive copies of whistleblowing allegations of misconduct	Confidential Reporting Policy and Procedure
5	Investigate and report on any misconduct in compliance with Regulations and directions of Ethical Standards Officers	Section 66(1) and 66(6), LGA 2000
6	Establish and maintain registers of Members' interests and gifts and hospitality	Section 81, LGA 2000 and Code of Conduct for Members (and Employees, once introduced)
7	Advice to Members on interpretation of Code	Code of Conduct for Members
8	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	Statutory Guidance, paragraph 8.20
9	Liaison with Standards Board and Ethical Standards Officers and Adjudication Panel for England	New Ethical Framework
10	New Ethical Framework functions in relation to Parish Councils	Section 83(12), LGA 2000
11	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members	ODPM guidance
12	Refer relevant matters to Standards Committee for initial assessment, review and hearing	Regulations under LGA 2000
13	Advise on any indemnities and insurance issues for Members/Officers	Regulations under LGA 2000
14	Deal with Local Assessment arrangements introduced by legislation	Local Government Act 2007