

## **Protocol for the Monitoring Officer**

### **A. Statutory Responsibilities**

The Monitoring Officer is a statutory appointment under Section 5 of the Local Government and Housing Act 1989 as amended by paragraph 24 of Schedule 5 Local Government Act 2000. This Protocol sets out how those statutory requirements will be discharged at Burnley Council.

The current responsibilities of the Monitoring Officer role rest with the relevant Officer appointed by Full Council who undertakes to discharge his/her statutory responsibilities in a manner that enhances the overall reputation of the Council. In doing so s/he will also safeguard, so far as is possible, Members and Officers whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.

#### **(a) The main functions of the Monitoring Officer are:-**

To report to the Council and to the Executive in any case where s/he is of the opinion that any proposal or decision of the Council 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);

1. To investigate any matter which s/he has reason to believe may constitute, or where s/he has received an allegation that a matter may constitute, a reportable incident under Sections 5 and 5A of the LGHA 89;
2. To act as the principal adviser to the Council's Audit and Standards Committee and Sub Committees;
3. To maintain the register of Members' interests;
4. To maintain the register of Officers' interests;and
5. To undertake, with others, investigations in accordance with the Council's Whistleblowing procedures;

#### **(b) In general terms, the Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:-**

1. Complying with the law (including any relevant Codes of Conduct);
2. Complying with any General Guidance issued, from time to time, by the Audit and Standards Committee and/or the Monitoring Officer;
3. Making lawful and proportionate decisions;
4. Complying with the Council's Constitution and standing orders;
5. Generally, not taking action that would bring the Council, their offices or professions into disrepute; and
6. Communicating effectively with the Monitoring Officer and seeking advice on any issues relating to constitutional or ethical matters.

The main statutory references for the Monitoring Officer's functions are set out in Appendix 1.

## **B. 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 his/her staff) to enable him/her to discharge his/her statutory responsibilities and other duties.

**(a) 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 must:-

1. 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 act or fail to act, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
2. 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, the Executive, committee meetings and/or Executive Team (or equivalent arrangements);
3. 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, the Executive, Committee meetings and/or Executive Team (or equivalent arrangements);
4. 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 his/her functions;
5. Ensure the other statutory Officers (Head of Paid Service and the Chief Financial 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;
6. Meet regularly with the Head of Paid Service and the Chief Financial 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;
7. Report to the Council, from time to time, on the Constitution and any necessary or desirable changes following consultation, in particular, with the Executive Leader, the Head of Paid Service and Chief Financial Officer;
8. In accordance with statutory requirements, make a report to the Council as necessary, on the staff, accommodation and resources s/he requires to discharge his/her statutory functions;
9. Have an effective working liaison and relationship with the Leader of the Council, Deputy Leader, Audit and Standards Committee and

- Scrutiny Committee with a view to ensuring the effective and efficient discharge of Council business;
10. Develop effective working liaison and relationship with the relevant statutory bodies regarding Standards , the Audit Commission and the Local Government Ombudsman;
  11. Maintain and keep up-to-date relevant statutory registers for the declaration and registration of Members' interests, gifts and hospitality;
  12. Maintain and keep up-to-date a register for the registration of Officers' interests;
  13. Give informal advice and undertake relevant enquiries into allegations of misconduct (in the absence of a written complaint being received by the Audit and Standards Committee) and, if appropriate, make a written report to the Audit and Standards Committee (unless the Chair of the Audit and Standards Committee agrees a report is not necessary);
  14. Undertake all statutory Monitoring Officer functions in respect of the Town and Parish Councils of the Borough and make arrangements to ensure effective communication between his/her office and the respective Clerks on
  15. Monitoring Officer and Audit and Standards Committee issues;
  16. Subject to the approval of the Audit and Standards Committee, be responsible for preparing any training programmes for Members, staff and partners on ethical standards and Code of Conduct issues;
  17. Support the implementation and operational effectiveness of the Code of Corporate Governance;
  18. Advise on all applications from Council employees (or prospective employees) for exemption from political restriction in respect of their posts;and
  19. Appoint a deputy and keep him/her briefed on any relevant issues that s/he 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.

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.

The Monitoring Officer will seek to resolve potential reportable incidents by avoiding the illegality or otherwise, 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, s/he 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 Council (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 his/her written advice to the report of any other Officer of the Council.

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, s/he is 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 of the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (eg Standing Orders, policy framework, terms of reference, scheme of delegations etc).

To ensure the effective and efficient discharge of this Protocol, the Council 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 Burnley Council's Code of Conduct for Members and this protocol**

Complaints about a breach of the Council's Code of Conduct for Members may be referred to the Audit and Standards Committee.

Complaints about a breach of this Protocol by a Member may be referred to the Audit and Standards Committee and to the relevant Leader and/or Chief Whip of the Political Party Group. Complaints about any breach of this Protocol by an Officer may be referred to the Chief Operating Officer and/or the Chief Executive.

Appendix 1 - Monitoring Officer Protocol  
Summary of Main Monitoring Officer Functions

|    | <b>Description</b>   | <b>Source</b>   |
|----|--|---|
| 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 Burnley Council                         |
| 6  | Investigate allegation of misconduct/take alternative action in accordance with a direction of the Audit and Standards Committee | Local Government Act 2000   |
| 7  | Establish and maintain registers of Members interests and gifts and hospitality  | Section 81 LGA 2000 and Code of Conduct for Members and Co-opted Members of Burnley 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 Audit and Standards Committee             | Relevant statutory bodies regarding Standards Guidance and notable practice                 |
| 10 | Liaison with relevant statutory bodies regarding Standards   | New ethical framework, practical implications   |
| 11 | Ethical framework functions in relation to Parish Councils   | Section 83(12) LGA 2000   |
| 12 | Advice on vires, maladministration, financial impropriety, probity and policy framework to all Members                           | Constitution, law and CLG guidance  |