



Report of the Assistant Chief Executive (Corporate Governance)

Standards Committee

Date: 21st April 2009

Subject: Annual Report On The Monitoring Officer Protocol

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. This report is the annual report of the Monitoring Officer required under Paragraph 5 of the Monitoring Officer Protocol.
2. A copy of the Monitoring Officer Protocol is attached to this report for Members' approval.
3. Members are asked to:
 - Consider the performance information and issues raised within this report; and
 - Approve the revised Monitoring Officer Protocol which has been amended light of the changes made under the Local Government and Public Involvement in Health Act 2007.

1.0 Purpose Of This Report

1.1 This report is the Monitoring Officers Annual Report which is required under paragraph 5 of the Monitoring Officer Protocol.

2.0 Background Information

2.1 Members will recall that the role of the Monitoring Officer is a statutory role by virtue of Section 5 of the Local Government and Housing Act 1989. The principle duties of the Monitoring Officer are set out in the Appendix to the Monitoring Officer protocol, which for ease of reference is attached to this report as Appendix 1.

2.2 The functions carried out by the Monitoring Officer include the following:-

- Reporting on Contraventions of the Law.
- Reporting on any maladministration or injustice where the Ombudsman has carried out an investigation.
- Establishing and maintaining registers of Members' interests and gifts and hospitality.
- Maintaining reviewing and monitoring the constitution.
- Supporting the Standards Committee.
- Advising on Vires issues, maladministration, financial impropriety, propriety, budget and policy framework issues for all Members.

3.0 Main Issues

3.1 Paragraph 5 of the Monitoring Officer Protocol requires that the Monitoring Officer reports annually to the Standards Committee regarding whether the arrangements set out in the Protocol have been complied with and whether there are any proposals for amendments. The following paragraphs give detailed information in relation to each heading raised in the Protocol.

Resources

3.2 The Monitoring Officer considers that she has sufficient resources to discharge her statutory functions, and to address any matters concerning her functions.

3.3 The Monitoring Officer is satisfied that so far for the financial year 2008/9 she had a sufficient budget at her disposal to enable her to seek Counsel's opinion on matters concerning her functions as and when necessary during the course of the current Municipal year.

3.4 The Monitoring Officer has appointed the Chief Legal Services Officer as the Deputy Monitoring Officer and keeps him briefed on any relevant issues that he may have to deal with in her absence. The Deputy Monitoring Officer has also carried out local investigations on behalf of the Monitoring Officer.

Access to information/ meetings

- 3.5 The Monitoring Officer is of the view that she has been alerted to any issues that may have become of concern to the authority. The Monitoring Officer has had advance notice of all relevant meetings of the authority, and has had the right to attend these meetings.
- 3.6 The Monitoring Officer has ensured that all meetings of the authority are sufficiently supported and advised. All meetings of Committees, Panels and Sub-Committees are attended by a member of Governance Services who maintains a record of the meeting and advises on procedural issues. All Committees also have a legal officer who is responsible for providing legal advice to that body, and in some cases, especially where committees are acting in a quasi-judicial capacity, the legal officer also attends the meetings throughout.
- 3.7 The Monitoring Officer, as the Assistant Chief Executive (Corporate Governance), is a member of the Corporate Leadership Team, and therefore has had advance notice of its meetings, agenda and reports, and has had the right to attend and speak.
- 3.8 As the proper officer for access to information, the Monitoring Officer is responsible for ensuring that decisions, together with reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible. The Monitoring Officer achieves this through the publication on the Council's website of minutes, delegated decision forms and the forward plan within strict deadlines.

Relationships

- 3.9 The Monitoring Officer has ensured that the other statutory officers have been kept up to date with relevant information regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues.
- 3.10 The Monitoring Officer has met regularly with the Head of Paid Service and the Section 151 Officer to consider and recommend action in connection with Corporate Governance issues. They all attend weekly meetings of the Corporate Leadership Team, and any additional meetings are arranged as and when necessary.
- 3.11 The Monitoring Officer is the Chair of an officer group involving representatives from audit, risk, finance, governance, performance management, information governance and human resources. The Corporate Governance Board is responsible for reviewing the adequacy of the Council's Corporate Governance arrangements (including matters such as internal control and risk). This group meets every month and therefore allows the Monitoring Officer to maintain effective working relationships with these officers and retain an overview of corporate governance issues.
- 3.12 The Monitoring Officer has a close working relationship of respect and trust with the Lord Mayor, deputy Lord Mayor, group whips and the chairs of the Executive Board, Standards Committee, regulatory committees, Scrutiny Boards and Area Committees.
- 3.13 The Monitoring Officer has developed and maintained an effective working liaison and relationship with the Standards Board for England, the District Auditor and the Local Government Ombudsman. During this municipal year the Monitoring Officer

was asked to act as a mentor to a new Ethical Standards Officer of the Standards Board for England.

- 3.14 The Monitoring Officer is required to make a report under Section 5 of the Local Government and Housing Act 1989 if it appears to her that any proposal, decision or omission by the Authority¹ has given rise to or is likely to give rise to a contravention by the Authority of any enactment or rule of law. The Monitoring Officer has not had reason to make any report under Section 5 of the Local Government and Housing Act 1989 or to consult in relation to making any of these formal reports.
- 3.15 The Monitoring Officer has informal mechanisms for dealing with issues which are brought to her attention which are not likely to give rise to a contravention of any enactment or rule of law. The Monitoring Officer keeps records of these matters and any appropriate action taken.
- 3.16 The Monitoring Officer has made arrangements to ensure effective communication between her office and clerks to parish councils. The Parish Council Liaison Officer sends correspondence as and when necessary, and provides information to meetings of the Parish Council Liaison Forum. In addition there is regular contact from the Standards Committee to Parish Councils. All Clerks receive a copy of the agenda for each Standards Committee meeting together with regular correspondence sharing information and guidance from the Standards Committee and seeking the views of the Parish Councils.

Ombudsman Complaints

- 3.17 It is the duty of the Monitoring Officer under the Local Government Act 1974 and the Local Government and Housing Act 1989 to prepare reports in relation to complaints which have been the subject of investigation by the Local Government Ombudsman and which have revealed maladministration, whether or not that maladministration has been found to cause injustice. The Monitoring Officer carries out this duty by instructing the relevant director to produce a report for the Executive Board.
- 3.18 There have been no reports of this nature presented to the Executive Board since February 2008.
- 3.19 The Monitoring Officer has prepared reports to bring to Members' attention issues of importance arising out of complaints made to the Local Government Ombudsman whether or not those complaints were investigated or maladministration found. These reports are formally considered by the Corporate Governance and Audit Committee. The Monitoring Officer has provided reports to the Corporate Governance and Audit Committee at their meetings on 18th June 2008 and 29th September 2008 showing the numbers of complaints and the departments to whom they related. An additional report on 29th September 2008 highlighted comments made by the Local Government Ombudsman in her annual letter. The Ombudsman was generally complimentary towards the Council and its approach to handling complaints. However, she did draw attention to some areas for improvement, for example, improving the quality and clarity of our response to complaints. She also highlighted the importance of analysing trends and lessons learnt so that the Council can change processes/procedures where failures are identified - this is particularly important for services where the level of complaints remains high.

¹ This includes committees, sub-committees, any person holding any office or employment under the authority or joint committees.

Standards matters

- 3.20 The Monitoring Officer has provided advice to Members of the City Council and Members of Parish Councils. The Monitoring Officer has done so through correspondence, in meetings, and through the provision of guidance and briefing notes on specific issues.
- 3.21 The Monitoring Officer has arranged a programme of training for Members on ethical standards and Code of Conduct Issues. Briefings on the Code of Conduct are delivered through the induction programme, which is delivered to all newly elected Members of Council. In this municipal year, the Monitoring Officer has personally delivered Code of Conduct training to all Members who were newly elected in May 2008. In addition, a programme of training was offered to some officers on the Members' Code of Conduct and the new local assessment process.
- 3.22 Several compulsory training sessions relating to governance and conduct issues have taken place for Members of Plans and Licensing panels this year. These sessions have been well attended and received.
- 3.23 The Monitoring Officer has been involved in drafting the extended programme of training for Parish and Town Clerks and Councillors on the new Code of Conduct, in conjunction with the Standards Committee. A specific training brochure has been developed for Parish and Town Councils by Member Development, which also incorporates training available from the Yorkshire Local Councils Association and other external agencies. In addition, match-funding has been provided for training on planning issues. Finally, the Monitoring Officer has assisted the Chair of the Standards Committee and the Parish and Town Council representatives in analysing the results of the Parish and Town Council Annual Audit and will be offering to meet some Clerks and Chairpersons to discuss any additional help available.
- 3.24 Two final investigations under the previous Standards Committee Procedure Rules have been concluded this municipal year on behalf of the Monitoring Officer. The first investigation was completed by the Deputy Monitoring Officer and involved allegations that a Councillor failed to comply with his Parish Council's code of conduct. The investigating officer was satisfied that he had access to all necessary information and all officers who could assist in the discharge of his functions. The second investigation was delegated to an external solicitor.
- 3.25 The Monitoring Officer is responsible for ensuring that Leeds City Councillors and voting Co-opted Members complete and maintain a register of interests and register any gifts or hospitality that they have received. The Monitoring Officer has delegated responsibility for these matters to Governance Services, but remains updated through regular reports on these matters.
- 3.26 The Monitoring Officer has delegated responsibility to the Parish Clerks for maintaining the Members' register of interests and the register of gifts and hospitality for their Parish Council. The Monitoring Officer seeks confirmation on an annual basis that these registers are being regularly reviewed by the Clerks, and that they are being completed by new Councillors through the annual audit process.
- 3.27 The Monitoring Officer is also responsible for receiving and acting on reports from Ethical Standards officers and decisions of case tribunals. The Monitoring Officer has ensured that the Standards Committee has been made aware of any case summaries published on the Standards Board website as quickly as possible. She

has also reported to the Standards Committee on the number of complaints received regarding Leeds City Councillors and Parish and Town Councillors in Leeds and the outcome of those complaints twice a year, as well as reporting on Adjudication Panel case tribunal decisions at every meeting.

- 3.28 The Monitoring Officer is also responsible for supporting the Standards Committee. Through her support to the Committee the Monitoring Officer promotes and maintains high standards of conduct. The Monitoring Officer has ensured that the Committee are supported through attending meetings of the Committee, ensuring they are able to carry out their functions effectively by the provision of reports and information, and through ensuring that their training needs are met by enabling Committee members to attend internal and external training sessions. Committee members have attended Standards Board for England Annual Conferences, been provided with an e-learning module of the Code of Conduct, and watched Standards Board training DVDs. Members of the Committee have also been provided with guidance on the local assessment process, including locally development tools to assist them with following the Standards Board guidance and considering all aspects of the Code of Conduct. The Committee have also been regularly briefed on changes and developments to the Members' Code of Conduct as well as the development of case law.

Constitution

- 3.29 The Monitoring Officer has kept the Constitution under continuous review and where necessary reports are taken to General Purposes Committee, Corporate Governance & Audit Committee, Standards Committee and Full Council for approval in respect of proposed amendments to the constitution. The Monitoring Officer has consulted with the Chief Finance Officer and the Head of Paid Service when required. Attached at Appendix 2 is a table summarising those changes which have been implemented during this municipal year.

Members and Officer Responsibilities

- 3.30 The Monitoring Officer is satisfied that Members and Officers have reported any suspected breaches of statutory duty or council policies or procedures and other vires or constitutional concern to her as soon as practicable.

Advice

- 3.31 The Monitoring Officer has been available for Members and Officers to consult on any issues relating to the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements.

Amendments to the Monitoring Officer Protocol

- 3.32 The new standards arrangements brought about by the Local Government and Public Involvement in Health Act 2007 and the Standards Committee (England) Regulations 2008, have meant changes to the role of the Monitoring Officer. A review of the protocol, taking into account these developments, has now been completed. The amended version of the Protocol is attached as Appendix 1 for the Committee's approval.
- 3.33 Several functions have been added to the main body of the protocol in relation to local assessment. These are:

- To refer relevant matters to Standards Committee for initial assessment and review;
- To give relevant notifications as required under the Local Government Act 2000 (as amended) to complainants, subject Members and any other relevant parties;
- To make arrangements for and advise meetings of the Assessment and Review Sub-Committees;
- To carry out any direction from the Standards Committee or an Ethical Standards Officer to take steps other than carrying out an investigation;
- To make arrangements for investigations to be carried out into Code of Conduct complaints or local complaints on the instructions of the Standards Committee;
- To make arrangements for and to advise the Assessment Sub-Committee in its consideration of a final investigation report; and
- To make arrangements for and to advise the Standards Committee with regard to hearings.

3.34 Finally, the requirement for the Monitoring Officer to establish and maintain a register of interests and gifts and hospitality for Members has also been added to the main body of the Protocol as this is already reflected in the summary table.

4.0 Implications For Council Policy And Governance

4.1 The Monitoring Officer is a statutory role which underpins the Ethical Framework of the Council. Annual reporting on the Monitoring Officer's performance of the protocol supports the ethical framework and provides a key assurance to inform the Council's Annual Governance Statement.

5.0 Legal And Resource Implications

5.1 This report is not considered to have any specific legal or resource implications.

6.0 Conclusions

6.1 This is the annual report of the Monitoring Officer required under paragraph 5 of the Monitoring Officer Protocol. This report confirms that the arrangements set out in the Protocol are being carried out satisfactorily.

7.0 Recommendations

- 7.1 Members are asked to:
- Consider the performance information and issues raised within this report; and
 - Approve the revised Monitoring Officer Protocol which has been amended light of the changes made under the Local Government and Public Involvement in Health Act 2007.

Background Documents

- The Standards Committee (England) Regulations 2008
- The Local Government and Public Involvement in Health Act 2007
- Birmingham City Council's Monitoring Officer Protocol, revised May 2008

- “The New Role of the Monitoring Officer”, Association of Council Secretaries and Solicitors, revised 21/11/01)