

DRAFT

ARGYLL AND BUTE COUNCIL

MONITORING OFFICER PROTOCOL

INTRODUCTION TO STATUTORY RESPONSIBILITIES

1. The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989 and has a duty to:

(a) submit a report to the full Council and / or the Council's Standards Committee, as appropriate, where it appears to the Monitoring Officer that any proposal, decision or omission by the Council, its committees or sub-committees or any officer or joint committee on which the Council is represented, has given rise to, or is likely to give rise to, a contravention of any legislation or rule of law or of any code of practice made or approved under any legislation or any maladministration or injustice which might give rise to a complaint to the Public Services Ombudsman;

(b) consult as far as practicable with the Chief Executive as the Council's Head of Paid Service and the Head of Strategic Finance as the Council's proper officer for the council's financial affairs, before submitting any report mentioned above;

(c) appoint a depute(s) as is necessary to act in their absence as Monitoring Officer;

(d) report on resources necessary to discharge Monitoring Officer responsibilities; and

(e) provide advice and guidance on vires and maladministration issues.

2. In terms of Section 5 of the Ethical Standards in Public Life (Scotland) Act 2000, the Council has a duty to promote and ensure observance of the Councillors' Code of Conduct. The Monitoring Officer has as an important role in discharging this duty by:

(a) establishing and maintaining registers of Councillors' interests, gifts and hospitality;

(b) providing advice to Members on the Code on Conduct;

(c) providing training on the Code of Conduct;

(d) reporting alleged breaches by members of the Council's Ethical Framework, as contained in the Council's Constitution;

(e) supporting the Standards Committee; and

(f) liaising with the Standards Commission and Public Standards Commissioner, as necessary.

3. The Monitoring Officer is also responsible for (1) receiving declarations of acceptance of office of councillors and (2) maintaining a list of politically restricted posts within the Council.

(1) Section 33A, Local Government (Scotland) Act 1973

(2) Section 2, Local Government and Housing Act 1989

4. This Protocol provides information on how those statutory requirements will be discharged in the Council.

5. The current responsibilities of the Monitoring Officer role rest with the Executive Director of Customer Services who aims to discharge the statutory responsibilities in a manner that enhances the overall reputation of the Council. In doing so, the Executive Director will provide appropriate and robust advice to Members so as to protect and safeguard, so far as is reasonably possible, Members and Officers, from legal difficulties and possible misconduct whilst acting in their official capacities.

6. The Monitoring Officer will be supported in exercising this role by such Depute Monitoring Officers as are appointed by him from time to time.

7. Generally, 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 Council's Constitution and the law (including any statutory Codes of Conduct. This includes the Code of Conduct for Councillors);

(b) complying with any guidance issued, from time to time, by the Standards Committee and/or advice of the Monitoring Officer;

(c) making lawful and proportionate decisions;

(d) adhering to the Council's approved procedures and having due regard to approved policies; and

(e) not acting in manner that might bring the Council, their office or profession into disrepute.

8. Good working relations with Members and Officers will assist greatly in the discharge of the statutory responsibilities of the Monitoring Officer as will early discussion of any issues well in advance of any formal Council business (including Committees and sub-committees). Members and Officers should, therefore, co-operate fully with the Monitoring Officer (and staff).

9. The Monitoring Officer is available for Members and Officers to consult on any issues relating to the Council's legal powers, possible maladministration, impropriety or general advice on the Councillors' Code of Conduct.

CORPORATE RIGHTS OF THE MONITORING OFFICER

10. In order to encourage good decision making and high standards of conduct amongst officers and elected members, the Monitoring Officer expects to be alerted at an early stage by Members and Officers as to any legal or procedural issues about which they may have concerns including, in particular, issues about the legal powers of the Council, ethical standards, probity, propriety, procedural or other governance issues that have arisen or that are likely to arise.

11. In order to perform the statutory role, the Monitoring Officer and staff shall:

(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 at or before the Council, Committee meetings and/or Strategic Management Team;

(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 at or before the Council, Committee meetings and/or Strategic Management Team;

(d) in carrying out any investigation(s) have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of his functions; and

(e) have sufficient resources to enable him to address any matters concerning Monitoring Officer functions.

CORPORATE RESPONSIBILITIES OF MONITORING OFFICER

12. The Monitoring Officer will:

(a) seek to ensure as far as practicable that the other statutory officers (the Chief Executive as Head of Paid Service and the Head of Strategic Finance as Chief Finance Officer) are kept up-to date with relevant information regarding any legal, ethical standards, procedural or other governance issues that are likely to (or do) arise;

(b) report to the Council where required by law following consultation, as far as practicable, with the Chief Executive and Head of Strategic Finance as Chief Finance Officer where to do so will not compromise his statutory responsibilities;

(c) report to the Council, as necessary, on the staff, accommodation and resources required to discharge his functions;

- (d) seek to establish effective working relationships with all elected members, in particular those Members who hold positions of responsibility in the Council's political management structure so as to ensure the effective and efficient discharge of Council business;
- (e) provide advice to the Council's Standards Committee as and when necessary;
- (f) maintain and keep up-to-date relevant statutory registers for the declaration of Members' interests, gifts and hospitality;
- (g) give robust advice to Members and Officers;
- (h) be responsible for preparing any training programme for Members on ethical standards and the Councillors' Code of Conduct issues;
- (i) act as the Council's point of contact by the Commissioner for Ethical Standards in Public Life in Scotland and/or the Public Standards Commissioner regarding complaints concerning alleged breaches of the Councillors' Code of Conduct;
- (j) seek to develop good liaison and working relationships with outside bodies relevant to the role of the Monitoring Officer, including the Commissioner for Ethical Standards in Public Life in Scotland and the Standards Commission for Scotland, the Council's external auditor, the Accounts Commission and the Scottish Public Services Ombudsman;
- (k) carry out such investigations as the Chief Executive may determine as relevant to the Monitoring Officer's role;
- (l) obtain, at his discretion, Counsel's opinion or other external specialist legal advice relevant to the Monitoring Officer's role;
- (m) appoint a depute(s) and keep them briefed on any relevant issues that may be required to be dealt with in the absence of the Monitoring Officer.
- (n) receive declarations of acceptance of office of councillor; and
- (o) maintain a list of politically restricted posts within the Council.

THE COUNCILLORS' CODE OF CONDUCT

13. Whilst the Council has a statutory obligation to promote and ensure observance of the Councillors' Code of Conduct, and the Monitoring Officer has a pivotal role to play in discharging that obligation, it is important to note that enforcing compliance with the Code is strictly a matter for the Commissioner for Ethical Standards in Public Life in Scotland who has the power to investigate complaints against councillors.

14. The Monitoring Officer may assist the Commissioner with an investigation by commenting on and providing information on any complaint and making arrangements for interviewing witnesses.

15. The Monitoring Officer may also be involved in the handling of complaints made against Councillors in terms of the Council's own local procedures for dealing with such complaints.

16. The Monitoring officer may refer any alleged breach of the Council's Ethical Framework, as contained in the Council's constitution, to the Council's Standards Committee to enable it to consider any such alleged breaches by members in order that it may provide advice and recommendations to the Council, as it thinks fit, in regard to the reporting of any such alleged breach to the Commissioner for Ethical Standards in Public Life in Scotland.

DRAFT