

PROPOSAL FOR A MONITORING OFFICER PROTOCOL AND ASSOCIATED MATTERS

1. SUMMARY

- 1.1 This report advises the SLWG on a proposed process for a protocol to confirm the duties and responsibilities of the Council's monitoring officer, and to allow for the efficient discharge of these.

2. RECOMMENDATION

- 2.1 The SLWG is asked to agree to the further development of the principles as outlined herein.

3. BACKGROUND

- 3.1 The Council's Monitoring officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989. The Monitoring officer has a duty to:

- (a) submit a report to the full Council, or any committee with appropriate delegated powers, 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.

- 3.2 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 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; and

(e) liaising with the Commissioner for Ethical Standards in Public Life in Scotland as necessary.

3.3 The Statutory Report from Audit Scotland (October 2013), highlighted that:

“The Chief Executive and the Monitoring Officer have a role in challenging councillors that do not behave in accordance with the code of conduct and within the roles and responsibilities of a councillor.”

The Accounts Commission accepted the report from Audit Scotland. In its findings, communicated to the Council by letter dated 25 October 2013, it stated, amongst others things that:

“The Commission underlines the importance of the role of Monitoring Officer in supporting good governance. The role needs to be afforded trust and respect.”

3.4 The Council’s Constitution contains, within Part F Ethical Framework, contains:

1. Guidelines – Code of Conduct for Members and Employees; and
2. Protocol for Member Officer Relations.

These set out the roles and responsibilities of both councillors and council officers. This highlights that elements of the guidance may be enforceable and subject to reporting to the Council by the Monitoring Officer.

3.5 Given the statutory and overarching role of the monitoring officer it is proposed to introduce a Monitoring Officer Protocol to confirm the duties and responsibilities of the Council’s monitoring officer.

A draft of a protocol is attached at Appendix 1 hereof.

The protocol refers to a “Standards Committee within the Council. it is proposed that such a committee be established with the following terms of reference as a first proposal for Members to consider:

“Terms of Reference

General Functions

1. To promote and maintain high standards of conduct by Councillors and other persons who may be appointed or co-opted to any Committee or Sub Committee or Policy Development Group of the Council;

2. To assist Councillors and other persons who may be appointed or co-opted to any Committee, Sub Committee or Policy Development Group of the Council to observe the requirements of the Ethical Standards In Public Life Etc (Scotland) Act 2000, the Code of Conduct, as amended from time to time, and the requirements of the Council’s Governance Framework and its Regulatory Schemes.

Specific Functions

1. To advise the Council on the Councillors Code of Conduct (hereinafter referred to as the "Code") in terms of the Ethical Standards In Public Life Etc (Scotland) Act 2000, together with any Guidance and dispensation notes and the Councils own Governance Framework and Regulatory Scheme;
 2. To advise, train, or arrange to train Councillors and other persons who may be appointed or co-opted to any Committee or Sub Committee or Policy Development Group of the Council on matters relating to the Code and the Council's Governance Framework;
 3. To consider matters referred to it in terms of alleged breaches by members of the Council's Ethical Framework, as contained in the Council's constitution, reported to it by the Monitoring Officer and to provide advice and recommendations to the Council as it thinks fit in regard to the reporting of any alleged breach to the Commissioner for Ethical Standards;
 4. To consider representations made to it in regard to the Code or any guidance issued thereunder and to consult with the Commissioner for Ethical Standards and the Scottish Government in relation to any matter for clarification, revisal or alteration of the Code as it shall think fit;
 5. To consider any reports or case materials issued by the Ethical Standards Commissioner in relation to any investigation or decision of any hearing and to advise the Council on the conclusions of any investigation or decision of any hearing and on any matter of best practice in relation to the Code and any guidance issued thereunder;
 6. To consider matters referred to it in terms of any requirements which may in future be laid down by statute."
- 3.6 The Membership of a Standards Committee within the Council would be a matter for members to determine. The Council previously had a standards committee comprising:

Five Members none of whom shall hold an executive position within the Council. Two members who are not councillors, one of whom will chair the committee.

4. CONCLUSION

- 4.1 Members have initial proposals to establish a protocol to confirm the duties and responsibilities of the Council's Monitoring Officer and constitute a Standards Committee within the Council as determined by members. If acceptable in principle, further details, including the resources required to implement specific measures will be brought forward.

5. IMPLICATIONS

Policy:

Any alteration to the Council's constitution would require the approval of the Council.

<i>Financial:</i>	None at present. Possible future resource requirement if proposals accepted.
<i>Legal:</i>	Any alteration to the Council's constitution would require the approval of the Council.
<i>Equal Opportunities:</i>	None at present.
<i>Personnel:</i>	None at present.
<i>Risk</i>	Failure to adopt realistic proposals for role of Monitoring Officer may give rise to issues with Audit Scotland/Accounts Commission.
<i>Customer Service</i>	None at present.

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