

SCOTTISH BORDERS COUNCIL

PROTOCOL

FOR

DISCHARGE OF THE MONITORING OFFICER'S DUTIES

1. Interpretation

"The 1989 Act" shall mean the Local Government and Housing Act 1989. As amended

"the 2000 Act" shall mean the Ethical Standards in Public Life etc (Scotland) Act 2000.

"The Head of Paid Service" shall mean the Chief Executive of Scottish Borders Council.

"The Chief Finance Officer" shall mean the Chief Financial Officer of Scottish Borders Council.

"Members" or "Member of the Authority" shall mean a Scottish Borders Councillor, or Councillors

"Convener of the Council" shall mean the Convener of Scottish Borders Council.

"Chairman of the Standards Committee" shall mean the Chairman of the Standards Committee of Scottish Borders Council.

"Chief Officers" shall mean the Chief Executive, Directors and Heads of Service of Scottish Borders Council.

"Officers" shall mean staff of Scottish Borders Council

"The Commission" shall mean the Standards Commission for Scotland.

"The Accounts Commission" shall mean the Accounts Commission for Scotland.

"The Ombudsman" shall mean the Scottish Public Services Ombudsman.

"The Standards Committee" shall mean the Standards Committee of Scottish Borders Council.

"The Ethical Framework" shall mean all matters relating to the Councillors Code of Conduct published by the Commission or the Ethical Standards in Public Life etc. (Scotland) Act 2000.

2. Introduction

2.1 This Protocol sets out the framework within which the Monitoring Officer will discharge his or her duties in terms of the 1989 Act.

2.2 The 2000 Act and any Guidance and Regulations made thereunder shall be taken to mean the Ethical Framework.

3. Statement of General Principles

3.1 The Monitoring Officer undertakes to discharge his or her duties outlined in this Protocol with diligence. In general terms, his or her ability to discharge these duties depends not only upon excellent working relations with Members and Officers but also upon the flow of information and access to debate, particularly at early stages.

3.2 The following arrangements and understandings between the Monitoring Officer, Members and Officers are designed to help ensure the effective discharge of the Council's functions.

4. Meetings and Agendas

4.1 If not a member of the Corporate Management Team, the Monitoring Officer will have advance notice of those meetings, agenda and reports and the right to attend and speak.

- 4.2 Advance notice of meetings, whether formal or informal, between Chief Officers, Executive Members and Chairmen of Committees will be given to the Monitoring Officer where any procedural, vires or other constitutional issues are likely to arise.
- 4.3 Chief Officers will alert the Monitoring Officer to all emerging governance issues of concern including legality, probity, vires and constitutional issues.
- 4.4 The Monitoring Officer and or his/her staff will have access to copies of all reports to Council, Committees, Sub-Committees, Joint Boards, Joint Committees, Working Groups and to Members.

5. Monitoring Officer Reports

- 5.1 The following sub-sections are extracts from Section 5 of the 1989 Act:-

5(1) *"It shall be the duty of every relevant Authority –*

- (a) *to designate one of their officers (to be known as "The Monitoring Officer") as the officer responsible for performing the duties imposed by this section; and*
- (b) *to provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow those duties to be performed;*

and the officer so designated may be the Head of Authority's Paid Service.....but shall not be their Chief Finance Officer.

- 5.2 *"It shall be the duty of a relevant authority's Monitoring Officer, if it at any time appears to him that any proposal, decision or omission by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any joint committee on which the authority are represented constitutes, has given rise to or is likely to or would give rise to –*

- (a) *a contravention by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any such joint committee of any enactment, rule of law ; or Code of Practice*
- (b) *any such maladministration or injustice as is mentioned in.....Part II of the Local Government (Scotland) Act 1975*

to prepare a report to the authority with respect to that proposal, decision or omission."

- 5.3 *"It shall be the duty of a relevant authority's Monitoring Officer –*

- (a) *in preparing a report under this section to consult so far as practicable with the person who is for the time being designated as the head of the authority's paid serviceand with their Chief Finance Officer; and*
- (b) *as soon as practicable after such a report has been prepared by him or his deputy, to arrange for a copy of it to be sent to each member of the authority."*

- 5.4 *"It shall be the duty of a relevant authority and of any such committee as is mentioned in subsection (4) above –*

- (a) *to consider any report under this section by a Monitoring Officer or his deputy at a meeting held not more than twenty-one days after copies of the report are first sent to members of the authority or committee; and*
- (b) *without prejudice to any duty imposed by virtue of section 115 of the Local Government Finance Act 1988 (duties in respect of conduct involving contraventions of financial obligations) or otherwise, to ensure that no step is taken for giving effect to any proposal or decision to which such a report relates at any time while the implementation of the proposal or decision is suspended in consequence of the report."*

6. Working Relationships

- 6.1 The Monitoring Officer is expected to develop good liaison and working relations with the Commission, the Accounts Commission, Ombudsman and the External Auditors, including arrangements for the exchange of relevant information, whether confidential or otherwise.
- 6.2 The Monitoring Officer will have such regular meetings, as he/she considers appropriate, with the Convener of the Council and Chairman of the Standards Committee
- 6.3 The Monitoring Officer will be the principal liaison officer between the Council and the Commission and will assist the Commission whenever necessary in connection with any complaints against Councillors and in all matters relevant to the Ethical Framework.
- 6.4 The Monitoring Officer will be the principal adviser to the Standards Committee.

7. Investigations

- 7.1 The Monitoring Officer shall carry out such investigations as may be necessary and shall have access to such information, Officers and reports as he/she considers necessary.
- 7.2 The Monitoring Officer shall also carry out such investigations as may be determined in guidance issued by the Commission, following consultation between the Commission and Monitoring Officers in Scotland.

8. Corporate Governance

- 8.1 The Chief Executive and the Monitoring Officer will meet regularly to consider and recommend action in connection with current governance issues and other matters of concern regarding probity.
- 8.2 In carrying out any enquiries, the Monitoring Officer will have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of his/her functions.
- 8.3 Following consultation, in particular with the Chief Executive and Chief Financial Officer, the Monitoring Officer will report to the Council from time to time on such matters of corporate governance or relating to the ethical standards framework as, in his/her opinion, require review.
- 8.4 The Monitoring Officer may defer the making of a formal report under Section 5 of the 1989 Act, where another investigative body is involved, after consultation with the Chief Executive and the Chief Financial Officer.
- 8.5 The monitoring officer will liaise closely with the Chief Financial Officer and the Head of Audit & Risk in relation to matters of Financial Risk.

9. Resources

- 9.1 The Monitoring Officer will have access to a budget sufficient to enable him/her to seek Counsel's Opinion on any matter concerning his/her functions.
- 9.2 The Monitoring Officer will be provided with such staff, accommodation and other resources as are, in his/her opinion, sufficient to allow his/her duties to be performed.
- 9.3 The Monitoring Officer will make a report to the Council, from time to time as necessary, on the staff, accommodation and resources he requires to discharge his functions.

9.4 The duties of the Monitoring Officer will be performed by him/her personally or, where he/she is unable to act owing to absence or illness, by such member of his/her staff as has been, for the time being, nominated for that purpose. Accordingly, the Monitoring Officer will appoint a deputy and keep him or her briefed on emerging issues.

10. **Training**

10.1 The Monitoring Officer will be responsible for ensuring that appropriate training is given to Members on the Ethical Framework.

10.2 The Monitoring Officer will ensure that Officers are familiar with the Ethical Framework.

10.3 The Monitoring Officer will attend the Annual Monitoring Officer's Conference in order to be kept up to date with all relevant developments in the Law and the Ethical Framework.