



# **THE NEWCASTLE CHARTER**

## **Part 5.4I – Monitoring Officer Protocol**

## **Notes:-**

**The Council's Monitoring Officer has a key role in ensuring ethical governance of the Council.**

The purpose of this Protocol is to bring together in one document the key responsibilities of the Monitoring Officer under statute and this Constitution.

The Assistant Director Legal Services is currently the Monitoring Officer.

## **Statutory Sources**

Local Government and Housing Act 1989, ss. 5 and 5A

Localism Act 2011, s 29, 30, 31, 32.

## **Authorisation**

This was approved by City Council on 2 March 2005. It replaces the previous Protocol approved by City Council on 5 November 2003. Minor changes were made in 2008 to reflect the revised Members' Code of Conduct.

Further changes were made in 2012 to reflect the new Members' Code of Conduct.

## MONITORING OFFICER PROTOCOL

### 1. Introduction

The Monitoring Officer is a statutory appointment under Section 5 of the Local Government and Housing Act 1989.

The Monitoring Officer is a “non-statutory chief officer” within the meaning of the Local Government and Housing Act 1989 and reports direct to the Chief Executive.

The Assistant Director Legal Services is the Council’s Monitoring Officer.

### 2. Functions of the Monitoring Officer

Article 13.03 of the Newcastle Charter provides that the functions of the Monitoring Officer include the following:

- (a) Maintaining the Constitution.** *The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.*
- (b) Ensuring lawfulness and fairness of decision making.** *After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the full Council (or to the Cabinet in relation to an executive function) if he/she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.*
- (c) Supporting the Standards Committee.** *The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.*
- (d) Receiving and assessing complaints that a member has, or may have failed to comply with the Code of Conduct for Members.** *The Monitoring Officer will receive written complaints that a member has, or may have failed to comply with the Members’ Code of Conduct. The Monitoring Officer will then decide whether a complaint requires investigation.*
- (e) Conducting investigations.** *The Monitoring Officer will conduct investigations into matters and make reports or recommendations in respect of them to the Standards Committee. The Monitoring Officer will carry out his/her responsibilities under the Council’s Arrangements for dealing with standards allegations against Members under the Localism Act 2011(contained in Part 5.4G of this Constitution).*
- (f) Granting dispensations.** *The Monitoring Officer may grant dispensations to members and co-opted members from requirements relating to interests set out in the Members’ Code of Conduct, so far as not delegated to the Standards Committee.*
- (g) Proper officer for access to information.** *The Monitoring Officer will assist the Service Manager Democratic Services to ensure that executive decisions, together with the reasons for those decisions, and relevant officer reports and background papers are made publicly available as soon as possible.*

- (h) Advising whether Cabinet decisions are within the budget and policy framework.** *The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.*
- (i) Supporting the Audit Committee.** *The Monitoring Officer will contribute to the promotion and maintenance of high standards in audit and governance issues, including the Council's internal control environment, through the provision of support to the Audit Committee.*
- (j) Providing advice.** *The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors."*

Paragraph 17.02(a) of the Newcastle Charter also provides that a function of the Monitoring Officer is to interpret the Constitution:

*"The Monitoring Officer or Deputy Monitoring Officer will interpret this Constitution when asked to do so and/or when he/she considers it necessary to do so."*

### **3. Procedures Designed to Avoid the Need to Issue a Statutory Report**

Under Section 5 of the Local Government and Housing Act 1989, the Monitoring Officer has to prepare a report where it appears to him that any proposal, decision or omission by the Council, by any Committee or Sub-Committee of the Council, or any office holder or employee or any joint committee has or is likely to contravene the law, or where there has been a finding of maladministration by the Local Commissioner.

The Council therefore has procedures in place which are designed to avoid the need to issue a statutory report:

#### **(a) Systems to Reduce Risk of Illegality/maladministration**

The risk of illegality or maladministration is reduced by having effective systems which are regularly reviewed and updated. These include:

- Council Procedure Rules (Standing Orders)
- Codes of Conduct for Officers and Members
- List of delegated powers and procedures for recording decisions taken under those powers
- Complaints procedures
- Guidance on access to information
- Registers, for example, in relation to declarations of interest or receipt of gifts and hospitality
- Property Protocols

#### **(b) Ombudsman Reports**

- (i)** A mechanism for dealing with Ombudsman Reports is set out in Annex 4 in Part 3 of the Newcastle Charter. This includes the following with regard to local settlements:

*"F. Delegated Officers may exercise their delegated powers to agree local settlements with the Ombudsman. They may also exercise their delegated powers to make payments or provide other benefits under section 92 of the Local Government Act 2000.*

*G. This is subject to the other provisions of this Protocol (in particular regarding consultation with members). The Service Manager Democratic Services and Assistant Director Legal Services should also be consulted. The Delegated Officer must also be satisfied that financial provision exists and comply with the provisions of Financial Regulations.”*

This approach was agreed with the Ombudsman.

**(c) Access**

The following access granted to the Monitoring Officer will help to ensure that issues which should be brought to Monitoring Officer’s attention are:

**(i) Access to Corporate Management Team papers.**

The Monitoring Officer has access to Corporate Management Team papers.

**(ii) Access to Meetings**

- Paragraph 21 of the Access to Information Procedure Rules (Part 4B of the Newcastle Charter) includes the following provision:

*“a) The head of the paid service, the chief financial officer and the monitoring officer, and their nominees are entitled to attend any meeting of the Cabinet and its committees .....*”

- In addition to the above, the Monitoring Officer has a right of access to all meetings of the Council, including Member briefings. However, access to Member briefings is by invitation only.

**(iii) Access to Documentation**

Paragraph 25 of the “Officer Delegations - General” in Part 3.13 of the Newcastle Charter provides:

*“The Director of Resources or the Assistant Director Legal Services may from time to time require officers to give them access to documentation in their possession relating to decisions made or proposed to be made by them”.*

**(d) Reports to Cabinet and Attendance by a Lawyer at City Council etc**

- (i) To ensure that issues concerning legality have been addressed, all Cabinet reports have a section on the legal implications of the report.
- (ii) There will be attendance by a Lawyer from Legal Services at full City Council, Cabinet, Constitutional Committee, Standards Committee, Planning Committee, Regulatory and Appeals Committee and Licensing Committee. Their attendance is recorded in the Minutes.

**(e) Monitoring Officer Meetings**

Regular meetings between the Chief Executive, Director of Resources, Monitoring Officer and Chief Internal Auditor to discuss issues of legality and probity.

#### **4. What the Monitoring Officer will not report on**

It is intended to limit the need for formal reports to be produced by the Monitoring Officer so far as is possible. Reports will therefore not be issued as a matter of routine or in relation to trivial issues. The Monitoring Officer will concentrate on major matters, in accordance with Parliament's intention, and the emphasis will be on the preventative aspect of the role. Generally, therefore, the Monitoring Officer will not report on the following matters:

- Minor procedural irregularities.
- Matters which have already been reported to the Council or Committee by another officer and where Members are aware of the illegality or maladministration involved.
- Matters which are being resolved by other means, for example, matters being dealt with through the Council's insurers.
- Cases where the Council has been convicted of an offence (for example under health and safety legislation) or had a statutory order made against it and a report has already been made to the Council or Cabinet or Committee.
- Matters dealt with through the Council's internal complaints procedures unless those matters raise issues of illegality or maladministration in the Council's systems and which will recur unless corrected.
- Cases in which the Ombudsman has made a finding of maladministration against the Council which will be reported separately in accordance with Annex 4 in Part 3 of the Newcastle Charter.
- Litigation involving the Council provided that the Council has an arguable case.
- A preliminary enquiry or request which, if it becomes a formal proposal, would create the need for a report.
- Matters where no further action is required to remedy the breach, for example, where there is a historic illegality and no continuing injustice, but there is no active complaint in respect of it.
- Matters that can be resolved promptly by a report to a Committee or Sub-Committee or Delegated Officer.

#### **5. Working Arrangements**

##### **(a) Resources**

The Council is under a duty to provide sufficient resources to the Monitoring Officer. Article 13.05 of the Newcastle Charter provides:

*"The Council will provide the Head of Paid Service, Monitoring Officer and Chief Finance Officer with such officers, accommodation and other resources as are in their opinion sufficient to allow their duties to be performed".*

##### **(b) Deputy Monitoring Officer**

Article 13.01(e) of the Newcastle Charter provides that the Monitoring Officer must appoint a Deputy.

The current Deputy Monitoring Officer is such person as the Monitoring Officer may appoint as deputy from time to time.

However, certain duties of the Monitoring Officer remain personal to him, as set out in Article 13.01(f):

*“(i) The duties in respect of the statutory reports by the Monitoring Officer ..... (under sections 5 and 5A of the Local Government and Housing Act 1989 .....) are personal to them, unless they are unable to act owing to absence or illness, in which case the duties are personal to their deputy.”*

Except in respect of the statutory duties referred to in sub-paragraph (i) of Article 13.01(f) of the Newcastle Charter, all references to the Monitoring Officer under the Newcastle Charter shall include reference to the Deputy Monitoring Officer and any other officer that he may nominate.

**(c) Maintaining and Monitoring the Register of Members’ Interests (including Gifts and Hospitality)**

The Service Manager Democratic Services maintains the register of Members’ interests (including gifts and hospitality) on behalf of the Monitoring Officer. An annual report from Standards Committee is submitted to City Council which includes the operation of the register.

## **6. Responsibilities of Members and Officers**

The Monitoring Officer needs to ensure that all issues that should be brought to his attention are. Members and Officers therefore have various responsibilities towards the Monitoring Officer:

- (a) Paragraph 7 of the Protocol on Member/Officer Relations provides:

*“7.1 If there are any issues of legality, maladministration, financial impropriety or probity, or if Members are in any doubt as to whether decisions are or likely to be contrary to the Council’s policy, budget or the law, Members are required to consult with the Assistant Director Legal Services as Monitoring Officer or the Director of Resources as Chief Finance Officer as appropriate.”*

- (b) The Council’s guide to “Good Practice in Decision Making” (Annex 3 of Part 3 of the Newcastle Charter) includes the following as a key consideration:

*“3.4 It is important that proper consultation takes place with Cabinet Members, Chairs, Ward Members, the Director of Resources and the Assistant Director Legal Services before decisions are made in accordance with the Protocol.”*

- (c) So far as decisions outside the budget or policy framework are concerned, paragraph 3(b) of the Budget and Policy Framework Procedure Rules (Part 4C of the Newcastle Charter) provides:

*“If the Cabinet, committees of the Cabinet, individual members of the Cabinet and any officers, area committee(s) or joint arrangements discharging executive functions want to make such a decision, they shall take advice from the monitoring officer and/or the chief finance officer as to whether the decision they want to make would be contrary to the policy framework, or contrary to or not*

*wholly in accordance with the budget. If the advice of either of those officers is that the decision would not be in line with the existing budget and/or policy framework, then the decision must be referred by that body or person to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in paragraph 4 (urgent decisions outside the budget and policy framework) shall apply.”*

Paragraph 7 of the Budget and Policy Framework Procedure Rules addresses call-in of such decisions. Sub-paragraph (a) provides:

*“Where either (i) 7 non-executive members (which may include the statutory education representatives if the matter being called in is an education matter on which they would be entitled to vote), or (ii) the Chair and Vice-Chair of a relevant scrutiny committee and one other non-executive member are of the opinion that an executive decision is, or if made would be, contrary to the policy framework, or contrary to or not wholly in accordance with the Council’s budget, then they shall make a call-in request with their reasons to the proper officer who will refer it to the Monitoring Officer and/or Chief Financial Officer for their advice”.*

The matter shall then be dealt with in accordance with the further provisions of paragraph 7.

- (d) Paragraph 1b of the Code of Conduct for Employees (Part 5.2C of the Newcastle Charter) provides:

*“If you become aware of anything illegal, improper or a breach of procedure, you must report it to your manager or supervisor, or, if you prefer, to the Assistant Director Legal Services. You will not be penalised for doing this as long as you act in good faith. Managers must record, investigate and take appropriate action on your reports.”*

- (e) The City Council’s policy for confidential reporting of concerns (“Whistle blowing”) is in Part 5.3A of the Newcastle Charter. The Monitoring Officer receives allegations under that policy. The Monitoring Officer has overall responsibility for the maintenance and operation of that policy, maintaining a record of concerns raised and the outcomes, and reporting as necessary to the Council.
- (f) Decision-makers are required to have regard to guidance issued by the Monitoring Officer.

Article 14.02(b) of the Newcastle Charter provides:

*“In particular, all decision-makers shall take into account protocols for good decision making (approved by the Council) and guidance issued from time to time by the Head of Paid Service, Monitoring Officer and/or Chief Finance Officer which are contained in Part 3.13 of this Constitution”.*

Article 14.03(d) of the Newcastle Charter provides:

*“Decision-makers shall also have regard to protocols approved by the Council or guidance issued from time to time by the Head of Paid Service, Monitoring Officer and/or Chief Finance Officer which are contained in Part 7D of this Constitution.”*

So far as decision-making by Council bodies in a quasi-judicial manner is concerned, Article 14.08(b) of the Newcastle Charter provides:

*“They shall have regard to any protocols approved by the Council or guidance issued from time to time by the Head of Paid Service, Monitoring Officer and/or Chief Finance Officer which are contained in Part 5 of this Constitution”.*

- (g) Paragraph 6 of the “Protocol on the Exercise of Officer Delegations” in Part 3 of the Newcastle Charter provides:

*“Delegated Officers shall follow any further guidance that may be issued from time to time by the Chief Executive, the Director of Resources or the Assistant Director Legal Services, including Protocols relating to Property Issues”.*

## **7. Complaints Against Members**

Complaints that Members have breached the Council’s Code of Conduct can be made to the Monitoring Officer.

The Protocol – Arrangements for Dealing with Complaints against Members in Part 5.4G of the Newcastle Charter sets out how a complaint will be dealt with.

As part of the Arrangements, the Localism Act 2011 provides that the Council must appoint at least one Independent Person, whose views must be sought by the Council before it takes a decision on a complaint which has been investigated, and whose views may also be sought by the Council, or the member against whom the complaint has been made, at any stage in the process. The Council has appointed two Independent Persons.

The Protocol in Part 5.4G of the Newcastle Charter contains details of the role to be undertaken by the Council’s Independent Persons, including information as to when the Monitoring Officer will normally consult the Independent Persons:

- The Monitoring Officer reviews every complaint received and, after consulting the Independent Persons where appropriate, decides whether it merits formal investigation.
- The Monitoring Officer also consults the Independent Persons if (a) he/she considers a local resolution is appropriate and (b) a complainant is not willing to accept an offer of local resolution.
- If an investigation has been carried out, the Independent Persons are consulted by the Monitoring Officer on the investigating officer’s final report.
- The views of the Independent Persons will be sought and taken into account before Standards Committee takes any decision about a breach of the Code of Conduct or what sanctions to impose.
- In the event of an appeal against certain decisions made under the Arrangements, the Monitoring Officer will consult the Independent Persons.

Reports are submitted to the Standards Committee on complaints that have been received as and when appropriate.

## **8. Monitoring the Protocol**

The Monitoring Officer will report to the Standards Committee each year as to whether the arrangements set out in this Protocol have been complied with and will include any proposals for amendments in the light of issues which have arisen during the year.

## **9. Conflicts**

Where the Monitoring Officer has received a complaint or is aware of an event which may lead to him issuing a statutory report relating to a matter upon which he has previously advised the Council, he shall consult the Chief Executive who may then either refer the matter to the Deputy Monitoring Officer for investigation and report to the Chief Executive or ask a neighbouring authority to make their Monitoring Officer available to investigate the matter and report to the Chief Executive and/or the Authority as appropriate.