Annex 3.3 – Monitoring Officer Protocol

1. Purpose of Document

1.1. The purpose of this protocol is to explain the role of the Monitoring Officer ("MO") and provide a guide for officers and councillors as to how it will be exercised in Epsom and Ewell Borough Council.

2. The Monitoring Officer and Deputy Monitoring Officer

2.1. The council has a MO under Section 5 of the Local Government and Housing Act 1989.

2.2. The MO has designated the Principal Solicitor as the Deputy MO under Section 5 (7) of the 1989 Act. The Deputy MO can perform all the MO's duties and deputise for the MO when required.

2.3. Both the MO's and Deputy MO's duties are required to be performed by them personally.

3. Statutory Duties and Functions of the Monitoring Officer

3.1. These arise under the Local Government and Housing Act 1989, the Local Government Act 2000 (as amended by the Local Government Act 2003 and the Local Government and Public Involvement in Health Act 2007) and relevant regulations.

3.2. In preparing a Section 5 report, the MO must consult, as far as practicable the council's Head of Paid Service (the Chief Executive) and the Section 151 Officer (Chief Finance Officer).

3.3. As soon as the MO has prepared the report, they must send it to every councillor.

3.4. The Full Council must consider the report within 21 days of the MO having sent it to councillors.

3.5. Once the MO has sent out the report, the council cannot implement any proposal or decision to which it relates until the end of the first business day after the Full Council have considered it.

4. Duties of the Council towards the Monitoring Officer

4.1. Under Section 5 (1)(b) of the Local Government and Housing Act 1989, the council must provide the MO with such staff, accommodation and other resources as are, in their opinion, sufficient to allow their duties to be performed.

5. Functions of the Monitoring Officer

5.1. The MO will ensure that an up-to date version of the Constitution is maintained and will ensure that it is available to councillors, officers and the public.

5.2. The MO will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards & Constitution Committee.

5.3. The MO will conduct or arrange for investigations to be conducted into allegations against councillors made to the council and arrange, if necessary, for the Standards & Constitution Committee to receive reports or recommendations in respect of them.

5.4. Whilst the Chief Executive is the proper officer for access to information, The MO will ensure that decisions, together with the reasons for those decisions and relevant officer reports and background papers, are made publicly available as soon as possible.

5.5. The MO will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all councillors and officers in their respective roles.

5.6. The MO will support the overview and scrutiny work of the Audit and Scrutiny Committee as set out in the Council Operating Framework (Annex 4.6).

5.7. The MO will ensure that the operation of the Constitution is monitored and reviewed to ensure that the aims and principles of the Constitution are given full effect and will report to the Full Council on this at least once every year.

5.8. The MO must establish and maintain the register of the councillors' and co-opted members' interests including disclosable pecuniary interest which must be available for inspection on the council's website.

5.9. The MO shall keep the Common Seal of the council in some safe place secured by a lock and the keys.

5.10. The MO may attest documents that the Common Seal has been affixed to.

5.11. The MO or any other officer authorised by them may authenticate any document that may be required for legal proceedings.

5.12. The MO may grant dispensations to councillors where the council would not be able to discharge business unless a dispensation was granted (Section 33 Localism Act 2011).

5.13. The MO may instruct external legal support as and when necessary, in connection with a matter concerning the council.

5.14. The MO may settle legal proceedings in the best interests of the council.

5.15. The MO shall act as the 'proper officer' to receive complaints that councillors have breached the Councillors' Code of Conduct.

6. Operative Provisions of the Protocol

6.1. The MO will receive:

i. Advance notice of Strategic Management Team meetings, copies of all agendas and reports.

ii. Advance notice of meetings whether formal or informal, between the Chief Executive / Directors / Heads of Service and Group Leaders / committee Chairs where any procedural, vires or other constitutional issues are likely to arise.

iii. Advance notice of all emerging issues of concern, including legality, probity, vires and constitutional issues.

iv. Copies of all reports to councillors.

6.2. The MO has the right:

i. To attend and speak at any Strategic Management Team and Corporate Management Team meetings.

ii. To call for any relevant information, whether confidential or otherwise, and to give that information as appropriate to any body, including the Standards and Constitution Committee, Internal or External Audit, or the Local Government and Social Care Ombudsman.

iii. To withhold the identity of a complainant who has made an allegation of misconduct against a councillor, in consultation with the Chair of the Standards and Constitution Committee and the Independent Person. Such anonymity will last until preparation for the hearing of the complaint.

iv. To withhold from a councillor, in consultation with the Chair of the Standards and Constitution Committee and the Independent Person the fact that a complaint has been received against them if it is decided that notification may prejudice any subsequent investigation.

v. To make non-substantive changes / updates to the Constitution, that is those that do not change a process or meaning of a section / paragraph, in consultation with the Chair of Standards and Constitution Committee. The MO can also make any changes agreed by the Full Council.

6.3. The MO will:

i. Ensure the Head of Paid Service and the Section 151 Officer have up-to-date information regarding emerging issues.

ii. Set up arrangements within the authority to ensure that any allegation, made in writing, that a councillor has or may have failed to comply with the authority's codes of conduct, is referred to the MO immediately upon receipt by the council.

iii. Maintain a register of such allegations to ensure that the council can comply with its obligations under any legislation.

iv. Refer all substantive allegations of member misconduct to the Standards Hearing Sub-Committee and refer all other matters for action as appropriate.

v. Act as Chair of the Statutory Officer Group and through this Group will meet the Head of Paid Service and Section 151 Officer regularly (and in any event not less than quarterly) to consider and recommend action in connection with current governance issues and other matter of concern regarding probity.

vi. In carrying out any investigation (whether under regulations or otherwise), have unqualified access to any information held by the council and any employee who can assist in the discharge of their functions.

vii. Have control of a budget sufficient to enable them to seek Counsel's opinion on any matter concerning the MO's functions.

viii. Be responsible for preparing a training programme for councillors on the ethical framework.

ix. Report to the Standards and Constitution Committee from time to time on the Constitution and any changes.

x. Appoint a deputy who will be kept briefed on emerging issues. The nominated deputy will have all the rights and powers of the MO when discharging the role of MO.

6.4. The MO may:

6.4.1. In consultation with the Mayor and the Chair of the Standards and Constitution Committee, defer the making of a formal report under Section 5 of the LGHA 1989 where another investigative body is involved.

6.4.2. Make a report to the council from time to time as necessary on the staff, accommodation and resources required to discharge the MO's functions.