

5.8: MONITORING OFFICER PROTOCOL

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5.8 MONITORING OFFICER PROTOCOL

1. GENERAL INTRODUCTION TO STATUTORY RESPONSIBILITIES AND FUNCTIONS

- 1.1** The Monitoring Officer is a statutory appointment pursuant to Section 5 of the Local Government and Housing Act 1989 (LGHA 1989) and is accountable to the Council. That Act, the Local Government Act 2000 and the Local Government and Public Involvement in Health Act 2007 place personal obligations on the appointee in respect of the Council, which are summarised as a schedule annexed to this document.
- 1.2** This protocol provides some general information on how those statutory requirements will be discharged at this Council.
- 1.3** The duties of the Monitoring Officer under Section 5 of the LGHA 1989 are to report to the Authority on any proposal, decision or omission by the Authority (or a Committee or Sub-committee, or a Joint Committee on which the Authority is represented) or an officer of the Authority, which has given rise to, or is likely or would give rise to:
- (a) a contravention of law or any code of practice made or approved by or under any enactment; or
 - (b) such maladministration or injustice as is mentioned in Part III of the Local Government Act 1974, i.e. in connection with action taken by or on behalf of the Authority, in exercise of the Authority's administrative functions.

It is the Monitoring Officer's duty to consult with both the Head of Paid Service and the Section 151 Officer during the preparation of a report and as soon as practicable after its preparation to arrange for a copy of it to be sent to each member of the Authority. The Monitoring Officer is bound to perform all of his or her duties personally, save that during absence or illness, a deputy nominated by him or her may undertake them.

- 1.4** Where there are town and parish councils within unitary and district authorities, other obligations are placed upon the Monitoring Officer. The protocol does not focus on these aspects.
- 1.5** In general terms, the Monitoring Officer's ability to discharge his or her duties and responsibilities will depend, to a large extent, on members and officers:
- complying with the law (including any relevant Codes of Conduct);
 - complying with any general guidance issued, from time to time, by the Audit and Governance Committee and the Monitoring Officer;

- making lawful and proportionate decisions; and
- generally, not taking action that would bring the Council, their Officers or professions into disrepute.

2. WORKING ARRANGEMENTS

- 2.1** Having excellent working relations with members and officers will assist in the discharge of the statutory responsibilities of the Monitoring Officer and maintaining high standards of conduct, governance and legal compliance. Equally, a speedy flow of relevant information and access to debate (particularly at the **early stages** of any decision making by the Council) will assist in fulfilling those responsibilities. Members and officers must, therefore, work with the Monitoring Officer (and his/her staff) to discharge the Council's statutory and discretionary responsibilities.
- 2.2** Having effective working liaison and relationships with the Audit and Governance Committee (and its members), the External Auditor and the Local Government Ombudsman will also assist in the discharge of those statutory responsibilities. This will include having the authority to complain to the same, refer any breaches to the same or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary.

3. MONITORING OFFICER'S RIGHTS

- 3.1** The following arrangements and understandings between the Monitoring Officer, members and officers are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will have the right to:
- (a) be advised by members and officers of any issue(s) that may become of concern to the Council, including, in particular issues around legal powers to do something or not, ethical standards, probity, policy, procedural or other constitutional issues that are likely to (or do) arise;
 - (b) access to any meetings of officers or members (or both) of the Authority, whether or not such meetings include any other persons (for the purpose of clarification, this right does not extend to any meetings held by or on behalf of any political party represented on the Council);
 - (c) receive advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Council at which a decision of the Council may be made formulated or briefed upon (including a failure to take a decision where one should have been taken) at or before the Council, Executive Cabinet, Executive Cabinet member, committee meetings and/or Corporate Leadership Team (or equivalent arrangements);
 - (d) require when carrying out any investigation(s):

- (i) such advice and assistance from the Authority that he or she considers is reasonably needed to assist him or her,
 - (ii) unqualified access to any officer or member who the Monitoring Officer wishes to make inquiries of or who he or she believes can assist in the discharge of his/her functions, and
 - (iii) any information and documents held by the Council;
- (e) disclose information and documents to the appropriate and relevant authority (even where such disclosure would otherwise be in breach of the Monitoring Officer's duty of confidentiality to the Authority);
- (f) ensure or facilitate that the other statutory officers (Head of Paid Service and Section 151 Officer) are kept up-to-date with relevant information regarding any legal, ethical standards, probity, procedural or other constitutional issues that are likely to (or do) arise;
- (g) meet with the Head of Paid Service and the Section 151 Officer to consider and recommend action in connection with corporate governance issues and other matters of concern regarding any legal, ethical standards, probity, procedural or other constitutional issues that are likely to (or do) arise;
- (h) report on ethical governance issues and on the Constitution following consultation, where appropriate, with the Head of Paid Service and Section 151 Officer;
- (i) report to the Council as necessary on the staff accommodation and resources he/she requires to discharge his/her statutory functions and to be provided with the same;
- (j) obtain legal advice on any matter which he/she believes may be a reportable incident, at the Authority's expense;
- (k) defer the making of a formal report under Section 5 of the Local Government and Housing Act 1989 where another investigative body is involved, subject to any necessary consultation with all or any of Head of Paid Service, Section 151 Officer, the Chairman of the Council, Leader, Deputy Leader and the Audit and Governance Committee;
- (l) notify (after consultation with the Head of Paid Service and the Section 151 Officer) the police, the Authority's auditors and other regulatory agencies of his/her concerns in respect of any matter and to provide them with information and documents in order to assist them with their statutory functions;
- (m) seek to resolve potential reportable incidents by avoiding or rectifying the illegality, failure of process or breach of code, or by identifying alternative and

legitimate methods to proceed whilst retaining the right to make a statutory report where, after consultation with the Head of Paid Service and the Section 151 Officer, he/she is of the opinion that such is necessary in order to respond properly to such an incident;

- (n) prepare any training programme for members or officers on ethical standards and Code of Conduct issues.
- (o) To make reports to and receive reports from the Audit and Governance Committee, subject (where appropriate) to consultation with the Head of Paid Service and the Section 151 Officer.

4. PROPER OFFICER

- 4.1 Councils may place “Proper Officer” and other obligations on the Monitoring Officer, through the Council’s Constitution and elsewhere, but these are delegated functions of the Authority rather than personal duties under statute. Whilst the exercise of these functions equally require good working arrangements, they differ slightly from authority to authority. For the sake of commonality and clarity of the protocol, they are not directly addressed here.
- 4.2 The Proper Officer list is contained at Part 3, Section 8 of the Council’s Constitution.

5. CONFLICTS OF INTEREST

- 5.1 Where the Monitoring Officer is aware he/she has a potential conflict of interest he/she shall refer the matter to the Deputy Monitoring Officer or another appropriate party (and report to the Head of Paid Service and/or the Authority as appropriate).

6. INSURANCE AND INDEMNITY ARRANGEMENTS

- 6.1 The Section 151 Officer will ensure adequate insurance and indemnity arrangements are in place to protect and safeguard the interests of the Council and the proper discharge of the Monitoring Officer role.

7. BREACH OF THIS PROTOCOL

- 7.1 Complaints against any breach of this protocol by a member may be:
 - dealt with informally by the Monitoring Officer or
 - referred to the Audit and Governance Committee as appropriate by the Monitoring Officer (or if the Monitoring Officer so requests, referred to the Head of Paid Service) or
 - referred to the relevant Leader and/or whip of the political group.

7.2 Complaints against any breach of this protocol by an officer may be referred to the Head of Paid Service for assessment.

8. POST OF MONITORING OFFICER

8.1 For the purposes of this protocol, the term “Monitoring Officer” includes:

- any person nominated by the Monitoring Officer as a Deputy Monitoring Officer for the purposes of Section 5(7) of the Local Government and Housing Act 1989; and
- any person nominated under the provisions of Section 82A(2) or (3) of that Local Government Act 2000 to perform any function.

SCHEDULE

SUMMARY OF MONITORING OFFICER FUNCTIONS

	Description	Source
1.	Report on contraventions or likely contraventions of any enactment or rule of law.	Section 5 Local Government and Housing Act 1989.
2.	Report of any maladministration or injustice where Ombudsman has carried out an investigation.	Section 5 Local Government and Housing Act 1989.
3.	Appointment of Deputy.	Section 5 Local Government and Housing Act 1989.
4.	Report on resources.	Section 5 Local Government and Housing Act 1989.
5.	Investigate allegations of misconduct of councillors under the Authority’s Code of Conduct in compliance with the Council’s adopted arrangements.	Localism Act 2011 Section 28 and associated regulations and guidance.
6.	Establish and maintain registers of members’ interests and gifts and hospitality.	Section 29 of the Localism Act 2011 and Code of Conduct for Members.
7.	Advice to members on interpretation of Code of Conduct.	Code of Conduct for Members.

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	Description	Source
8.	Key role in promoting and maintaining high standards of conduct through support to the Audit and Governance Committee.	New Council Constitutions Guidance paragraph 8.20.
9.	Advising on appropriateness of compensation for maladministration.	Section 92 Local Government Act 2000.
10.	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members.	New Council Constitutions Guidance paragraph 8.21.
11.	Refer relevant matters to the Audit and Governance Committee (or its Sub-committees) for initial assessment, review and hearing.	Council's adopted arrangements under Section 28 of Localism Act 2011.
12.	Advise on any indemnities and insurance issues for members/officers.	Regulations under Local Government Act 2000.
13.	Advise on the introduction of Local Assessment arrangements.	Local Government and Public Involvement in Health Act 2007 (including amendments to the Local Government Act 2000).
14.	Act as the qualified person.	S36 Freedom of Information Act 2000 and Information Commissioner's Office Awareness Guidance No. 25.

The officer holding the designation Monitoring Officer also holds certain Proper Officer appointments as detailed in the Constitution.