

# **MONITORING OFFICER ROLE AND FUNCTIONS PROTOCOL**

## **1. Introduction**

This protocol has been produced as a guideline for the benefit of Members and Senior Officers on the role of the Monitoring Officer and the arrangement for ensuring this role is carried out effectively.

The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989 and aims to promote and maintain high standards of conduct under the Localism Act 2011

This protocol is based on the understanding that the ability of the Monitoring Officer to undertake their role and effectively rests on:

- developing and maintaining effective working relations with colleagues and Members;
- the flow of relevant information and access to debate (particularly at the early stages of any decision-making by the Council);
- the culture of the Council that enables the Monitoring Officer to speak truth to power.

The Monitoring Officer and the Council must have systems and procedures in place that will bring to the function's attention any situations where issues of; illegality, maladministration or impropriety may arise.

The Monitoring Officer will provide appropriate and, if necessary, firm advice to Members to protect and safeguard, so far as is possible, Members and Officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.

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 Act to perform any function.

## **2. Functions and Responsibilities**

The specific functions of the Council's Monitoring Officer are detailed in the Constitution.

The chief responsibilities include: -

- (a) a duty to report under Section 5 Local Government and Housing Act 1989 to the Council in any case where the Monitoring Officer is of the opinion that any proposal or decision is or is likely to be illegal, improper or to constitute maladministration. These matters are referred to in this Protocol as "reportable incidents" and include things such as breaches of the constitution or failure to follow a statutory/consultation process. However the power is broad enough to capture any behaviour which looks to breach the fairness of Council decision making.
- (b) ensuring that the Council acts in accordance within the legislative framework when undertaking its functions;
- (b) ensuring compliance with any relevant Codes of Conduct, best practice and government guidance;
- (c) upholding the public law principles of; legality, fairness, participation, accountability, consistency, rationality, proportionality and impartiality.
- (d) Not taking action that would bring the Council, their offices or professions into disrepute.
- (e) referring relevant matters to the Standards Committee in accordance with the Members' Code of Conduct as set out in Part 17 of the Council's Constitution.
- (f) preparing reports for, and advising at meetings of the Standards Committee;
- (g) giving informal advice to Members in relation to informal resolution of a complaint;
- (h) preparing any training programme for Members on ethical standards and Code of Conduct issues;
- (i) establish, maintain and publish the statutory register of Members' interests;
- (j) referring any written requests for dispensations from Members and Co-opted Members

### **3. Discharge of Functions**

In order to ensure the effective discharge of the above duties, the Monitoring Officer will:-

- (a) amplify the 'Golden Triangle' relationship by working closely with the Chief Executive and Director of Resources (S.151Officer) in order to review current and likely future issues with legal, constitutional, or ethical implications;
- (b) maintain harmonious working relations with; Internal and External Auditors; the Local Government and Social Care Ombudsman and the Housing Ombudsman Service.
- (c) ensure that the Council is kept abreast of new legislation and changes in the law which are relevant to the carrying out of the Council's activities.

### **3.1 Senior Management Group (SMG) responsibilities:**

SMG are fundamental in enabling the Monitoring Officer to be able to fulfil their statutory responsibilities to the highest standard and will ensure that:-

- (a) The Monitoring Officer is consulted at an early stage on new policy proposals and on matters which have potentially significant legal implications;
- (b) Ensure that all draft reports to the Council and Committees are as a matter of routine approved by the Monitoring Officer who should also be made aware of any headline issues;
- (c) The Monitoring Officer is informed of all emerging issues of concern of a legal, ethical, or constitutional nature. Similarly, Members should ensure that the Monitoring Officer is consulted in respect of new policy/regulatory proposals.

### **3.2 Reportable Incidents:**

The Monitoring Officer will evaluate whether a reportable incident has triggered their statutory duty to act as set out below:

- (a) The Monitoring Officer will seek to resolve potential reportable incidents by avoiding the illegality, or by identifying alternative and legitimate means of achieving the objective of the proposal.

The Monitoring Officer will only need to make a public report on the matter if the proposal were to be a potential reportable incident and the Officer or Member subsequently took any action to progress that proposal despite being advised to the contrary by the Monitoring Officer.

- (b) Where the Monitoring Officer receives a complaint of a potential reportable incident, s/he must in appropriate cases seek to resolve the matter amicably, by securing that any illegality or failure of process is rectified. However, it is recognised that the Monitoring Officer may decide that the matter is of such importance that a statutory report is the only appropriate response.
- (c) In appropriate cases, and to secure the rapid resolution of a potential reportable incident or avoid a separate statutory report, the Monitoring Officer will be entitled to add their written advice to the report of any other Council officer.
- (d) The Monitoring Officer retains the right to make a statutory report where, after consultation with the Chief Executive and the Director of Resources (Section 151 Officer), that such is necessary to respond properly to a reportable incident.

### **3.3 Working Arrangements:**

The Monitoring Officer will remain front and centre of all decision making of the Council and therefore maintains the right to:

- (a) See all documents and information held by or on behalf of the Council, including documents and information held by any Council officer or Member; However, this right does not extend to documents and information held by or on behalf of any political party represented on the Council.
- (b) Require any Council officer or Member, or any contractor to provide an explanation of any matter under any investigation;
- (c) Report to the Council, and its Committees, including a right to present a written report;
- (d) Notify the Police, the Council's Internal and External Auditors, and other regulatory agencies of any issue of risk and concern and to provide them with information and documents to assist them with their statutory

functions, after consultation with the Chief Executive and the Director of Resources;

(f) Obtain, at the Council's expense, legal advice, either internally or from an independent external solicitor, barrister, or forensic consultant, on any matter which it is believed to be a reportable incident.

#### **4.Resources:**

The Monitoring Officer shall report to the Council, as necessary on the staff, accommodation and resources she requires to discharge her statutory functions;

- (a) have sufficient resources to enable them to address any matters concerning her Monitoring Officer functions;
- (b) have control of a budget sufficient to enable them to seek Counsel's opinion on any matter concerning their functions.
- (c) appoint a deputy(ies) and keep them briefed on any relevant issues that they may be required to deal with in the absence of the Monitoring Officer;

#### **5. Conflicts**

Where the Monitoring Officer is in receipt of a complaint or is aware of a potential 'reportable incident' they must:

- (a) consult the statutory officers who may then either refer the matter to a Deputy Monitoring Officer for investigation and to report back to the Chief Executive or
- (b) request a neighbouring authority to make their Monitoring Officer available to the Council to investigate the matter and report to the Chief Executive and other statutory officers and/or the Council as appropriate. Examples of when this may be appropriate can be found in paragraph 3.2 of the 'Complaints Handling Procedure for matters relating to the Councillors' Code of Conduct'.

#### **6. Insurance and indemnity arrangements**

Financial Services will ensure adequate insurance and indemnity arrangements are in place for the same to protect and safeguard the

interests of the Council, and the proper discharge of the Monitoring Officer role.

## **7 Sanctions for breach of the Council's Codes of Conduct and this Protocol**

Complaints about any breach of this Protocol by a Member will be referred to the Standards Committee and to the relevant Leader of the Political Group.

Complaints about any breach of this Protocol by an Officer will be referred to the relevant Director and/or the Chief Executive.

## **8. Parish Councils**

This protocol is in respect of the Council **only** and not in respect of Parish Councils.

The Monitoring Officer has no powers to deal with issues of maladministration or lawfulness on the part of the Parish Councils nor in terms of the Constitution/Standing Orders of the Parish Council

Where a complainant considers that the complaint has not been satisfactorily dealt with, the matter must be referred back to the Parish Clerk via their formal complaints process (where they do not publish one you should make enquiries of their Clerk and/or their Chairperson).

The Monitoring Officer will provide assistance to Parish clerks over standards issues; however the principal source of advice on such matters to should emanate from the Clerk

The Monitoring Officer is responsible for dealing and receiving complaints against Parish Councillors alleging breaches of a code of conduct however it will not always be an appropriate or necessary use of public resources for the Monitoring Officer to conduct an investigation.

## **SUMMARY OF MONITORING OFFICER FUNCTIONS**

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	Receive copies of whistleblowing allegations of misconduct.	Code of Conduct. Public Interest Disclosure

		(Whistleblowing) Protocol.
6	Investigate allegations of misconduct of Councillors under the authority's Code of Conduct in compliance with: - <ul style="list-style-type: none"><li>• regulations</li><li>• in liaison with Independent Member</li></ul>	Localism Act 2011
7	Establish and maintain registers of Members' interests and gifts and hospitality.	Section 81 Local Government Act 2000 and Code of Conduct for Members.
8	Advice to Members on interpretation of Code of Conduct.	Code of Conduct for Members.
9	New ethical framework functions in relation to Parish Councils.	Section 83(12) Local Government Act 2000. Localism Act 2011.
10	Advising on appropriateness of compensation for maladministration.	Section 92 Local Government Act 2000.
11	Advice on vires issues,	New Council Constitutions

	maladministration, financial impropriety, probity and policy framework and budget issues to all Members.	Guidance paragraph 8.21.
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