

Part 5, Section 5: Monitoring Officer Protocol

Introduction

- 5.5.1. This Protocol explains the role and functions of the Council's Monitoring Officer and the arrangements for ensuring this role is effectively carried out. The ability of the Monitoring Officer to undertake this role effectively relies on excellent working relations with colleagues and councillors and on the flow of information and access to debate particularly at early stages.

Statutory Obligations

- 5.5.2. The Council is required¹ to appoint a Monitoring Officer in accordance with Article 9 (Officers) in Part 2 of the Constitution.
- 5.5.3. The Monitoring Officer must perform² statutory obligations in respect of the Council, which are summarised in the Appendix to this Protocol. This Protocol provides general information as to how those statutory obligations will be discharged.
- 5.5.4. The Monitoring Officer must discharge the statutory obligations personally. If the Monitoring Officer is unable to act owing to absence or illness, the duties will be performed personally by the person nominated by the Monitoring Officer as the Deputy Monitoring Officer.
- 5.5.5. The Monitoring Officer's ability to discharge the statutory obligations will depend largely on councillors and employees:
- 5.5.5.1. complying with the law of the land (including any relevant Codes of Conduct);
 - 5.5.5.2. complying with any guidance issued, from time to time, by the Audit and Standards Committee or the Monitoring Officer;
 - 5.5.5.3. making lawful and proportionate decisions (see further Article 10 (Decision Making)); and
 - 5.5.5.4. generally, not taking action that would bring the Council, their offices or professions into disrepute.
- 5.5.6. The Council has a duty to provide the Monitoring Officer with such staff, accommodation and other resources as are, in the Monitoring Officer's opinion, sufficient to allow them to perform those duties.

¹ section 5 of the Local Government and Housing Act 1989

² Pursuant to the Local Government and Housing Act 1989, the Local Government Act 2000 and the Local Government and Public Involvement in Health Act 2007

Functions

- 5.5.7. The specific functions of the Council's Monitoring Officer are detailed in the Appendix. The chief responsibilities can be summarised as:
- 5.5.7.1. A duty to report 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 or to constitute maladministration. These matters are referred to in this Protocol as "reportable incidents".
 - 5.5.7.2. A range of functions relating to Councillors' conduct.
 - 5.5.7.3. Specific functions under the Council's Constitution.
- 5.5.8. The Council has also placed '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.
- 5.5.9. Some of the statutory obligations on the Monitoring Officer relate to local councils within the District. Local councils must provide cooperation and assistance to the Monitoring Officer in discharging the obligations.

Discharge of Functions

- 5.5.10. In order to ensure the effective undertaking of these duties, the Monitoring Officer will:
- 5.5.10.1. have regular meetings with the Statutory Chief Officers to review current and likely future issues with legal, constitutional or ethical implications;
 - 5.5.10.2. maintain good liaison and working relations with the external auditor;
 - 5.5.10.3. ensure the Council is kept up to date on new legislation and changes in the law which are relevant to the carrying out of its activities. This will generally take the form of reports to councillors and briefing notes to Chief Officers but where appropriate will involve training sessions for relevant councillors and employees. These activities will be carried out in consultation and conjunction with relevant Chief Officers.
- 5.5.11. In addition, Chief Officers will ensure that:
- 5.5.11.1. the Monitoring Officer and their Deputy are consulted at an early stage on new policy proposals and on matters which have potentially significant legal implications. Where there is any doubt, the Chief Officer should always consult.
 - 5.5.11.2. all draft reports to the Council, Cabinet and Committees should as a matter of routine be cleared with the Monitoring Officer or their deputy in good time prior to dispatch;
 - 5.5.11.3. the Monitoring Officer is informed of all emerging issues of concern of a legal,

ethical or constitutional nature.

- 5.5.12. Councillors should ensure that the Monitoring Officer is routinely informed and consulted in respect of new policy proposals.
- 5.5.13. The Monitoring Officer will always seek to resolve any potential illegality by identifying alternative and legitimate means of achieving the objective of the purpose.
- 5.5.14. Where external Lawyers act for the Council, the relevant Chief Officer and the Monitoring Officer will agree arrangements for ensuring that vires and constitutional issues are satisfactorily addressed.

Reportable Incidents

- 5.5.15. 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. Accordingly, and given that Council employees and councillors are encouraged to consult the Monitoring Officer in respect of any 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 employee or councillor subsequently took any action to progress that proposal despite being advised to the contrary by the Monitoring Officer.
- 5.5.16. Where the Monitoring Officer receives a complaint of a potential reportable incident, they 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.
- 5.5.17. 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 employee.
- 5.5.18. Notwithstanding the above, the Monitoring Officer retains the right to make a statutory report where, after consultation with the Statutory Chief Officers, they are of the opinion that such is necessary in order to respond properly to a reportable incident.

Monitoring Officer Rights

- 5.5.19. To assist in the effective undertaking of the above duties, the Monitoring Officer has the right to:
 - 5.5.19.1. receive advance notice of meetings, whether formal or informal, between Chief Officers and the Leader, Cabinet Members, the Cabinet or Committee Chairs, where any procedural, vires or other constitutional issues are likely to arise, together with the right to attend such meetings;
 - 5.5.19.2. receive advance notice of meetings of the Council's, Corporate Board, Executive Directors and agenda and reports and the right to attend and speak.

- 5.5.19.3. see all documents and information held by or on behalf of the Council, including documents and information held by any Council employee or councillor. However, this right does not extend to documents and information held by or on behalf of any political party represented on the Council.
- 5.5.19.4. attend any meetings of employees or councillors (or both), whether such meetings include any other persons. However, this right does not extend to any meetings held by or on behalf of any political party represented on the Council.
- 5.5.19.5. require any Council employee or councillor, or any contractor to provide an explanation of any matter under investigation;
- 5.5.19.6. report to the Council, and its Committees, including a right to present a written report and to attend and advise orally;
- 5.5.19.7. have access to the Head of Paid Service and to the Chief Finance Officer as the Statutory Chief Officers;
- 5.5.19.8. after consultation with the Chief Executive Officer and Director of Strategic Finance, to notify the Police, the Council's Auditors and other regulatory agencies of concerns in respect of any matter and to provide them with information and documents in order to assist them with their statutory functions.
- 5.5.19.9. obtain, at the Council's expense, legal advice, either internally or from an independent external Solicitor or Barrister, on any matter which it is believed may be a reportable incident.

Working arrangements

- 5.5.20. Having excellent working relations with councillors and employees will help the Monitoring Officer discharge their statutory obligations. A timely 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 obligations. Councillors and employees must, therefore, work with the Monitoring Officer (and their staff) to discharge the Council's statutory and discretionary responsibilities.
- 5.5.21. The following arrangements and understanding between the Monitoring Officer, councillors and Chief Officers are designed to ensure the effective discharge of the council's business and functions. The Monitoring Officer will:

Resources

- 5.5.22. report to Council, as necessary, on the staff, accommodation and resources required to discharge the statutory functions of the role;
- 5.5.23. have sufficient resources to enable them to address any matters concerning their Monitoring Officer functions, including control of an adequate budget to enable them to seek counsel's opinion on any matter concerning their functions;
- 5.5.24. appoint at least one Deputy Monitoring Officer and keep them briefed on any relevant

issues that they may be required to deal with in the absence of the Monitoring Officer;

Access to information and meetings

- 5.5.25. be alerted by councillors and employees to any issue that may become of concern to the Council including 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;
- 5.5.26. have the right to attend (and be heard at) any meeting of the authority, including its employees and or councillors, before any binding decision is taken (including a failure to take a decision where one should have been taken), whether or not such meetings include other persons. This right does not extend to any meetings held by or on behalf of any political party represented on the Council;
- 5.5.27. have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Council (including meetings at which officer delegated decisions are taken) at which a binding decision may be made (including a failure to take a decision where one should have been taken), formulated or briefed upon;
- 5.5.28. be a member of the Corporate Leadership Team and have advance notice of those meetings, agenda and reports and the right to attend and speak;
- 5.5.29. have access to any information held by the Council and to any employee who can assist in the discharge of their functions;
- 5.5.30. disclose information and documents to the Audit and Standards Committee as they consider appropriate, even where such disclosure would otherwise be in breach of the Monitoring Officer's duty of confidentiality to the authority;
- 5.5.31. be consulted when new policy proposals or matters with significant legal implications are at a formative stage;

Relationships

- 5.5.32. ensure the other Statutory Chief Officers are kept up-to-date with relevant information regarding any legal, ethical standards, probity, procedural or other constitutional issues likely to arise;
- 5.5.33. meet regularly with the other Statutory Chief Officers to consider and recommend action in connection with corporate governance issues and other matters of concern including any legal, ethical standards, probity, procedural or other constitutional issues that arise or are likely to arise;
- 5.5.34. have a close working relationship of respect and trust with the Chairman of the Council, the Leader of the Council and the Chairmen of the Audit and Standards Committee, Overview and Scrutiny Committees and other committees with a view to ensuring the effective and efficient discharge of Council business;
- 5.5.35. develop effective working liaison and relationship with the Council's External Auditors, the Local Government and Social Care Ombudsman (LGSCO) and the Housing

Ombudsman Service (HOS), including having the authority, on behalf of the Council, to complain to the same, refer any breaches or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary;

- 5.5.36. 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 any or all of the Statutory Chief Officers, the Chairman of the Council, the Leader of the Council, Cabinet and the Audit and Standards Committee;
- 5.5.37. make arrangements to ensure effective communication between their office and clerks to local councils on Monitoring Officer and standards issues;
- 5.5.38. report on ethical governance issues and on the Constitution following consultation, where appropriate, with the Statutory Chief Officers;
- 5.5.39. 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 statutory Chief Officers, they are of the opinion that such is necessary in order to respond properly to such an incident;

Ombudsman Complaints

- 5.5.40. prepare reports³ in relation to complaints which have been the subject of investigation by the Local Government and Social Care Ombudsman and which have revealed maladministration, whether or not that maladministration has caused injustice;
- 5.5.41. prepare reports to councillors as necessary to bring to their attention issues of importance arising out of complaints made to the Local Government and Social Care Ombudsman, whether or not investigated, and whether or not maladministration was found;

Standards Matters

- 5.5.42. refer relevant matters to the Audit and Standards Committee in accordance with the procedure for considering complaints alleging a failure to comply with a Councillors Code of Conduct within the district;
- 5.5.43. make arrangements for, prepare reports for, and advise meetings of the Standards Sub-Committee;
- 5.5.44. give informal advice to councillors in relation to informal resolution of a complaint;
- 5.5.45. prepare any training programme for councillors or employees on ethical standards and Code of Conduct issues;
- 5.5.46. establish, maintain and publish the statutory register of Councillors interests⁴;

³ as required by the Local Government Act 1974 and the Local Government and Housing Act 1989

⁴ in relation to Harborough District Council councillors, voting co-opted Members of Harborough District Council, and councillors of local Councils in the Harborough district area.

- 5.5.47. receive written requests for dispensations from councillors and co-opted members of Harborough District Council, and to refer such requests to the Head of Paid Service;

Constitution

- 5.5.48. review and monitor the Constitution in accordance with the arrangements set out in Article 1 of the Constitution and consult with the other Statutory Chief Officers before taking any report to approve amendments to the Constitution.
- 5.5.49. report on ethical governance issues and on the Constitution following consultation, where appropriate, with the other Statutory Chief Officers;

Conflicts of interest

- 5.5.50. Where the Monitoring Officer is aware of a potential conflict of interest in performing their duties (i.e. they have previously advised the Council), they shall consult the Head of Paid Service.
- 5.5.51. The Monitoring Officer may then either:
- 5.5.51.1. refer the matter to the Deputy Monitoring Officer for investigation; or
 - 5.5.51.2. request a neighbouring authority to make their Monitoring Officer available to this Council, or
 - 5.5.51.3. nominate another person to investigate the matter and report the results to the Monitoring Officer and the Head of Paid Service and / or the Council.

Insurance and indemnity arrangements

- 5.5.52. The Chief Finance Officer 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.

Councillor and Employee Responsibilities

- 5.5.53. Councillors and employees should report any breaches of statutory duty or council policies or procedures and other vices or constitutional concerns to the Monitoring Officer, as soon as practicable.

Advice

- 5.5.54. The Monitoring Officer is also available for councillors and officers to consult on any issues relating to the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (e.g. Council Procedure Rules, Budget and Policy Framework, Terms of Reference, Scheme of Delegations, etc).

Monitoring the protocol

- 5.5.55. Annually, the Monitoring Officer will report to the Audit and Standards Committee regarding whether the arrangements set out in the Protocol have been complied with and will include any proposals for amendments in the light of any issues that have arisen during the year.

Sanctions for breach of this protocol

- 5.5.56. Complaints in relation to against any breach of this Protocol by a Councillor will be referred to the relevant group Leader and or Whip of the Political Party Group and may result in a complaint that the Councillor Code of Conduct has been breached.
- 5.5.57. Complaints in relation to any breach of this Protocol by an employee will be referred to the relevant Chief Officer for appropriate action to be considered, including disciplinary investigation and or action.

Appendix: Summary of Monitoring Officer Functions

i. Functions under Section 5 of the Local Government and Housing Act 1989

To report to the Council in any case where the Monitoring Officer is of the opinion that any proposal or decision of the authority in respect of any matter which, in their opinion, has given rise to or is likely to or would give rise to any illegality or maladministration. This includes advising on vires issues, maladministration (including compensation in respect of pursuant to s92 Local Government Act 2000), financial impropriety, probity and policy framework and budget issues to all councillors.

ii. Functions relating to Standards

- a. To act as the principal adviser to the Audit and Standards Committee and in that role to contribute by training and otherwise to the provision and maintenance of high standards of conduct;
- b. To refer matters relating to conduct, ethics and propriety to the Audit and Standards Committee;
- c. To maintain the Register of Members' Interests and in this connection to receive from Members written notification of disclosable pecuniary interests and other interests and to receive written notification of any change to those interests;
- d. To receive written notification from Members of the existence and nature or any gift or hospitality exceeding £50;
- e. Dealing with complaints against Members, including the conduct of investigations and reporting to the Audit and Standards Committee;
- f. To process requests from Members for dispensations to speak and vote at meetings;
- g. To maintain and promote the Council's Anti-Fraud and Corruption Strategy;
- h. To keep the Code of Corporate Governance under review;

iii. Functions relating to the Constitution

- a. To monitor the operation of the Constitution and to make recommendations on how it can be amended in order to better to achieve the overall purposes. This may include:
 - i. observing meetings of different parts of the councillor / employee structure;
 - ii. undertaking an audit trail of a sample of decisions;
 - iii. recording and analysing issues raised by Members, Officers, the public and other relevant stakeholders; and
 - iv. comparing practices in this authority with those in other comparable authorities, or national examples of best practice.
- b. To consult the Constitution Review Committee on changes to factual references in the Constitution or changes required by a change in the law. Also, to publish

changes to the Constitution.

- c. To publicise the Constitution by ensuring that;
 - i. access is given to each Councillor on their election to the Council;
 - ii. ensuring that copies are available for inspection at Council offices, libraries and other appropriate locations, and can be purchased by members of the local media and the public on payment of a reasonable fee;
 - iii. ensuring that the executive summary is made widely available within the area and is updated as necessary; and
 - iv. ensuring the publication of changes made