

Local Protocol – Monitoring Officer

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1. Requirement to Designate an Employee as Monitoring Officer

- 1.1 The Council is required by Section 5 of the Local Government and Housing Act 1989 ("the 1989 Act") to designate one of its employees as the "Monitoring Officer". That person is required to perform the duties set out in sections 5 and 5A of the 1989 Act.

2. Employees who cannot be Monitoring Officer

- 2.1 The 1989 Act prohibits the persons designated as the Council's Head of Paid Service (currently the Chief Executive) and the Council's Chief Finance Officer from also being designated as the Council's Monitoring Officer.

3. Provision of Staff, Accommodation and Resources for Monitoring Officer

- 3.1 The Council is required by Section 5(1)(b) of the 1989 Act to provide the Monitoring Officer with "such staff, accommodation and other resources as are, in his opinion, sufficient to allow those duties [under Sections 5 and 5A] to be performed".

4. Monitoring Officer to Report Cases of Illegality and/or Maladministration

- 4.1 It is the Monitoring Officer's duty, if he/she believes that any proposal, decision or omission by the Council, has given rise to (or is likely to, or would give rise to) a contravention by the Council of "any enactment or rule of law" to prepare a report ("a Monitoring Officer Report") on the matter. A Monitoring Officer Report must also be prepared where the Local Government Ombudsman has found any "maladministration or injustice".
- 4.2 If the Monitoring Officer Report relates to a proposal, decision or omission by the Leader of the Council, an individual member of the Cabinet or the Cabinet (or on behalf of the Cabinet – i.e. by a committee of the Cabinet or an Officer, or (potentially) an area committee or joint committee) the report must be submitted to the Cabinet. If it relates to a Council function proposal, decision or omission (whether by Council, a Committee, sub-committee, joint committee, or an Officer) the report must be submitted to the Council.
- 4.3 In preparing a Monitoring Officer Report, the Monitoring Officer must, so far as is practicable, consult with the Chief Executive (in his/her capacity as the Council's Head of Paid Service) and the Chief Finance Officer.
- 4.4 As soon as practicable after preparing a Monitoring Officer Report, the Monitoring Officer must arrange for a copy to be sent to the every member of the Council.

5. Consideration of Monitoring Officer Reports

- 5.1 The Cabinet or Council (as appropriate) must consider a Monitoring Officer Report within 21 days of copies being first sent to the all members. The Cabinet or Council (as appropriate) are also under a duty to ensure that no step is taken to give effect to any proposal or decision to which such a report relates until the end of the first business day after the day on which consideration of the report is concluded. The Cabinet and Council's responsibilities under this paragraph may not be delegated.

5.2 As soon as practicable after the Cabinet has concluded its consideration of a Monitoring Officer Report, the Cabinet must prepare a report and send a copy to every member of the Council and to the Monitoring Officer. This report must specify what action (if any) the Cabinet has taken in response to the Monitoring Officer Report; what action (if any) it proposes to take (and when); and the Cabinet's reasons for taking (or not taking) action. (There is no equivalent obligation upon the Council to prepare a report in response to a Monitoring Officer Report.)

6. Personal Obligation of Monitoring Officer and Appointment of Deputy Monitoring Officer

6.1 The Monitoring Officer must perform his/her duties under the 1989 Act personally. However, where he/she is unable to act owing to absence or illness, these duties may be performed by such member of his/her staff as the Monitoring Officer has nominated as his/her deputy.

7. Disciplinary Action against a Monitoring Officer

7.1 The Local Authorities (Standing Orders) (England) Regulations 2001 require all local authorities to adopt certain mandatory Standing Orders in relation to the taking of any "disciplinary action" (as defined in those Regulations) against the Monitoring Officer. Similar provisions also apply in relation to the Head of Paid Service and the Chief Finance Officer. These are all contained in the Council's Standing Orders in relation to Officer Employment (see in particular Standing Order G5).

8. Local Arrangements and Conventions

8.1. This protocol applies to the Monitoring Officer, any Deputy Monitoring Officer/s and to any person/s appointed in line with paragraph 6.1 above. This Protocol also applies to the all members, including co-opted and independent members.

8.2 The Council expects that the Monitoring Officer will discharge his/her statutory responsibilities with determination and in a manner that will enhance the reputation of the Council.

8.3 In addition to the Monitoring Officer's formal statutory responsibilities the Council expects and encourages him/her to take a positive and proactive approach to promoting and encouraging high standards in ethics and probity amongst members and officers.

8.4 The Council expects the Monitoring Officer to draw to members' attention in clear terms not only matters where the Council may be at risk of being accused of illegality or maladministration, but also where the Council may be failing to have proper regard to Government guidance or best practice.

8.5 The Council recognises that, in general terms, the Monitoring Officer's ability to discharge his/her duties depends not only on excellent working relations with officers and all members but also on the flow of information and access to debate, particularly at early stages.

8.6 The Council expects the following arrangements and understandings to be followed by all officers and members, in order to help ensure the effective discharge of the Monitoring Officer's functions:

- (a) If not a member of the Senior Leadership Team, the Monitoring Officer will have advance notice of those meetings (and immediate access to all agendas and reports) and the right to attend meetings and speak.
- (b) The Monitoring Officer will be given ample advance notice of meetings (whether formal or informal) between Directors, the Leader of the Council and members of the Cabinet (or Committee Chairmen/women), especially where the Chief Executive or any Director or Divisional Director or Head of Service considers that it is reasonably likely that any issues may arise in relation to probity, legality, procedure or the Council's Constitution.
- (c) All officers must immediately alert the Monitoring Officer to all issues of concerning probity, legality, procedure or the Council's Constitution, as soon as they become aware of those matters.
- (d) The Monitoring Officer (or his/her staff) will be provided with copies of all reports to members before they are published and shall be entitled to have his/her advice included in those reports.
- (e) The Monitoring Officer shall use all reasonable endeavours to develop good working relations with the Council's External Auditor and the Local Government Ombudsman.
- (f) The Monitoring Officer shall use all reasonable endeavours to develop good working relations with the all members, particularly the Leader of the Council, Civic Mayor, Chairman of the Council's Standards Committee and the Overview and Scrutiny Co-ordinator.
- (g) The Council expects and encourages that the Monitoring Officer, Chief Finance Officer and the Head of Devon Audit Partnership meet on a regular basis to consider and recommend action in connection with current governance issues and other matters of concern regarding ethics and probity. The Council also expects that these three Officers will keep the Chief Executive (as Head of Paid Service) informed of any matters that any of them consider shall be brought to his/her attention.
- (h) The Council expects the Monitoring Officer to make enquiries into any written complaint alleging misconduct by any member falling short of a possible breach of the Members' Code of Conduct in accordance with the Council's Local Protocol for the Assessment and Determination of Allegations of Breaches of the Members Code of Conduct.
- (i) In carrying out any investigation (whether under the preceding paragraph or otherwise) the Monitoring Officer will have unrestricted access to any information held by the Council, any Council employee, or any member as he/she may require, subject only to any legal rights an individual may have to withhold information or to decline to answer any question.
- (j) The Monitoring Officer will have control of a budget sufficient to enable him/her to seek Counsel's opinion or other expert advice on any matter concerning his/her functions.
- (k) The Monitoring Officer will be responsible for arranging training for members on ethics, probity and legality.

- (l) The Monitoring Officer will recommend to the Council changes to the Constitution where agreement is not reached with the Leader of the Council and Group Leaders (in accordance with Article 13 paragraph 13.02 (a)), following consultation with the Head of Paid Service, the Chief Finance Officer and any other person he/she considers appropriate.
- (m) The Monitoring Officer may make a report to the Council from time to time, as he/she considers appropriate, on the staff, accommodation and resources necessary to discharge his/her function.

9. What Happens When Things Go Wrong?

- 9.1 From time to time the relationship between the members and officers may break down or become strained. Whilst it will always be preferable to resolve matters informally, through conciliation, if necessary by the Chief Executive and the Leader of the Council or the appropriate Group Leader, this is not always possible.

10. Procedure for Members Complaining About the Monitoring Officer

- 10.1 Where a member considers that the Monitoring Officer has acted in breach of this Protocol and informal resolution of the matter has not proved possible, the member may put his/her complaint in writing to the Chief Executive. The written complaint must specify all incidents that the complainant intends to raise and set out the alleged breach of this Protocol.
- 10.2 The Chief Executive may disregard any complaint that he/she considers to be unreasonable, frivolous or vexatious, and that shall be the end of the matter. Otherwise the Chief Executive shall provide a copy of the written complaint to the Monitoring Officer and allow him/her to respond in writing. If the Chief Executive considers it appropriate, he/she may then invoke the Council's Disciplinary Procedure in accordance with Standing Order G5 of the Council's Standing Orders in relation to Officer Employment. Where the Chief Executive receives a written complaint he/she shall write to the member making the complaint to inform him/her of the outcome.
- 10.3 A complainant may at any time withdraw a complaint by notice in writing to the Chief Executive.

11. Procedure for the Monitoring Officer to complain about a member

- 11.1. If attempts at resolving matters informally have not been successful, where the Monitoring Officer considers that a member has acted in breach of this Protocol he/she may make a written complaint to the Chief Executive. The written complaint must specify all incidents that the Monitoring Officer intends to raise and set out the alleged breach of this Protocol and (if applicable) any other Council protocol/s.
- 11.2 The Chief Executive may disregard any complaint that he/she considers to be unreasonable, frivolous or vexatious, and that shall be the end of the matter. Otherwise the Chief Executive will give a copy of the complaint to the member concerned and invite his/her written comments (if any) within 10 working days.

- 11.3 The Chief Executive will give a copy of the member's response to the Monitoring Officer and invite his/her further written comments (if any) within 10 working days. If any material new issues are raised the Chief Executive may give the respective parties such further opportunities to make written comments as he/she shall consider reasonable.
- 11.4 The Chief Executive will then consider the written submissions and shall, unless he/she is satisfied that the complaint is clearly unjustified, refer the matter to the Standards Committee for consideration. The Standards Committee may uphold or reject the complaint (in whole or in part) and/or recommend to Council such action as it considers appropriate.
- 11.5 The Monitoring Officer may at any time withdraw his/her complaint by notice in writing to the Chief Executive.

12. Exceptions to Complaints Procedures

- 12.1 Exceptions may be made to the above procedures if to do otherwise would conflict with the Council's policy on "Whistleblowing" or potentially prejudice a criminal investigation (whether in progress or reasonably contemplated in the future).