

DECISION-MAKER:	FULL COUNCIL		
SUBJECT:	MONITORING OFFICER REPORT: INVESTIGATION		
DATE OF DECISION:	25 TH APRIL 2013		
REPORT OF:	DIRECTOR OF CORPORATE SERVICES (MONITORING OFFICER) FOLLOWING CONSULTATION WITH THE HEAD OF FINANCE & IT (CHIEF FINANCIAL OFFICER) AND INTERIM CHIEF EXECUTIVE (HEAD OF PAID SERVICE)		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY
N/A

BRIEF SUMMARY

The purpose of this report is to place before Full Council in accordance with legal requirements the outcome of an independent investigation commissioned by the Monitoring Officer in relation to allegations of impropriety involving the issue of a press release following the resignation of Councillor Keith Morrell from the Executive.

RECOMMENDATIONS:

- (i) That the report of the Monitoring Officer be noted;
- (ii) That the report of the Monitoring Officer be referred to the Governance Committee to consider:
 - a. whether or not the current constitutional arrangements, protocols and / or guidance are robust and adequate;
 - b. making any recommendations for changes to such arrangements to Full Council as appropriate, and
 - c. whether the current training and development arrangements for officers and members should be revised.

REASONS FOR REPORT RECOMMENDATIONS

1. Having commissioned an investigation, the Monitoring Officer determined that the matter should be reported in full to Full Council and that is the purpose of this report. This is a statutory report within the meaning of Section 5 Local Government and Housing Act 1989. The issues raised within it are sufficiently serious for Full Council to receive such a report and for the report to be considered publicly in the interests of openness, transparency and accountability.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. None.

DETAIL (Including consultation carried out)

3. On 19 October 2012, the Southern Daily Echo carried a story referring to Councillor Keith Morrell's resignation from the Executive and surrounding events. The Director of Corporate Services, in his capacity as the Council's statutory Monitoring Officer reached the view that his legal statutory duty required him to investigate whether or not there had been any breach of the law, Code or protocol.
4. The Monitoring Officer wrote to the Leader of the Council, Councillor Richard Williams, advising him of this on the day that the Echo ran the story and further wrote to all members advising them that an investigation would be carried out.
5. The law requires the Monitoring Officer to act in these circumstances, but in initiating an independent investigation, the Monitoring Officer made it clear that he was not saying that there had been a breach of any law, Code or protocol, but that the law required him to intervene and investigate.
6. The Monitoring Officer, therefore, arranged for the independent investigation to be carried out by Mr Richard Lingard, a highly experienced ex-local authority lawyer and Monitoring Officer.
7. The Monitoring Officer said that the report arising from the investigation would in due course be reported to Full Council.

Findings of Fact

8. Mr Lingard has satisfied himself that the basic sequence of events was as follows.
 - i. Having been appointed as Cabinet Member for Efficiency and Improvement following Labour's assumption of control of Southampton City Council on 3 May 2012, Cllr Keith Morrell decided, less than two weeks later, to resign that post.
 - ii. At about 1.50 pm on Tuesday 22 May, Cllr Morrell telephoned an officer with whom he was due to have a meeting in his capacity as a newly appointed Cabinet member to tell that officer that he would not be going to the meeting at 2pm because he was resigning from his Cabinet post.
 - iii. About an hour and a half later he communicated his decision to resign in an email sent to the Leader of the Council, Councillor Richard Williams.
 - iv. That email cited political and policy differences as the reasons for his resignation.
 - v. A short time later, Cllr Jacqui Rayment, alerted to Cllr Morrell's possible resignation by a conversation she had had with a Council officer, contacted Cllr Williams to ask if he was aware that Cllr Morrell had resigned.

- vi. Cllr Williams had not at that stage seen or read the email that Cllr Morrell had sent to him but did so shortly afterwards and returned Cllr Rayment's call and in due course contacted both Cllr Don Thomas and Cllr Morrell.
- vii. Cllr Williams sought to persuade Cllr Thomas to, in turn, persuade Cllr Morrell to withdraw his resignation. Cllr Thomas declined. After a local party branch meeting that evening Councillor Williams and Councillor Rayment discussed Cllr Morrell's resignation in the car park. Councillor Rayment said during that discussion, that Cllr Morrell may have some "mental health" issues.
- viii. Cllr Williams had two telephone conversations with Cllr Morrell during the course of which he sought to persuade Cllr Morrell to withdraw his resignation. Cllr Morrell declined.
- ix. After some discussion with Cllr Williams, Cllr Morrell agreed that he should resign on the grounds of ill health.
- x. That same morning, Cllr Williams telephoned Ben White, Communications Director and instructed him to prepare a statement for release to Staff and Councillors and to the media at large explaining that Cllr Morrell had resigned on grounds of ill health.
- xi. Cllr Williams instructed Mr White to secure clearance of the statement from the Deputy Leader, Cllr Jacqui Rayment.
- xii. Mr White prepared a draft statement which he read over the telephone to Mr Heath, the Council's Monitoring Officer / Director of Corporate Services (who was by this time aware that Cllr Morrell had tendered his resignation) and then placed it before Cllr Rayment.
- xiii. Cllr Rayment read, slightly amended and approved the release.
- xiv. Mr White then arranged for the release to be distributed both internally and externally to the Council's media contacts.
- xv. Once the press and public became aware of the contents of the press release, Cllr Morrell began to receive enquiries after the state of his health. Amongst the enquirers was a reporter from the local newspaper to whom Cllr Morrell confirmed that he had not originally resigned for health reasons.
- xvi. On Sunday 10 June Cllr Williams forwarded Cllr Morrell's resignation email of 22 May to Cllr Rayment and Cllr McEwing.
- xvii. On Tuesday 12 June 2012, Cllr McEwing forwarded it to all members of the Labour Group.
- xviii. At an EGM of the Council held on 25 June, the Leader of the Opposition moved a motion of no confidence in Cllr Williams as Leader citing the circumstances of Cllr Morrell's resignation and the publicly stated reasons for it. The motion was lost. Cllr Rayment apologised at the meeting for failing to properly check the press release and Cllr Williams apologised for 'communication errors'. Cllr Morrell made no objections at the Council meeting to the version of events as described by Cllr Williams.

- xix. Prior to the EGM, the Southern Daily Echo had submitted a Freedom of Information Act request for all emails relating to Cllr Morrell's resignation.
- xx. On Friday 19 October the Echo ran a three-page story calling upon Cllr Williams to resign because he had misled the public over Cllr Morrell's reasons for resignation. (Historically there is a poor relationship between the Echo and Councillor Williams and the newspaper has made it clear to him and the Labour Group that their treatment of stories about the current administration will not be sympathetic).
- xxi. On the same date, the Monitoring Officer decided that the matter should be investigated.

Conclusions and Recommendations from the investigation

- 9. The investigator's report contains conclusions and recommendations in relation to:
 - a. Councillor Keith Morrell;
 - b. Councillor Richard Williams;
 - c. Councillor Jacqui Rayment;
 - d. Councillor Catherine McEwing;
 - e. other members of the Labour Group; and
 - f. Ben White, Senior Communications Manager.
- 10. Full Council's attention is specifically drawn to the adverse findings in relation to Councillors Morrell, Rayment and Williams set out in paragraphs 9-11 inclusive of the investigator's report.
- 11. In respect of Councillor Keith Morrell, the investigator found that he failed to comply with The Nolan Principles of Public Life relating to Openness and Honesty.
- 12. In respect of Councillor Richard Williams, the investigator found that he failed to comply with The Nolan Principles of Public Life relating to Openness, Honesty and Leadership, and the guidance as to mutual respect and courtesy between members and Officers set out in the Council's Member / Officer Protocol.
- 13. In respect of Councillor Jacqui Rayment, the investigator found that she failed to comply with The Nolan Principles of Public Life relating to Openness and Honesty, and the guidance as to mutual respect and courtesy between members and Officers set out in the Council's Member / Officer Protocol.

Process

- 14. The investigator supplied his provisional report to the Monitoring Officer on 3 March 2013.
- 15. Although this was not a Code of Conduct matter, given the content of the investigator's report and the fact that specific adverse findings were made against Councillors Morrell, Rayment and Williams, they were given an opportunity to comment on the provisional report.

16. This is because of the requirements of procedural fairness and natural justice, and the legal duty placed on public bodies such as councils to act fairly. These are the terms generally used to describe the range of procedural standards which are applied to the administrative decision-making processes. They encompass both specific statutory requirements and the requirements of natural justice derived from common law. All must be considered in light of the requirements of the Human Rights Act 1998 and in particular the provision in the Convention for the Protection of Human Rights and Fundamental Freedoms dealing with the right to a fair trial which is incorporated into English law.
17. The concept of fairness is necessarily a flexible one, and the requirements which it imposes will differ depending on the circumstances which prevail. The right to a fair hearing requires that individuals should not be penalised by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case. The mere fact that a decision affects rights or interests is sufficient to subject the decision to the procedures required by natural justice. The right to a fair hearing is guaranteed by Article 6 of the European Convention on Human Rights which complements the common law requirements of fairness and natural justice rather than replaces it.
18. The comments made by Councillors Morrell, Rayment and Williams were supplied to the investigator who then considered them, making any changes to his report that he considered were necessary, prior to finalising it on 17 April 2013. As a result any changes accepted by the investigator have been incorporated within the final version appended to this report. However, whilst he has taken full account of all comments, he has not changed his findings and conclusions.

RESOURCE IMPLICATIONS

Capital/Revenue

19. The cost of the investigation has been £7,000.

Property/Other

20. Nil.

LEGAL IMPLICATIONS

21. The Director of Corporate Services is the Council's statutory Monitoring Officer. Every local authority must have a statutory Monitoring Officer whose duty it is under the Local Government and Housing Act 1989 to prepare a report to the Authority with respect to any proposal, decision or omission of the Executive, the Authority, a committee or sub-committee, an officer, employee or a joint committee on which the Authority is represented which appears to the Monitoring Officer to have given rise to or is likely to give rise to or would give rise to a contravention of any rule of law or maladministration.
22. In preparing such a statutory report, the Monitoring Officer must consult with the Head of Paid Service and Chief Financial Officer. The Monitoring Officer has shared his report with both the Interim Chief Executive (in her capacity as Head of Paid Service) and the Head of Finance and IT (in his capacity as Chief Financial Officer).

23. In appropriate cases, the Monitoring Officer may rely upon existing processes within the authority (such as the Code of Conduct process, internal appeals procedures or insurance arrangements) to resolve any potential reportable incident, but may intervene in such processes to identify that the particular matter is a potentially reportable incident and to ensure the satisfactory resolution of the issue. In appropriate cases, and to secure the rapid resolution of a potential reportable incident or avoid a separate statutory report, the Monitoring Officer adds his written advice to the report of other officers of the authority.
24. Notwithstanding the above, the Monitoring Officer retains the right in all cases to make a statutory report where, after consultation with the Chief Executive and the Chief Finance Officer, he is of the opinion that this is necessary in order to respond properly to a reportable incident.
25. Whilst the findings of failing to comply with The Nolan Principles of Public Life and the Council's Officer / Member Protocol are serious, the investigator considers that there has been no evidence of injustice or maladministration and no contravention of any enactment or rule of law. Whilst the investigator's view, having examined the evidence in detail, clearly carries considerable weight, the ultimate decision about whether or not to issue a statutory Monitoring Officer report rests solely (and is the personal statutory responsibility of) the Monitoring Officer.
26. The Monitoring Officer agrees with the investigator's finding that there has been no contravention of any enactment or rule of law. The Monitoring Officer also agrees that there has been no conduct that amounts to the commission of a criminal offence. It should be noted the expenditure incurred on the drafting of the press release was a very modest amount. Furthermore, the amount of expenditure here is, in one sense, neutral because there would have been no more expenditure had the press release been accurate.
27. The investigator further noted that he did not see any serious potential or actual consequences for the public as a consequence of this matter.
28. The directing actions underlying the accuracy of the press release fall within the ambit of ethics, probity and member conduct. Such issues have a regime, underpinned by a Code of Conduct for Members which is policed by the Council's Governance Committee.
29. The Code of Conduct and the processes underpinning that established by the Local Government Act 2000 (as amended) were abolished by the Localism Act 2011 at the end of June 2012. As a result, this matter cannot be considered under the new Code of Conduct as that is not retrospective nor under the old Code of Conduct as that has been abolished.
30. Consequently, as a matter of law, this matter cannot be considered by the Council's Governance Committee as a Code of Conduct issue matter. If it had been capable of being so considered, the Monitoring Officer would have referred the matter to the Governance Committee in November 2012 and an appropriate Code of Conduct investigation would have been undertaken.
31. Nevertheless, the findings identified by the investigating officer and set out in his report relate to important aspects of compliance by members with The

Nolan Principles of Public Life which underpin the Council's Code of Conduct as well as the Council's Officer/Member Protocol.

32. The essential role of the monitoring officer is to uphold high standards of corporate governance in the authority and (in an appropriate manner, depending upon the circumstances) to make a formal report in what will usually be exceptional circumstances. That is the case here. The findings of the investigator should be reported to Full Council. Having the matter independently investigated and then reporting the result of that investigation to Full Council is appropriate and proportionate given the absence of a Code of Conduct route for considering the matter.
33. Further, in the light of this report, Governance Committee should consider and make recommendations for any changes to the current constitutional arrangements, protocols and guidance, as well as reviewing the existing training and development arrangements for officers and members relevant to the areas covered by this report.

POLICY FRAMEWORK IMPLICATIONS

34. Nil

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	All
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SUPPORTING DOCUMENTATION

Appendices

1.	Report of Mr Richard Lingard, Solicitor
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Documents In Members' Rooms

1.	None
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Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	No
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Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1. None	