

## **PROTOCOL FOR THE MONITORING OFFICER**

### **A General introduction to statutory responsibilities**

1. The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged in Southampton City Council.
2. The current responsibilities of the Monitoring Officer role rest with the Service Director: Legal & Governance, who undertakes to discharge his statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. The Monitoring Officer will appoint a Deputy Monitoring Officer as appropriately needed. In doing so, he will also safeguard, so far as is possible, Members and Officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.
3. A summary list of the statutory responsibilities appears in the table annexed to this document. In general terms, the Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:
  - a. complying with the law of the land (including any relevant Codes of Conduct);
  - b. complying with any General Guidance issued, from time to time, by the Governance Committee and the Monitoring Officer;
  - c. making lawful and proportionate decisions; and
  - d. generally, not taking action that would bring the Council, their offices or professions into disrepute.

### **B Working Arrangements**

4. Having excellent working relations with Members and Officers will assist in the discharge of the statutory responsibilities of the Monitoring Officer and keep the Council out of trouble. 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 staff) in discharging these responsibilities.
5. The Monitoring Officer issues guidance to officers to assist them in understanding the nature, breadth and requirements that the Monitoring Officer puts upon all officers. The guidance also explains how the Monitoring Officer will approach the role. The Monitoring Officer considers that the role is a positive and preventative one, related to legality, avoidance of maladministration and observance of codes of conduct / practice where there is actual / potential transgression by the Council. The Monitoring Officer gives authoritative advice and guidance on these issues which will be conducive to a culture of propriety and integrity. This will provide comfort for officers and Members alike. However, although the Monitoring Officer will seek to be positive about the role, it must be recognised that the role imposes a personal duty to make a public, statutory report where it appears to be necessary. This might ultimately force the authority to consider issues it might not wish to.

The Monitoring Officer and the authority should co-operate in everyway possible so as to reduce the chance of the need for the Monitoring Officer to issue a formal report. In support of this, the Monitoring Officer places significant reliance upon the

advice and support given by colleagues in Legal and Governance, but particularly those in the Corporate Legal Team who will, in providing corporate legal advice do so in an enabling manner, but also identify areas of particular risk and concern, assisting officers / Members to achieve their objectives, but ultimately in a lawful and proper manner.

6. The following arrangements and understandings between the Monitoring Officer, Members and Chief Officers are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will:-
  - a. be alerted by Members and Officers to 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, propriety, procedural or other constitutional issues that are likely to (or do) arise;
  - b. have advance notice (including receiving Agendas, Minutes, Reports and related papers) of all relevant meetings of the Council, including joints bodies, partnerships, etc at which a binding decision of the Council may be made (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, by Cabinet Members under individual delegations, Committee meetings and/or Council Management Team (or equivalent arrangements);
  - c. have the right to attend any meeting of the Council (including the right to be heard) before any binding decision is taken by the Council (including a failure to take a decision where one should have been taken) at or before the Council, Cabinet, Cabinet Member decision meetings, Committee meetings and/or Council Management Team (or equivalent arrangements);
  - d. be a member of Council Management Team, and as such has advance notice of those meetings, the agenda and reports and a right to attend and speak;
  - e. in carrying out any investigation(s) have unqualified access to any information held by the City Council and to any officer who can assist in the discharge of his functions;
  - f. ensure the other statutory officers (Head of Paid Service and the Chief Financial Officer) are kept up-to-date with relevant information regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
  - g. meet regularly with the Head of Paid Service and the Chief Financial Officer to consider and recommend action in connection with Corporate Governance issues and other matters of concern regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
  - h. report to the Council, from time to time, on the Constitution and any necessary or desirable changes following consultation, in particular, with the Head of Paid Service and Chief Financial Officer;
  - i. as per the statutory requirements, make a report to the Council, as necessary on the staff, accommodation and resources he requires to discharge his statutory functions;
  - j. have a special relationship of respect and trust with the Mayor, Sheriff, Leader, Group Leaders and Chairs of the committees, sub-committees and panels with a view to ensuring the effective and efficient discharge of Council business;
  - k. develop effective working liaison and relationship with the external Auditor and the Local Government Ombudsman (including having the authority, on behalf of the City Council, 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) and settle any compensation payments for alleged or actual maladministration found against the Council;

- l. maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality;
- m. give informal advice and undertake relevant enquiries into allegations of misconduct and, if appropriate, make a written report to the Governance Committee (unless the Chair of Governance Committee agrees a report is not necessary);
- n. in consultation, as necessary, with the Chair of the Governance Committee, defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved;
- o. have sufficient resources to enable him to address any matters concerning his Monitoring Officer functions;
- p. subject to the approval of the Governance Committee, be responsible for preparing any training programme for members on ethical standards and Code of Conduct issues; and
- q. appoint a deputy and keep him or her briefed on any relevant issues that s/he may be required to deal with in the absence of the Monitoring Officer;
- r. have responsibility for Local Government Ombudsman and whistle-blowing functions of the authority;
- s. ensure that Members and Officers of the authority are fully aware of their obligations in relation to probity.

The Service Director: Legal & Governance will be the Proper Officer for Access to Information, decision-making, Data Protection Act 1998 and the Freedom of Information Act 2000.

- 7. To ensure the effective and efficient discharge of these arrangements, Members and Officers will 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.
- 8. The Monitoring Officer is also available for Members and Officers to consult on any issues of the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements.
- 9. To ensure the effective and efficient discharge of this Protocol, the Chief Financial Officer will ensure adequate insurance and indemnity arrangements are in place to safeguard the interests of the City Council and the proper discharge of the Monitoring Officer role.

### **C Sanctions for breach of Southampton's Code of Conduct for Members**

- 10. Complaints in relation to a breach of the Code of Conduct for Members will be investigated in accordance with the Council's adopted procedures

### **D Monitoring the Protocol**

- 11. The Monitoring Officer will report to the Governance Committee as to whether the arrangements set out in this Protocol have been complied with and will include any proposals for amendments in the light of issues which have arisen.

## **E Conflicts and Interpretation**

12. Where the Monitoring Officer has received a complaint or is aware of an event which may lead to him issuing a statutory report relating to a matter upon which he has previously advised the Council, he shall consult the Chief Executive who may then either refer the matter to the Deputy Monitoring Officer for investigation and report to the Chief Executive, or ask a neighbouring authority to make their Monitoring Officer available to investigate the matter and report to the Chief Executive and/or the authority as appropriate.
13. Questions of interpretation of this guidance will be determined by the Monitoring Officer.

## **F Protocol for the Monitoring Officer**

14. This Protocol was approved by Full Council for inclusion within the Council's Constitution on 17<sup>th</sup> May 2017.

## SUMMARY OF MONITORING OFFICER FUNCTIONS

Description		Source
1	Report on contraventions or likely contraventions of any enactment or rule of law.	Local Government & Housing Act 1989 ss 5, 5A (as inserted by SI 2001/2237).
2	Report on any maladministration or injustice where Ombudsman has carried out an investigation.	Local Government & Housing Act 1989 ss 5, 5A (as inserted by SI 2001/2237).
3	Appointment of Deputy and power to delegate.	Local Government & Housing Act 1989 s 5, Local Government Act 2000 s 82A (as inserted by the Local Government Act 2003 s 113).
4	Power to delegate	Local Government Act 2000 s 82A.
5	Report on resources.	Local Government & Housing Act 1989 s5.
6	Receive copies of whistle-blowing allegations of misconduct.	Code of Members' Conduct
7	Investigate misconduct in compliance with the Council's adopted Code of Conduct	Localism Act 2011 s 28
8	Establish and maintain registers of Members' interests and gifts and hospitality.	Localism Act 2011 Chapter 7
9	Advice to Members on interpretation of Code.	Code of Members' Conduct.
10	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee.	Localism Act 2011 Chapter 7
11	Compensation for maladministration.	Local Government Act 2000 s 92.
12	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members.	Department for Communities & Local Government, Local Government Ombudsman,