

# **WAVERLEY BOROUGH COUNCIL** **MONITORING OFFICER PROTOCOL**

## **1. Introduction**

- 1.1 Section 5 of the Local Government and Housing Act 1989 (“the 1989 Act”) requires local authorities to appoint a Monitoring Officer. This Protocol provides some general information on the statutory role the Monitoring Officer undertakes and how the functions will be discharged within Waverley Borough Council (“the Council”).
- 1.2 The Monitoring Officer role is currently undertaken by the Head of Corporate Governance who undertakes to discharge the post’s statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. In doing so, the Monitoring Officer will also safeguard, so far as is possible, Members and Officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.
- 1.3 A summary list of the Monitoring Officer’s functions appear in Appendix 1 to this Protocol. The Monitoring Officer’s ability to discharge these responsibilities will depend, to a large extent, on Members and Officers:
  - a) Complying with the law (including any relevant Codes of Conduct),
  - b) Complying with any statutory guidance and other guidance and advice issued from time to time by the Standards Committee and the Monitoring Officer,
  - c) Not doing anything that would bring the Council, their offices or professions into disrepute, and
  - d) Making lawful, proportionate and reasonable decisions.
- 1.4 In general terms the Monitoring Officer’s ability to discharge duties also depends on good working relations with Members and Officer colleagues, particularly the Council’s Corporate Management Team and Heads of Service, and also access to information and debate during the decision-making process.
- 1.5 The Monitoring Officer has appointed, the Democratic Services Manager, as the Deputy Monitoring Officer who will perform the functions of the Monitoring Officer when the Monitoring Officer is unable to act. The Monitoring Officer is assisted from time-to-time by staff in Democratic Services and Legal Services and any other appropriate officers, but the responsibility of discharging the functions of Monitoring Officer is a personal one.

## **2. Working Arrangements/Understandings**

- 2.1 Good working relations with Members and Officers will assist in the discharge of the statutory responsibilities of the Monitoring Officer and ensure the Council’s interests are safeguarded. 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 staff) to discharge the Council's statutory and discretionary responsibilities.

2.2 The following arrangements and understandings between the Monitoring Officer, Members and Corporate Management Team are designed to help ensure the effective discharge of the Council's statutory powers and duties.

- a) **Lawfulness etc** – Members and Chief Officers must alert the Monitoring Officer to all emerging issues that may become a concern to the Council including, in particular, issues around legal powers to do something or not (i.e. lawfulness), ethical standards, probity, procedural or other constitutional matters and give advance notice to the Monitoring Officer of meetings (whether formal or informal) where these issues are likely to arise.
- b) **Attendance at and access to papers for meetings** – The Monitoring Officer will have the right to attend and be heard at any meeting of the Council, the Executive and the Corporate Management Team before any binding decision is taken (including a decision not to take action) and have access in advance to the agendas, minutes, reports and related papers for such meetings.
- c) **Liaison with the Statutory Officers** – The Monitoring Officer will meet with the Head of Paid Service (the Chief Executive) and the S.151 Officer (the Deputy Chief Executive and Strategic Director of Resources) 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.
- d) **The Council's Constitution** – The Monitoring Officer will monitor and review the operation of the Constitution in consultation with the Head of Paid Service (the Chief Executive) and the S.151 Officer (the Deputy Chief Executive and Strategic Director of Resources) and the Head of Democratic and Legal Services as appropriate to ensure that the aims and principles of the Constitution are given full effect.
- e) **General Advice** – The Monitoring Officer will give general advice on the interpretation and application of the Constitution to Members and Officers alike (e.g. responsibility for functions, procedural rules, codes and protocols, standing orders, contract procedure rules etc.).
- f) **Registers** – The Monitoring Officer will compile and maintain the Council's Registers of Members' Interests and Gifts and Hospitality.
- g) **Training** – The Monitoring Officer will be responsible for preparing and implementing a training programme for Members on the Council's ethical framework subject to the approval of the Standards Committee.

- h) **External Relations** – The Monitoring Officer will develop good and effective working relations with Town and Parish Councils and the Council’s auditors and the Local Government Ombudsman as necessary (including the giving and receiving of relevant information, whether confidential or otherwise).
- i) **Internal Relations** – The Monitoring Officer will be afforded a special relationship of mutual trust and respect with the Leader, Deputy Leader, Mayor, Deputy Mayor, and the chairmen of the Standards Panel, Planning, Audit, Licensing and Overview and Scrutiny Committees with a view to ensuring the effective and efficient discharge of the Council’s functions.
- j) **Complaints/Investigations** – The Monitoring Officer will
- Receive and act on complaints made in respect of member conduct, including members of the town and parish councils within Waverley’s area.
  - Conduct investigations into matters as set out in the arrangements for investigating complaints adopted by the Council and if appropriate make reports or recommendations in respect of them to a Standards Panel.
  - Be expected to make enquiries into allegations of misconduct in the absence of a written complaint being received.
  - Have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of his functions when carrying out any investigation.
- k) **Appointment of Deputy** – The Monitoring Officer will appoint a Deputy and keep them briefed on any relevant issues that he may be required to deal with where he is unable to act.
- l) **Resources** – The Monitoring Officer will report to the Council from time to time on the staff, accommodation and resources required to discharge his functions. Where the Monitoring Officer requires specialist advice on any matter concerning his statutory responsibilities he will be able to seek Counsel’s Opinion and will have a budget to enable him to do so. The Council will also provide such support from its own resources, including but not limited to legal and procedural advice.

2.3 To ensure the effective and efficient discharge of the above working arrangements and understandings, Members, the Chief Executive, Strategic Directors and Heads of Service will report any breach of statutory duty or material breach of Council policy or procedures and other vires or constitutional concerns to the Monitoring Officer as soon as practicable.

2.4 The Chief Executive, Strategic Directors and Heads of Service agree to inform and explain the terms of this Protocol to their Service Managers so that they

understand the issues highlighted in paragraph 2.1 and 2.2 above and report concerns accordingly.

2.5 The S.151 Officer will ensure that adequate insurance and indemnity arrangements are in place to protect and safeguard the interests of the Council and the proper discharge of the Monitoring Officer's role.

**3. Breach of the Local Code of Conduct for Members and this Protocol**

3.1 Complaints against any breach of the Council's Local Code of Conduct for Members must be referred to the Monitoring Officer. He will investigate the complaint. Complaints against any breach of this Protocol by a Member may be referred to a Standards Panel and/or to the Leader of the relevant political party group.

3.2 Complaints against any breach of this protocol by an Officer may be referred to the relevant strategic director and/or the Chief Executive.

## SUMMARY OF MONITORING OFFICER FUNCTIONS

Description		<u>Key Source</u>
1.	Appointment of Deputy	Section 5 (7) Local Government and Housing Act 1989
2.	Report on resources allocated to the Monitoring Officer	Section 5 Local Government and Housing Act 1989
3.	Establish and maintain Registers of Members' Interests and Gifts and Hospitality	Section 81 Local Government Act 2000 and Local Code of Conduct
4.	Advice to Members and Officers on the interpretation and application of the Constitution	Article 12 of the Council's Constitution
5.	Receive copies of whistleblowing allegations of misconduct	Anti Fraud and Corruption Strategy, Council Constitution
6.	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	Statutory Guidance on Council Constitutions paragraph 8.21 and Article 12 of the Council's Constitution
7.	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members.	Article 12 of the Council's Constitution and Statutory Guidance on Council Constitutions
8.	Report on contraventions or likely contraventions of any enactment or rule of law	Section 5 Local Government and Housing Act 1989
9.	Report on any maladministration or injustice where Ombudsman has carried out an investigation	Section 5 Local Government and Housing Act 1989
10.	Liaison with Standards Board for England and Ethical Standards Officers	Section 66 Local Government Act 2000
11.	Investigate misconduct in compliance with Regulations	Local Government Act 2000 and the Standards Committee (England) Regulations 2008

## **Appendix to Monitoring Officer Protocol**

### **Waverley Borough Council**

#### **What is a Monitoring Officer?**

Under the provisions of the Local Government and Housing Act 1989, all councils have a duty to appoint a Monitoring Officer to ensure the lawfulness and fairness of local authority decision-making. He is responsible for advising the Council on the legality of its decisions and providing guidance to the members and officers on the powers and duties of the Council.

#### **Who is the Monitoring Officer?**

The current Monitoring Officer is Robin Pellow, Head of Corporate Governance. Robin has more than 37 years of Chartered Local Government Secretary experience and also manages Democratic Services. His phone number is 01483 523222 and email is [robin.pellow@waverley.gov.uk](mailto:robin.pellow@waverley.gov.uk) If Robin is unavailable, please contact the Deputy Monitoring Officer, Emma McQuillan, on 01483 523351 or email to [emma.mcquillan@waverley.gov.uk](mailto:emma.mcquillan@waverley.gov.uk) .

#### **What is the role of the Monitoring Officer in complaints?**

As part of Waverley's complaints process, the Monitoring Officer will receive all complaints that are made about member (councillor) conduct. This includes complaints regarding councillors who are members of the various town and parish councils within Waverley Borough. He will refer these complaints to the Council's Standards Committee for consideration, and conduct any investigations that the Committee requires.

#### **What if I want to complain about a Councillor?**

As stated above, under the Council's complaints procedure the Monitoring Officer will investigate any complaints about Members. There is a Code of Conduct for Members and this is part of the Council's Constitution (which can be seen on the Council's website). If you think that a Member has broken the Code of Conduct then you have to make a formal complaint to the Monitoring Officer. The Council has a special complaints leaflet which is available at its offices, and the offices of Town and Parish Councils, or one can be sent to you. If you want to take any advice about how to complain about a Member then please speak to the Monitoring Officer who will be able to guide you through the process.

#### **What else can the Monitoring Officer do?**

1. Report on contraventions or likely contraventions of any enactment or rule of law.  
Section 5 Local Government and Housing Act 1989.
2. Report on 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 and allegations of misconduct  
Code of Conduct for Members and Co-opted members of Waverley BC
  8. Establish and maintain registers of member's interests and gifts and hospitality.  
Section 81 Local Government Act 2000 and Code of Conduct for Members and Co-opted Members of WBC.
  9. Advice to members on interpretation of Code of Conduct for Members and regulations when made
  10. Key role in promoting and maintaining high standards of conduct through support to the Standards Committee.  
DETR Guidance.
  11. Liaison with Standards Board.  
New ethical framework, practical implications.
  13. Compensation for maladministration.  
Section 92 Local Government Act 2000.
  14. Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members.  
DETR guidance

The Council's Monitoring Officer is  
 Robin Pellow  
 Head of Corporate Governance  
 Council Offices  
 The Burys  
 Godalming  
 Surrey  
 GU7 1HR

Deputy Monitoring Officer is  
 Emma McQuillan  
 Democratic Services Manager  
 Council Offices  
 The Burys  
 Godalming  
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 GU7 1HR