

PART 5: MONITORING OFFICER PROTOCOL**WAVERLEY BOROUGH COUNCIL / GUILDFORD BOROUGH COUNCIL****MONITORING OFFICER PROTOCOL****1.0 THE MONITORING OFFICER**

The Monitoring Officer is responsible for ensuring that the Council and its Members act lawfully, do not cause maladministration, and comply with the Code of Conduct for Members. The Monitoring Officer is the Council's primary source of advice on all legal issues, and to Members on their legal obligations, but also has specific statutory duties, such as investigating complaints of Member misconduct and making public report to the Council in cases of actual or likely illegality.

The purpose of this protocol is to enable Members to make use of the Monitoring Officer's ability to provide them with practical advice on legality and conduct, by setting out how the Monitoring Officer will carry out their functions.

2.0 INTRODUCTION

The Council recognises that an effective Monitoring Officer, positively engaged in the discharge of the Council's business, is essential to the effective running and sound governance of the Council.

Section 5(1) Local Government and Housing Act 1989 requires the Council to appoint an Officer as the Council's Monitoring Officer and gives that Officer personal responsibility to:

- Report on actual, and anticipated, illegality within the Council; and
- Report cases where the Ombudsman has found maladministration on the part of the Council;

The Localism Act 2011 places a statutory responsibility on the Monitoring Officer to:

- Maintain the Register of Members' Interests; and
- Administer, assess and investigate complaints to Members' misconduct.

The law does not prescribe exactly how the Monitoring Officer is to carry out these functions. Therefore, this protocol describes the manner in which the Council expects the Monitoring Officer to discharge these functions and how it expects Officers and Members to co-operate with the Monitoring Officer in order to enable them to discharge these functions effectively.

3.0 DESIGNATION

The Monitoring Officer is designated by Council and may or may not be an employee of the Council. Where the Monitoring Officer is an employee of the Council and leaves that employment, they automatically cease to be the Monitoring Officer for the Council. The Council may appoint an Officer as Monitoring Officer on an interim basis pending a permanent appointment.

The Council's structure provides for the Executive Head of Legal & Democratic Services to be the Monitoring Officer. Any appointment to the role of Executive Head of Legal & Democratic Services and designation to the role of Monitoring Officer must be made in accordance with the Officer Employment Procedure Rules at **Part 4** of the Constitution.

4.0 PERSONAL RESPONSIBILITY

The Monitoring Officer is required to carry out the statutory functions of their post personally, with the exception that:

- The Monitoring Officer, rather than the Council, will nominate at least one Officer as Deputy Monitoring Officer, with the power to act as Monitoring Officer where the Monitoring Officer is unable to act as a result of absence or illness; and
- In respect of the obligations relating to alleged breaches of the Members' Code of Conduct, the Monitoring Officer may arrange for any person to perform all or any of their functions, for example by delegating internally or by instructing an external and independent individual to conduct a particular investigation.
- Whilst the statutory functions are personal to the Monitoring Officer, they may arrange for any Officer to assist them in the discharge of any non-statutory functions.

5.0 FUNCTIONS

The functions of the Monitoring Officer are as follows:

5.1 Statutory Functions

- To report to the Council in any case where they are of the opinion that any proposal, decision or omission by the Council or any of its Committees, Sub-Committees, or any Member or Officer, has given rise to, or is likely to give rise to any illegality, in accordance with section 5(2)(a) Local Government and Housing Act 1989.
- To report to the Council in any case where the Ombudsman, after investigation, has reported that any proposal, decision or omission by the Council or any of its Committees, Sub-Committee, or any Member or Officer, has given rise to maladministration or injustice, in accordance with section 5(2)(b) Local Government and Housing Act 1989.
- To maintain the Register of Member's Interests in accordance with section 81(1) Local Government Act 2000 and section 29 Localism Act 2011, including dealing with sensitive interests under section 32 Localism Act 2011.
- To administer, assess and investigate complaints of allegations of breach of the Members' Code of Conduct, in accordance with the Localism Act 2011.

5.2 Non-Statutory Functions

- To ensure that the Council has effective governance arrangements in place.
- To provide an effective, robust and ongoing programme of elected member training and development.
- To contribute to the corporate management of strategic risks.
- To encourage effective scrutiny of the Council.
- To monitor and uphold the Constitution.
- To act as principal Legal Advisor to the Council.
- To provide advice to Members on conduct and ethics matters generally.
- To consult regularly with the Chief Executive / Head of Paid Service, the Chief Financial Officer and Auditors to identify areas where the probity of the Council can be improved or better protected and to take appropriate action.
- To investigate any applications for dispensation from a Member and to report and recommend to the Council and / or [Standards & General Purposes Committee](#) / [Corporate Governance & Standards Committee](#) as appropriate.
- To report to the Council on resources which they consider they require for the discharge of their functions.

6.0 ADVICE AND DECISIONS

The Monitoring Officer's responsibilities fall into 3 distinct categories:

6.1 Advice

A Member may seek advice from the Monitoring Officer, for example concerning their interests. The Monitoring Officer will provide their advice but ultimately it is for the individual Member to take their own decision as to their conduct in the light of that advice.

6.2 Decisions

Where the proposal, act or omission would cause the Council to act unlawfully, the Monitoring Officer may be required to decide whether there is any illegality that they are required to report to Council which would have the effect of suspending implementation of the action or decision until their report has been considered.

6.3 Advice and Decision

In some case, for example a Member conduct matter, the Monitoring Officer may be obliged to advise a Member whilst also being required to take action as Monitoring Officer.

7.0 SEEKING THE ADVICE OF THE MONITORING OFFICER

The Monitoring Officer will be most effective if they are able to advise on any issue at an early stage of policy formulation or implementation. Officers and Members should therefore routinely consult the Monitoring Officer in respect of new policy proposals and action programmes.

Members and Officers of the Council may consult the Monitoring Officer in confidence in respect of any proposal, decision or omission. Wherever possible, the Monitoring Officer will seek to avoid any illegality or maladministration by identifying alternative means of achieving the objective or rectifying any deficiency. The Monitoring Officer may only make a report on illegality in respect of a proposal public where the relevant Officer or Member progresses the matter despite having been advised not to by the Monitoring Officer. Before reporting to Council on any illegality or maladministration, the Monitoring Officer will consult with the Chief Executive / Head of Paid Service and Chief Financial Officer.

The Monitoring Officer is responsible for advising Members on conduct and ethics matters and any Member can seek the confidential advice of the Monitoring Officer about their own position. Subject to any conflict of interest with the Council, the Monitoring Officer will advise whether in their view the conduct would amount to a breach of the Code and will not disclose that advice unless required to do so by law or as part of an investigation into an alleged breach of the code.

Members are encouraged to seek the advice of the Monitoring Officer concerning the conduct of another Member, prior to making a formal complaint, and they should do so in writing. The Monitoring Officer may make contact with the Member complained of, before responding.

8.0 INVESTIGATION

The Council expects the Monitoring Officer to investigate matters which give them concern as to possible illegality, maladministration or breach of code of conduct.

Where the Monitoring Officer is considering a complaint of a breach of the code of conduct, they will follow the Council's procedures and arrangements set out for the assessment, investigation and determination of such complaints.

Where the Monitoring Officer considers a complaint of illegality or maladministration and determines that the proposal, act or omission does, or would, give rise to maladministration or illegality, they shall seek to agree an alternative and lawful course of action and/or make a statutory report.

Upon receiving any complaint of illegality, maladministration or breach of the code of conduct, the Monitoring Officer will, where appropriate, seek to resolve the matter amicably and informally, but there may be circumstances where the matter is not appropriate for local resolution, is incapable of so being resolved, or if of such seriousness that a statutory report is an appropriate response.

Where the Monitoring Officer has received a complaint of conflict relating to another investigation or advice provided, or believes that one may be perceived, or receives a complaint regarding an investigation relating to a complaint against a Member (i.e. concerning the investigation/ or the investigator) then the Monitoring Officer may refer the matter to the Council's Deputy Monitoring Officer and her deputy will consider this and confirm their decision/ response on the complaint

9.0 REPORTING

Where the Monitoring Officer is of the opinion that illegality or maladministration has occurred or will occur, they will, after consulting with the Chief Executive / Head of Paid Service and Chief Financial Officer, report to Council. Alternatively, to negate the need for a separate statutory report, they are also able to add their written advice to the report on the matter by any other Council officer, and/or to provide oral advice at any meeting of the Council.

10.0 ADVICE TO INDIVIDUAL MEMBERS

Wherever possible the Monitoring Officer will provide advice to individual Members to support them in the discharge of their responsibilities as a Councillor. The Monitoring Officer will not however provide advice to a political group of the Council. The Monitoring Officer is designated as statutory officer to the Council, rather than to the Executive or any individual Member or group of Members. Where the Monitoring Officer considers that providing advice to a Member is incompatible with their role as advisor to the Council, they may decline to provide such advice but can, at their discretion, secure such advice from an independent source at the Council's expense.

11.0 MONITORING AND INTERPRETING THE CONSTITUTION

The Monitoring Officer will monitor, and review on a regular basis, the effectiveness and operation of the Council's constitution so as to ensure that the aims and principles of the Constitution are given full effect and that the Constitution enables the Council to discharge its functions effectively.

In order to conduct such monitoring and review, the Monitoring Officer may:

- Consult any Member or Officer, other organisations and stakeholders.
- Observe meetings of Members and/or Officers at any level.
- Undertake an audit trail of a sample of decisions.
- Record and analyse issues raised with them by Members, Officers, the public or stakeholders.
- Compare practices in this Council with those in other comparable authorities, or national examples of best practice.
- Consider any relevant reports and recommendations of the Auditors and other regulatory agencies.

The Monitoring Officer will maintain an up-to-date copy of the Constitution and ensure that it is accessible to Members, Officers and the public and will make such amendments to the Constitution as are necessary to reflect changes of law, decisions made by Council and any other minor and consequential amendments.

The Monitoring Officer is responsible for advising on the interpretation of the Constitution and this protocol. The Monitoring Officer may, at their discretion, take the advice of their Deputy or external legal advice from time to time on questions of interpretation and construction. Nevertheless, their opinion on such matters will be final.

12.0 RESOURCES

The Council is required by statute to provide the Monitoring Officer with the resources which they consider are necessary for the fulfilment of their statutory duties.

For the purpose of carrying out their functions, the Monitoring Officer shall be provided with the following resources:

- The right of access to all documents and information held by or on behalf of the Council.
- The right of access to any meetings of Members or Officers of the Council, other than political group meetings and to have advance notice, (including receiving agendas, minutes, reports and related papers) in relation to all such meetings.
- The right to require any Officer or Member of the Council to provide an explanation of any matter under investigation.
- A right to report to the Council and to the Executive, including the right to present a written report and to attend and advise verbally.
- The right of access to the Chief Executive / Head of Paid Service and the Chief Financial Officer and to be one of the Officers which constitutes the Corporate Management Board and will have advance notice of its meetings, agenda and reports and the right to attend and speak.
- The right, following consultation with the Chief Executive / Head of Paid Service and the Chief Financial Officer, to notify the Police, the Council's Auditors and other regulatory agencies of their concerns in respect of any matter and to provide them with information and documents in order to assist them with their statutory functions.
- The right to obtain legal advice at the Council's expense from an independent external source.