

Waverley Borough Council

Report to: Council

Date: 24 January 2024

Ward(s) affected: All

Report of Director: Transformation and Governance

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Report Status: Open

Guildford Borough Council and Waverley Borough Council Monitoring Officer Protocol

1. Executive Summary

- 1.1 Section 5(1) Local Government and Housing Act 1989 requires every Council to designate an Officer as the Council's Monitoring Officer. The Monitoring Officer is designated by Council and may or may not be an employee of the Council.
- 1.2 As part of the current work programme to update the constitutions of both Guildford Borough Council (GBC) and Waverley Borough Council (WBC), the Joint Executive Head of Legal and Democratic Services has deemed the Monitoring Officer Protocol as a high priority, to ensure that both councils have the proper procedures in place to allow the Monitoring Officer to effectively discharge their statutory obligations.

- 1.3 The law does not prescribe exactly how the Monitoring Officer is to carry out their 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.
- 1.4 This report was considered initially by the Joint Constitutions Review Group (JCRG) at its meeting on 18 December 2023. The JCRG supported the adoption of the proposed Protocol by both councils and referred it to GBC's Corporate Governance and Standards Committee and Waverley's Standards & General Purposes Committee for formal consideration, with a further recommendation that each committee recommends the adoption of the proposed Protocol to their respective full Council meetings¹.
- 1.5 The JCRG also felt that similar protocols should be developed for the two other statutory officer posts: Head of Paid Service and the Section 151 (Chief Finance Officer).
- 1.6 At its meeting on 8 January 2024, Waverley's Standards & General Purposes Committee, endorsed the recommendation in paragraph 2.1 of this report (see below), subject to:
- (a) the amendment of the first bullet point in paragraph 4.0 of the Protocol (see Appendix 1) as follows:
- *"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, or conflict of interest; and"*
- (b) the amendment of paragraph 5.2 of the Protocol to reflect the Monitoring Officer being responsible for providing or obtaining

¹ Extraordinary council meetings scheduled for 23 January (Guildford), and 24 January (Waverley)

legal advice rather than necessarily being the principal legal adviser to the Council.

2. Recommendation to Council

The Standards and General Purposes Committee recommends to Council:

- 2.1 That the proposed Monitoring Officer Protocol, as set out in Appendix 1 to this report, be adopted for inclusion in the Council's Constitution, with immediate effect.**

3. Reasons for Recommendation:

- 3.1 To protect the interests of the Council, and to provide guidance on how it expects Officers and Members to co-operate with the Monitoring Officer in order to enable them to discharge these functions effectively.

4. Exemption from publication

- 4.1 No part of this report is exempt from publication.

5. Purpose of Report

- 5.1 This report asks the Council to adopt the Monitoring Officer Protocol proposed by the Joint Constitutions Review Group, as set out in Appendix 1 to this report.

6. Strategic Priorities

- 6.1 The recommended Monitoring Officer Protocol will support the Council's strategic priorities and commitment to open, democratic and participative governance.

7. Background

7.1 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 illegality.

7.2 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. Section 5(1) Local Government and Housing Act 1989 and the Localism Act 2011 requires the Council to designate an Officer as the Council's Monitoring Officer and gives that Officer personal responsibility to:

- Report on actual, and anticipated, illegality within the Council;
- Report cases where the Ombudsman has found maladministration on the part of the Council;
- Maintain the Register of Members' Interests; and
- Administer, assess and investigate complaints of Members' misconduct.

7.3 It is recognised 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.

8. Equality and Diversity Implications

8.1 The Council must have due regard to the requirements of the Public Sector Equality Duty (Equality Act 2010) when making any recommendations concerning governance arrangements. There are no equality and diversity implications arising from this report.

9. Financial Implications

9.1 There are no financial implications arising from this report.

10. Legal Implications

10.1 The legal position in relation to the legislation and related Code

- Section 5(2)(a) and (b) Local Government and Housing Act 1989.
- Section 81(1) Local Government Act 2000
- Section 29 Localism Act 2011 (registration of interests).
- Members' Code of Conduct, in accordance with the Localism Act 2011.

11. Human Resource Implications

11.1 There are no direct human resource implications arising from this report. 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.

12. Background Papers

- 8 January 2024: Report to Waverley's Standards & General Purposes Committee
- 18 January 2024: Report to Guildford's Corporate Governance & Standards Committee

13. Appendices

Appendix 1: Proposed Monitoring Officer Protocol