

Part Four, Section E

Monitoring Officer Protocol

MONITORING OFFICER PROTOCOL

1. General Introduction to Statutory Responsibilities

- 1.1 The Monitoring Officer is a statutory appointment under Section 5 of the Local Government and Housing Act 1989 and is accountable to the Council. That Act, the Local Government Act 2000 and the Local Government, Public Involvement in Health Act 2007 and the Localism Act 2011 place personal obligations on the appointee in respect of the Council, which are summarised as a schedule in the appendix to this protocol. This protocol provides some general information on how those statutory requirements will be discharged at Havant Borough Council.
- 1.2 The current responsibilities of the Monitoring Officer role rest with the Chief Legal Officer, who undertakes to discharge their statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the council. In doing so they 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 The main functions of the Monitoring Officer at Havant Borough Council are:
- a. To report to the council and to the cabinet in any case where they are of the opinion that any proposal or decision of the authority has given rise to or is likely to or would give rise to any illegality, maladministration or breach of statutory code under Sections 5 and 5A of the Local Government and Housing Act 1989;
 - b. To investigate any matter, which they have reason to believe may constitute, or where they have received an allegation that a matter may constitute, a reportable incident under Sections 5 and 5A of the LGHA 89;
 - c. To act as the principal adviser to the authority's Standards Committee;
 - d. To act as the principal adviser to the authority's Standards Panel;
 - e. To maintain the register of members' interests;
 - f. To act as the Proper Officer for the preparation, publication and retention of records of decisions taken by or on behalf of the council and its committees;
 - g. To have responsibility for responding to complaints to the Local Government Ombudsman;
 - h. To undertake, with others, investigations in accordance with the council's Whistleblowing procedures;
 - i. To act as Proper Officer for the Data Protection Act 1998 and the Freedom of Information Act 2000
- 1.4 It is the Monitoring Officer's duty to consult with both the Head of Paid Service (the Chief Executive) and the Chief Finance Officer (Section 151 Officer) during the preparation of a report under paragraph 1 above, and as soon as practicable after its preparation to arrange for a copy of it to be sent to each member of the

council. The full council must consider the report within 21 days of the Monitoring Officer having sent it to members. Once the Monitoring Officer has sent out the report, the council cannot implement any proposal or decision to which it relates until the end of the first business day after they have considered it.

- 1.5 The Monitoring Officer is bound to perform all of their duties personally, save that during absence, unavailability or illness, a deputy nominated by them may undertake their duties.
- 1.6 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 (including any relevant Codes of Conduct);
 - b. complying with any general guidance issued, from time to time, by the Standards Committee and the Monitoring Officer;
 - c. making lawful and proportionate decisions;
 - d. complying with the council's constitution and standing orders;
 - e. generally, not taking action that would bring the council, their offices or professions into disrepute;
 - f. communicating effectively with the Monitoring Officer and seeking advice on any issues relating to constitutional or ethical matters.

2. Working Arrangements

- 2.1 It is important that members and officers work together to promote the corporate health of the council. The Monitoring Officer plays a key role in this and it is vital therefore that members and officers work with the Monitoring Officer (and their staff) to enable them to discharge their statutory responsibilities and other duties.
- 2.2 The following arrangements and understandings between the Monitoring Officer, members and chief officers (Executive Leadership Team) 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 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, committee meetings and/or strategic directorate (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, committee meetings and/or strategic directorate (or equivalent arrangements);
- d. in carrying out any investigation(s) have unqualified access to any information held by the council and to any member or officer who can assist in the discharge of their functions;
- e. ensure the other statutory officers (Head of Paid Service and the Chief Finance 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;
- f. meet regularly with the Head of Paid Service and the Chief Finance 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;
- g. report to the council, from time to time, on the constitution and any necessary or desirable changes following consultation, the Standards Committee, the Head of Paid Service and Chief Finance Officer;
- h. in accordance with statutory requirements, make a report to the council, as necessary on the staff, accommodation and resources required to discharge their statutory functions;
- i. have an appropriate relationship and good communication with the Leader of the council, the Mayor, political group leaders and the Chairs of the Standards Committee and the Finance & Audit Committee with a view to ensuring the effective and efficient discharge of council business;
- j. develop effective working liaison and relationship with the council's auditors, the Local Government and Social Care Ombudsman and the Housing Ombudsman (including having the authority, on behalf of the council, to complain to them, refer any breaches to them 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 in consultation with the Chief Executive and the appropriate Executive Head;
- k. maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality;
- l. give informal advice and undertake relevant enquiries into allegations of misconduct (in the absence of a written complaint being received by the Monitoring Officer) and, if appropriate, make a written report to the Standards Committee (unless the Chair of the Standards Committee agrees

a report is not necessary) if, in the opinion of the Monitoring Officer, there is a serious breach of Havant Borough Council's Members' Code of Conduct;

- m. in consultation, as necessary, with the Leader of the council and the Standards Committee, defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved;
 - n. be responsible for preparing any training programme for members on ethical standards and Code of Conduct issues;
 - o. advise on all applications from council employees (or prospective employees) for exemption from political restriction in respect of their posts and where appropriate sign the certificate of opinion required by the independent adjudicator;
 - p. appoint a deputy(ies) and keep them briefed on any relevant issues that they may be required to deal with in the absence of the Monitoring Officer. The deputy(ies) will only act in the absence of the Monitoring Officer if urgent action is required which cannot await the return of the Monitoring Officer.
- 2.3 To ensure the effective and efficient discharge of the arrangements set out in paragraph 5 above, members and officers will report any breaches of statutory duty or council policies or procedures and other vires or constitutional concerns to the Monitoring Officer, as soon as practicable.
- 2.4 The Monitoring Officer will seek to resolve potential reportable incidents by avoiding the illegality etc., or by identifying alternative and legitimate means of achieving the objective of the proposal.
- 2.5 Where the Monitoring Officer receives a complaint of a potential reportable incident, they shall in appropriate cases seek to resolve the matter amicably, by securing that any illegality, failure of process or breach of code is rectified, that the complainant is informed of the rectification, with or without a compensation payment and/or apology. However, it is recognised that the Monitoring Officer may determine that the matter is of such importance that a statutory report is the only appropriate response.
- 2.6 In appropriate cases, the Monitoring Officer may rely upon existing processes within the authority (such as 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 potential reportable incident and to ensure the satisfactory resolution of the issue.
- 2.7 In appropriate cases, and to secure the rapid resolution of a potential reportable incident or avoid a separate statutory report, the Monitoring Officer shall be entitled to add their written advice to the report of any other officer of the authority.

- 2.8 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, they are of the opinion that this is necessary in order to respond properly to a reportable incident. In addition, in appropriate cases, the Monitoring Officer may refer matters to the police for investigation.
- 2.9 The Monitoring Officer is 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 (e.g., Standing Orders, policy framework, terms of reference, scheme of delegations etc).
- 2.10 To ensure the effective and efficient discharge of this protocol, the Chief Finance Officer will ensure 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 role.

APPENDIX

Summary of Main Monitoring Officer Functions

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(ies)	Section 5 Local Government and Housing Act 1989
4	Report on resources	Section 5 Local Government and Housing Act 1989
6	Investigate allegations of misconduct of councillors under the Council's Member Code of Conduct in compliance with the Council's adopted arrangements	Localism Act 2011 Section 28 and associated regulations and guidance
7	Establish and maintain registers of members interests and gifts and hospitality	Section 29 of the Localism Act 2011 and Code of Conduct for Members.
8	Advice to members on interpretation of Code of Conduct	Members' Code of Conduct
9	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	Council's Constitution
11	Refer relevant matters to the Standards Committee in accordance with the Local Assessment Procedures	Council's adopted arrangements under Section 28 of Localism Act 2011
12	Advising on appropriateness of compensation for maladministration	Section 92 Local Government Act 2000
13	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members	Council's Constitution
14	Advise on any indemnities and insurance issues for members/officers	Regulations under Local Government Act 2000.

15	Act as the qualified person	S36 Freedom of Information Act 2000 and Information Commissioner's Office Awareness Guidance No. 25
----	-----------------------------	---

The officer holding the designation Monitoring Officer also holds certain Proper Officer appointments as detailed in the constitution.