

# SOMERSET COUNCIL

## MONITORING OFFICER PROTOCOL

### A. GENERAL INTRODUCTION TO STATUTORY RESPONSIBILITIES

The Monitoring Officer is a statutory appointment pursuant to Section 5 of the Local Government and Housing Act, 1989, as amended by paragraph 24 of Schedule 5 Local Government Act 2000. This Protocol sets out how those statutory requirements will be discharged at Somerset Council.

The responsibilities of the Monitoring Officer role rests with the Monitoring 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, he/she will also safeguard, so far as possible, Members and Officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.

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 Department of Levelling Up, Housing and Communities, Somerset Council's Standards 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

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 his/her staff) to enable him/her to discharge his/her statutory responsibilities and other duties.

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 every way 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 Services who will, in providing 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.

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:-

#### **Resources**

- (a) In accordance with statutory requirements, make a report to the Council, as necessary on the staff, accommodation and resources he/she requires to discharge his/her statutory functions.
- (b) Appoint deputies and keep him or her briefed on any relevant issues that he/she may be required to deal with in the absence of the Monitoring Officer.

#### **Access to Information/Meetings**

- (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 receive 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, The Executive or a Lead Member, Committee meetings and/or the Management Team or Strategic Leadership Team.
- (c) Having 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, The Executive, Committee meetings and/or the Management Team or Strategic Leadership Team.
- (d) In carrying out any investigation(s) have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of his/her functions.

#### **Relationships**

- (a) Ensure the other statutory officers (Head of Paid Service and the Section 151 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.
- (b) Meet regularly with the Head of Paid Service and the Section 151 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.

- (c) Develop effective working liaison and relationship with the Council's Auditors and the Local Government and Social Care Ombudsman (including having the authority, on behalf of the 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).
- (d) In consultation, as necessary, with the Chairman of 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.
- (e) Make arrangements to ensure effective communication between his/her office and the Clerks of Somerset City, Town and Parish Councils on Monitoring Officer and Standards Committee issues.

### **Ombudsman Complaints**

1. prepare reports as required by the Local Government Act 1974 and the Local Government and Housing Act 1989 in relation to complaints which have been the subject of investigation by the Local Government and Social Care Ombudsman and which have revealed maladministration whether or not that maladministration has caused injustice;
2. prepare reports to Members where considered necessary to bring to their attention issues of importance arising out of complaints made to the Local Government and Social Care Ombudsman whether or not investigated or maladministration found;

### **Standards Matters**

- (a) Maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality.
- (b) Maintain and keep up-to-date relevant registers for the declaration of officer's interests and gifts and hospitality
- (c) Advise the Standards Committee and its sub-committees in relation to Code of Conduct complaints and allegations of misconduct.
- (d) Be responsible for preparing any training programme for members on ethical standards and Code of Conduct issues; and

### **Constitution**

- (a) Report to the Council, from time to time through the Standards Committee, on the constitution and any necessary or desirable changes following consultation, in particular, with the Head of Paid Service and Section 151 Officer.

### **Other**

- (a) Be the Proper Officer for Access to Information, decision-making, Data Protection Act 1998 and the Freedom of Information Act 2000.

### **C. MEMBER AND OFFICER RESPONSIBILITIES**

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.

### **D. ADVICE**

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 (e.g. Standing Orders, policy framework, terms of reference, scheme of delegations etc.).

### **E. SANCTIONS FOR BREACH OF SOMERSET COUNCIL'S CODE OF CONDUCT FOR MEMBERS AND THIS PROTOCOL**

Complaints against any breach of Somerset's Code of Conduct for Members should be referred to the Monitoring Officer. Complaints against any breach of this Protocol by a Member will be referred to the Standards Committee and to the relevant Group Leader, unless the complaint is against the Group Leader, in which case, reference will be to the Deputy Group Leader. Complaints against any breach of this Protocol by an Officer may be referred initially to the relevant Executive Director and/or the Chief Executive.

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**Summary of Monitoring Officer Functions**

	Description	Source
1	Report on contraventions or likely contraventions of any enactment or rule of law.	Section 5 and 5A Local Government Housing Act, 1989
2	Report on any maladministration or injustice where Ombudsman has carried out an investigation	Section 5 and 5A Local Government Housing Act, 1989
3	Appointment of Deputy(s)	Section 5 Local Government Housing Act, 1989 Local Government Act 2000 s 82A
4	Report on resources	Section 5 Local Government Housing Act, 1989
5	Receive copies of whistleblowing allegations of misconduct	Local Code of Conduct for staff/Whistleblowing Policy
6	Investigate misconduct in compliance with Regulations	Localism Act 2011 and any regulations issued under the Localism Act 2011 and guidance issued by the Department for Levelling Up, Housing and Communities (DLUHC)
7	Establish and maintain registers of members interests and gifts and hospitality.	Section 29 of the Localism Act 2011 and Code of Conduct
8	Advice to members on interpretation of Code.	Member Code of Conduct
9	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee.	Localism Act 2011;
10	Ethical framework functions in relation to City, Town and Parish Councils	Localism Act 2011
11	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members	Local Government Act, 1972 and 2000; Ombudsman publications, Government Regulations and Circulars
12	Maintain, review and monitor the constitution	Constitution articles.....