



# Report to Standards and General Purposes Committee

**Date:** 10 December 2020

**Reference number:** TBC

**Title:** Monitoring Officer Protocol

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**Ward(s) affected:** none specific

**Recommendations:** The committee is asked to:-

- 1. Note the draft Monitoring Officer Protocol and, subject to any comments and amendments, approve the Protocol.**

**Reason for decision:** The Protocol is to further explain the role and functions of the Monitoring Officer and to support their overview and implementation of effective governance arrangements for Buckinghamshire Council. It supplements the roles and functions already detailed in the Council's Constitution.

## Content of report

### Background

- 1.1 Under s.5 Local Government and Housing Act 1989 the Council is required to appoint an officer to act as the Monitoring Officer who is responsible for reporting to the Council any matters which are unlawful, amount to maladministration or create injustice. The Monitoring Officer also has further statutory responsibilities, most notably in relation to standards and ethics.
- 1.2 Although there are many individual functions and responsibilities assigned to the Monitoring Officer both via legislation and the Constitution, they mainly centre around governance, ethics and standards which underpin the above functions.
- 1.3 As this Committee has responsibility for supporting the Monitoring Officer in discharging her role in respect of standards of conduct and behaviour and receive

reports relating to maladministration causing injustice it is considered that the Committee is the appropriate body to approve the Protocol.

### Protocol

- 1.4 The Protocol is intended to support and assist the Monitoring Officer by promoting understanding and effective discharge of her responsibilities and is a reflection and summary of the current arrangements. It is considered that setting this out strengthens the exercise of the Monitoring Officer's role. The draft Protocol is set out in the Appendix to this Report.
- 1.5 The Protocol sets out operational arrangements and understandings which are intended to support working relations and the flow of information.
- 1.6 The arrangements and understandings are set out in paragraph 4 of the Protocol. A summary of the key responsibilities are contained in the table at the end of Paragraph 4.
- 1.7 It is anticipated that the Protocol is reviewed every 2 years or earlier if necessary.

### Other options considered

- 1.8 None. The Protocol is not a statutory requirement and is intended to supplement and strengthen the arrangements already in place.

### Legal and financial implications

- 1.9 None except as set out in the body of this report.

### Corporate implications

- 1.10 Support for governance arrangements as dealt with by the Monitoring Officer as set out in the body of this report.

### Consultation and communication

- 1.11 None.

### Next steps and review

Background document for effective discharge of Monitoring Officer responsibilities. Comms where appropriate and review when necessary or in two years, whichever is the later.



## BUCKINGHAMSHIRE COUNCIL – PROTOCOL REGULATING THE DUTIES OF THE ROLE OF MONITORING OFFICER

1. The current responsibilities of the Monitoring Officer role rest with the Deputy Chief Executive, 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 is possible, Members and Officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.
2. The Monitoring Officer will appoint one or more Deputy Monitoring Officers as appropriately needed who, together with the Service Director Legal and Democratic Services, will support the Monitoring Officer with his/her responsibilities.
3. In general terms the ability to discharge these duties depends on excellent working relations with colleagues and elected Members of the Council, but also on the flow of information and access to debate, particularly at early stages.
4. The following arrangements and understandings between the Monitoring Officer and colleagues and Councillors are designed to help ensure the effective discharge of the Monitoring Officer's functions:-
  - (a) the Monitoring Officer will be a member of the Council's Management Team;
  - (b) the Monitoring Officer will be given advance notice of meetings (whether formal or informal) between Chief Officers, Committee and Sub Committee Chairmen where any procedural, vires or other constitutional issues are likely to arise;
  - (c) the Monitoring Officer will have access to all meetings;
  - (d) members of Management Team (the Chief Executive and Directors) will be responsible for alerting the Monitoring Officer to all emerging issues of concern including legality, probity, vires and constitutional issues;
  - (e) the Monitoring Officer will be provided with access to all reports to Councillors;
  - (f) the Monitoring Officer is expected to develop good liaison and working relations with the Council's Auditor and the Local Government 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) and settle any compensation payments for alleged or actual maladministration found against the Council;
  - (g) the Monitoring Officer will ensure that the Head of the Paid Service and the Chief Financial Officer have up-to-date information regarding emerging issues;
  - (h) the Monitoring Officer will be expected to make or commission enquiries into allegations of misconduct by Councillors;
  - (i) the Head of the Paid Service, Chief Financial Officer and Monitoring Officer will meet regularly to consider and recommend action in connection with current governance issues and other probity matters;

(j) in carrying out any investigation the Monitoring Officer will have unqualified access to any information held by the Council and any employee who can assist in the discharge of his/her functions.

(k) the Monitoring Officer will have access to an appropriate budget (whether corporate or service based) sufficient to enable him/her to seek Counsel's opinion or take appropriate action on any matter concerning his/her functions;

(l) the Monitoring Officer will be responsible for preparing a training programme for Members of the Council on the ethical framework, for approval by the Standards Committee;

(m) the Monitoring Officer will report to the Council from time to time on the Constitution and any necessary or desirable changes following consultation, in particular with the Head of the Paid Service and the Chief Financial Officer;

(n) the Monitoring Officer may defer the making of a formal report under Section 5 of the LGHA 1989 where another investigative body is involved;

(o) the Monitoring Officer may make an annual report to the Council on the staff, accommodation and resources required to discharge his/her functions;

(p) the Monitoring Officer will appoint one or more deputies to act in his/her absence and will ensure that he/she is briefed on emerging issues;

(q) the Monitoring Officer will make arrangements to ensure good communication with the Clerks to the Town and Parish Councils for which the Council is the principal authority.

#### Summary of Monitoring Officer Functions

Description		Source
1.	Report on contraventions or likely contraventions of any enactment of rule of law	Section 5, 5A Local Government and Housing Act 1989
2.	Report on any maladministration or injustice where Ombudsman has carried out an investigation	Section 5, 5A Local Government and Housing Act 1989
3.	Personal appointment of Deputies and power to delegate	Section 5, Local Government and Housing Act 1989 and Section 82A Local Government Act 2000
4.	Report on resources	Section 5, Local Government and Housing Act 1989
5.	Operation and interpretation of the Constitution	Constitution
6.	Investigate misconduct in compliance with the Council's or Town or Parish Council adopted Code of Conduct (as appropriate)	Section 28 Localism Act 2011
7.	Establish and maintain registers of Members' interests and gifts and hospitality	Chapter 7 Localism Act 2011
8.	Advice to Members on the interpretation of the Code of Conduct	Chapter 7 Localism Act 2011
9.	Key role in promoting and maintaining high	Chapter 7 Localism Act 2011

	standards of conduct through support to the Standards and General Purposes Committee and Audit and Governance Committee	
10.	Maintenance of the Council's Whistle-blowing Policy	Constitution
11.	Compensation for maladministration	Section 92 Local Government Act 2000
12.	Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all Members	Department for Communities & Local Government, Local Government & Social Care Ombudsman

#### Review of Protocol

5. This protocol shall be reviewed every two years or more frequently if necessary.

## Background papers

*Buckinghamshire Council Constitution:*

<https://buckinghamshire.moderngov.co.uk/documents/s5397/Buckinghamshire%20Council%20Constitution.pdf>

