

Appendix B

PART 5E - MONITORING OFFICER PROTOCOL

1. General Introduction to Statutory Responsibilities

- 1.1 The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged in Central Bedfordshire Council.
- 1.2 The Monitoring Officer owes a personal duty to the Council as a whole in carrying out his/her statutory functions, which cannot be discharged through intervening officers.
- 1.3 The Monitoring Officer undertakes to discharge statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. In doing so, he/she will provide appropriate cautionary advice to members so as to protect and safeguard, so far as is possible, Members and officers, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.
- 1.4 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:-
 - 1.4.1 Complying with the law of the land (including any relevant Codes of Conduct);
 - 1.4.2 Complying with any General Guidance issued, from time to time, by the General Purposes Committee and/or advice of the Monitoring Officer;
 - 1.4.3 Making lawful and proportionate decisions; and
 - 1.4.4 Generally, not taking action that would bring the Council, their offices or professions into disrepute.
- 1.5 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. Procedure Rules, policy framework, terms of reference, scheme of delegations etc.)

2. Working Arrangements

- 2.1 Having excellent working relations with Members and officers will assist in the discharge of the statutory responsibilities on the Monitoring Officer and safeguard the statutory interests of the Council. Equally, a speedy flow of relevant information and access to debate (particularly at the early stages of any decision-making by the Council) will assist in fulfilling those responsibilities. Members and officers must, therefore, co-operate with the Monitoring Officer (and his/her staff) to discharge the Council's statutory and discretionary responsibilities.
- 2.2 The following arrangements and understandings between the Monitoring Officer, Members, Directors and Assistant Chief Executives are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will:-
 - 2.2.1 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;
 - 2.2.2 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, Executive, committee meetings and/or Corporate Management Team;
 - 2.2.3 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, Executive, committee meetings and Corporate Management Team;
 - 2.2.4 In carrying out any investigation(s) have unqualified access to any information held by the Council and to any officer/Member who can assist in the discharge of his functions;
 - 2.2.5 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;
 - 2.2.6 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;

- 2.2.7 Report from time to time to the General Purposes Committee, which will make recommendations to Council, on any necessary or desirable changes to the Constitution following consultation, in particular, with the Head of Paid Service and Chief Finance Officer;
- 2.2.8 As per the 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;
- 2.2.9 Develop effective working liaison and relationship with the District Auditor and the Local Government Ombudsman (including having the authority, on behalf of the Council, after consultation with the Chairman of the General Purposes Committee, if appropriate, 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);
- 2.2.10 Maintain and keep up-to-date relevant statutory registers for the declaration of Members' interests, gifts and hospitality;
- 2.2.11 Give informal and, if necessary, cautionary advice to Members and officers – but not so as to issue any formal warning notices - and undertake relevant enquiries into allegations of misconduct and, if appropriate, make a written report to the Standards Sub-Committee;
- 2.2.12 In consultation, as necessary, with the Chairmen of the Council and the Executive, defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved;
- 2.2.13 Make arrangements to ensure effective communication between his/her office and the Clerks of Town and Parish Councils on Monitoring Officer and Code of Conduct issues;
- 2.2.14 Have sufficient resources to enable his/her to address any matters concerning his/her Monitoring Officer functions;
- 2.2.15 Be responsible for preparing any training for Members on ethical standards and Code of Conduct issues;
- 2.2.16 Appoint one or two deputies and keep them briefed on any relevant issues that he/she may be required to deal with in the absence of the Monitoring Officer and s/he shall ensure that at all times at least one deputy has been appointed and is able to serve the Council; and
- 2.2.17 If the Monitoring Officer is suspended under Part 4K of this Constitution s/he shall not be relieved of her/his obligation to appoint a deputy under paragraph 2.2.16 if otherwise there would be no deputy monitoring officer appointed.

2.2.18 Deal with any formal complaints about any Member's conduct.

2.3 To ensure the effective and efficient discharge of the arrangements set out in 2.2 above, Members and officers will report any breaches of statutory duty or Council policies or procedures and ultra vires or constitutional concerns to the Monitoring Officer, as soon as practicable.

2.4 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 Monitoring Officer role.

3. Sanctions for Breach of The Code Of Conduct for Members and this Protocol

Complaints alleging any breach of the Code of Conduct for Members must be referred to the Monitoring Officer. Complaints against any breach of this Protocol by a Member will be referred to the relevant Group Leader. Complaints against any breach of this Protocol by an officer may be referred to the relevant Director or Assistant Chief Executive and/or the Head of Paid Service.

SUMMARY OF MONITORING OFFICER FUNCTIONS

| Description | Source |
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| 1. Report on contraventions or likely contraventions of any enactment or rule of law | Section 5 Local Government and Housing Act 1989 |
| 2. Advice on ultra vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members | |
| 3. Report on any maladministration or injustice where the Local Government Ombudsman has carried out an investigation | Section 5 Local Government and Housing Act 1989 |
| 4. Appointment of Deputy | Section 5 Local Government and Housing Act 1989 |
| 5. Report on resources | Section 5 Local Government and Housing Act 1989 |
| 6. Receive copies of Confidential Reporting Code allegations of misconduct | Confidential Reporting Code |
| 7. Investigate and report on any misconduct in compliance with legislation. | Chapter 7 Localism Act 2011 |
| 8. Establish and maintain registers of Members' interests and gifts and hospitality | Section 81 LGA 2000, Chapter 7 Localism Act 2011 and Code of Conduct for Members (and Employees, once introduced) |
| 9. Advice to Members on interpretation of Code | |
| 10. Key role in promoting and maintaining high standards of conduct through support to the General Purposes Committee | |
| 11. Liaison with the "Independent person" | Chapter 7 Localism Act 2011 |
| 12. Ethical framework functions in relation to parish councils | Chapter 7 Localism Act 2011 |
| 13. Refer relevant matters to Standards Sub-Committee for determination | Chapter 7 Localism Act 2011 |

| | Description | Source |
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| 14. | Advise on any indemnities and insurance issues for members/officers | Regulations under LGA 2000 |
| 15. | Deal with any local filtering arrangements introduced by legislation. | Local Government Act 2007 |