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Ethics Committee

26 July 2018

**Name of Cabinet Member:**

N/A- Ethics Committee

**Director Approving Submission of the report:**

Director of Finance and Corporate Services

**Ward(s) affected:**

**Not applicable**

**Title:** Monitoring Officer Protocol

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**Is this a key decision?**

No

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**Executive Summary:**

At its meeting on 29 March 2018, the Monitoring Officer tabled a first draft of a Monitoring Officer Protocol. Committee members and Independent Persons were asked to consider the draft and let the Monitoring Officer have any comments or suggested amendments. This report brings forward a revised Monitoring Officer Protocol for members to consider. It includes changes made as a result of feedback from Committee members and Independent Persons.

**Recommendations:**

The Ethics Committee is recommended to:

- (1) Consider the draft protocol and make any comments or changes as it thinks fit; and
- (2) Subject to the Committee being in agreement with the wording of the Protocol, recommend to the Constitutional Advisory Panel that it approves the Monitoring Officer Protocol and that it recommends to the Cabinet Member and full Council that they agree to its being included in the Constitution.

**Appendix included: Draft Member Officer Protocol**

**Other useful background papers:** None

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

Yes, it will be considered by a future meeting of the Constitutional Advisory Panel

**Will this report go to Council?**

Yes (Date to be confirmed)

## **Report title: Draft Member/Officer Protocol**

### **1. Context (or background)**

- 1.1 At its meeting on 15 July 2016 the Committee resolved that the then Acting Monitoring Officer be requested to draft a Monitoring Officer Protocol for its consideration.
- 1.2 The decision to draft a Monitoring Officer Protocol arose from the Committee's consideration of public interest reports issued in connection with two other councils. The Acting Monitoring Officer at that time undertook a review of governance matters raised by these two reports to ensure that appropriate checks and balances were in place in Coventry. Many of the actions criticised in the two reports arise from a 'blurring of the lines' between Officers and Members, inappropriate behaviour by members towards Officers and a lack of arrangements in place to deal with such issues. Whilst there were, and are, no particular areas of concern in Coventry, the lack of any arrangements to deal with issues if they occurred could result in an erosion of ethical standards.
- 1.3 Such arrangements are typically set out in Member/Officer Relations Protocol and a Monitoring Officer Protocol. Such protocols are considered to be good practice.
- 1.4 A Monitoring Officer Protocol is beneficial as it sets out for both members and officers the roles and responsibilities of the Monitoring Officer, what resources should be available to the Monitoring Officer and how they will discharge those duties. It also sets out what is expected of members and other officers in terms of keeping the Monitoring Officer informed to ensure the effective and efficient discharge of their roles and responsibilities.

### **2. Options considered and recommended proposal**

#### **Option 1: Consider and Approve the Draft Protocol (recommended)**

- 2.1 The draft Protocol is attached at the Appendix to this report. It has been drafted both to reflect current practices within the Council and best practice in other local authorities. It includes revisions made by members of the Committee and Independent Persons following informal consultation after the Committee's meeting on 29 March.
- 2.2 The Protocol sets out the statutory responsibilities of the Monitoring Officer and how those will be discharged. It is partly a statement of current practice and convention. In some respects, however, it seeks to promote greater clarity and certainty. In particular, it makes it clear that the Monitoring Officer can only fulfil their statutory functions with the assistance and co-operation of members and other officers.
- 2.3 The Protocol outlines working arrangements including:
  - Access to resources
  - Access to information
  - The relationship between the Monitoring Officer, other statutory officers, leading members and external bodies
  - Standards matters
  - The Constitution

Monitoring and periodic review of the Protocol is the responsibility of the Monitoring Officer.

- 2.4 If the Committee is minded to approve the Protocol (with or without amendments), it would need to be considered by the Constitution Advisory Panel, Cabinet Member for Policing and Equalities and full Council before being incorporated into the Constitution.

## **2.5 Recommendation**

The Committee is recommended to:

- (1) Consider the draft protocol and make any comments or changes as it thinks fit; and
- (2) Subject to the Committee being in agreement with the wording of the Protocol, recommend to the Constitutional Advisory Panel that it approves the Monitoring Officer Protocol and that it recommends to the Cabinet Member for Policing and Equalities and full Council that they agree to its being included in the Constitution.

## **Option 2: Do nothing (not recommended)**

- 2.5 The Council is not required by law to have a Monitoring Officer Protocol. If the Committee so chose, it could decide not to pursue this matter. However, officers are strongly of the view that having a formal Protocol will assist both members and officers in understanding the roles and responsibilities of the Monitoring Officer and in setting clear standards which will help to maintain excellent working relationships.

## **3. Results of consultation undertaken**

Committee members and Independent Persons have been previously consulted on the Protocol and their changes are included.

## **4. Timetable for implementing this decision**

- 4.1 The decision will be implemented as soon as it has been through the procedure for making changes to the Constitution.

## **5. Comments from Director of Finance and Corporate Services**

### **5.1 Financial implications**

There are no specific financial implications arising from the recommendations within this report.

### **5.2 Legal implications**

There are no specific legal implications arising from this report, as there is no statutory obligation on the Council to have a Monitoring Officer Protocol, although it is recommended as it assists both officers and members in understanding the role, what is expected of them and what they can expect in return from the Monitoring Officer. The approval of a Monitoring Officer Protocol assists in compliance for the Council as a whole, in its duty to promote high standards of ethical conduct.

## **6. Other implications**

None

### **6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

Not applicable

## 6.2 How is risk being managed?

There is no direct risk to the organisation as a result of the contents of this report.

## 6.3 What is the impact on the organisation?

## 6.4 Equalities / EIA

### 6.5

There are no public sector equality duties which are of relevance at this stage.

## 6.5 Implications for (or impact on) the environment

None

## 6.6 Implications for partner organisations?

None at this stage

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Legal: Julie Newman	City Solicitor and Monitoring Officer	Place	10.07.18	11.07.18
Barry Hastie	Director of Finance and Corporate Services	Place	10.07.18	18.07.18
Councillor Walsh	Chair, Ethics Committee		10.07.18	10.07.18

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## **Appendix 1: Draft Monitoring Officer Protocol**

### **1. STATUTORY RESPONSIBILITIES**

- 1.1 The Monitoring Officer is a statutory appointment under the provisions of Section 5 of the Local Government and Housing Act 1989. This Protocol provides guidance on how the duties of the Monitoring Officer will be carried out at Coventry City Council.
- 1.2 The role of the Monitoring Officer is assigned to the Legal Services Manager under the provisions of the Constitution. The Monitoring Officer may appoint a Deputy Monitoring Officer.
- 1.3 A summary of the Monitoring Officer's responsibilities are set out more fully in the Table set out at the end of this Protocol.

These duties will be carried out in accordance with the Council's Constitution, legislative requirements and relevant Government guidance. The Monitoring Officer's ability to carry out these duties and responsibilities effectively will depend upon the proactive assistance and co-operation of Members and Officers:

- (i) complying with the law and relevant Codes of Conduct;
- (ii) complying with any general guidance, codes or protocols issued by the Ethics Committee and the Monitoring Officer;
- (iii) making lawful and proportionate decisions;
- (iv) not taking action that would bring the Council, their offices or professions into disrepute.

### **2. WORKING ARRANGEMENTS**

- 2.1 The Monitoring Officer will promote effective working relations with Members and Officers to advance good governance, the highest standards of ethical behaviour, as set out in the Seven Principles of Public Life (the "Nolan Principles", first formulated by the Committee on Standards on Public Life in 1995) and the effective discharge of the Monitoring Officer's statutory duties. A speedy flow of relevant information and access to debate, particularly at the early stages of any decision-making by the Council, is central to fulfilling those responsibilities. Members and Officers are required to work with the Monitoring Officer (and relevant staff) to this end.
- 2.2 The following arrangements and understandings between the Monitoring Officer, Members, the Head of Paid Service, the Section 151 Officer and Officers are designed to ensure the effective discharge of the Council's business and functions.

### *Resources*

#### 2.3 The Monitoring Officer will:

- (i) report to the Council, as necessary, on the staff, accommodation and resources s/he requires to discharge his/her statutory functions;
- (ii) have sufficient resources to enable him/her to address any matters concerning his/her functions as Monitoring Officer;
- (iii) have control of a budget sufficient to enable him/her to seek Counsel's opinion on any matter concerning his/her functions;
- (iv) appoint a deputy and keep the deputy briefed on any relevant issues that may be required to be dealt with in the absence of the Monitoring Officer.

### *Access to Information*

#### 2.4 The Monitoring Officer will:

- (i) be informed by Members and Officers of any issue(s) that may become of concern to the Authority, including: issues relating to legal powers, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to arise or have arisen;
- (ii) have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Authority (including any meetings at which Officer delegated decisions are taken) at which a binding decision may be made (including a failure to take a decision where one should have been taken);
- (iii) have the right to attend (including the right to be heard at) any meeting of the Authority (including any meetings at which Officer delegated decisions are taken) before any binding decision is taken (including a failure to take a decision where one should have been taken);
- (iv) have access to the Strategic Management Board and receive advance notice of meetings, agenda and reports to those meetings, including the right to attend;
- (v) in carrying out investigation(s), have unqualified and unrestricted access to any information held by the Council and to any Officer who can assist in the discharge of his/her functions.

### *Relationships*

#### 2.5 The Monitoring Officer will:

- (i) ensure the other two 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 arise or have arisen;

- (ii) meet as frequently as necessary with the Chief Executive (Head of Paid Service) and the Director of Finance and Corporate Services to consider and recommend action in connection with Corporate Governance issues and any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are of concern, that are likely to arise or have arisen;
- (iii) develop a close working relationship of respect and trust with the Leader, Cabinet Members and Ethics Committee with a view to ensuring the effective and efficient conduct of Council business;
- (iv) develop an effective working relationship with the Council's Independent Persons, its external auditors and the Local Government Ombudsman (including having the authority, on behalf of the Council, to refer any breaches or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary);
- (v) in consultation, as necessary, with the Leader, Cabinet, Ethics Committee and the Council's Independent Persons, defer the making of a formal report under Section 5 of the Local Government and Housing Act 1989 where another investigative body is involved.

### *Standards Matters*

#### 2.6 The Monitoring Officer will:

- (i) give informal advice and undertake relevant enquiries into allegations of misconduct and, if appropriate, make a written report to the Ethics Committee where, in the opinion of the Monitoring Officer, there is a serious breach of the Members' Code of Conduct, in accordance with the Council's Complaints Protocol;
- (ii) be responsible, on behalf of the Ethics Committee, for preparing any training programme for Members on ethical standards and Code of Conduct;
- (iii) carry out investigations into matters referred to him/her under the Council's Whistle Blowing Policy in respect of Members and arrange the conduct of hearings into allegations of breaches of the Code of Conduct.
- (iv) Maintain and keep up to date the Member's Registers of Interest and publish those registers along with those for parish councils within the city.

### *The Constitution*

#### 2.7 The Monitoring Officer will regularly review and monitor operation of the Constitution, reporting changes as necessary through the agreed procedure for amending the Constitution.



### **3. MEMBER AND OFFICER RESPONSIBILITIES**

To ensure the effective and efficient discharge of the arrangements set out in paragraph 2 above, Members and Officers will report any breaches of statutory duty, Council policies or procedures and other constitutional concerns to the Monitoring Officer, as soon as practicable, who will keep the reporting Members/Officers informed as appropriate.

### **4. ADVICE**

The Monitoring Officer is available for Members and Officers to consult on any issues relating to the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (e.g. Council Procedure Rules, Policy Framework, Terms of Reference and Scheme of Delegation etc.).

### **5. MONITORING THE PROTOCOL**

The Monitoring Officer will monitor the arrangements set out in the Protocol to ensure that they have been complied with. S/he will report to the Ethics Committee if s/he thinks that amendments are necessary in the light of any issues that have arisen during the year.

### **6. CONFLICTS AND INTERPRETATION**

- 6.1 Where the Monitoring Officer has received a complaint or is aware of an event which may lead to him/her issuing a statutory report, relating to a matter upon which s/he has previously advised the Council, s/he shall consult the Chief Executive who may then either refer the matter to the Deputy Monitoring Officer for investigation and report to the Chief Executive, or ask a neighbouring authority to make their Monitoring Officer available to investigate the matter and report to the Chief Executive and/or the authority as appropriate.
- 6.2 Questions of interpretation of this guidance will be determined by the Monitoring Officer.

## 7. SUMMARY OF FUNCTIONS

	Description	Source
1	Report on contraventions or likely contraventions of any enactment or rule of law.	Ss5 and 5A, Local Government and Housing Act 1989
2	Report on any maladministration or injustice where the Ombudsman has carried out an investigation.	Ss5 and 5A, Local Government and Housing Act 1989
3	Appointment of a Deputy.	S5, Local Government and Housing Act 1989
4	Report on the sufficiency of resources.	S5, Local Government and Housing Act 1989
5	Establish and maintain the Register of Members' Interests, and declarations of gifts and hospitality received.	S28 , Localism Act 2011 and Code of Conduct for Elected and Co-opted Members
6	Receive copies of certificates under the Local Authorities (Contracts) Regulations 1997.	Local Authorities (Contracts) Regulations 1997
7	Maintain, monitor and review the Constitution.	S9P Local Government Act 2000 and the Constitution
8	Support the Ethics Committee and promote and maintain high standards of conduct with particular reference to the Council's approved Code of Conduct for Elected and Co-opted Members.	S27 Localism Act 2011 and Code of Conduct for Elected and Co-opted Members
9	Conduct investigations into alleged misconduct.	S28 Localism Act 2011 and the Complaints Protocol
10	Consult with the Head of Paid Service and the Chief Finance Officer on issues of lawfulness and decision making.	Constitution
11	Advise whether executive decisions are within the budget and policy framework.	Constitution
12	Advise on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity, budget and policy framework issues to all Members.	Constitution