

PART 5e – MONITORING OFFICER PROTOCOL

Effective from ~~249~~ May 2023~~2015~~Approved by Council on ~~x 2023~~30 March 2015

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. This Protocol provides some general information on how those statutory requirements will be discharged at Fylde Council.

The current responsibilities of the Monitoring Officer role rest with the [Deputy Chief Executive](#)~~Director of Resources~~ who undertakes to discharge ~~her those~~ statutory responsibilities with a positive determination and where possible in a manner that enhances the overall reputation of the Council. In doing so ~~she the Monitoring Officer~~ will also safeguard, so far as is possible, Members and Officers acting in their official capacities, whilst incumbent on those Members and Officers to undertake their responsibilities correctly.

The main functions of the Monitoring Officer at Fylde Council are:

- (a) to report to the Council in any case where ~~she they are is~~ 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 (LGHA 89);
 - (b) to act as a principal adviser to the authority's ~~Audit and~~ Standards Committee;
 - (c) to commission or undertake investigations in accordance with the Council's Standards Framework;
 - (d) to maintain the register of members' interests;
 - (e) to act as the Proper Officer for the preparation, publication and retention of records of decisions taken by or on behalf of the Council;
 - (f) to have responsibility for responding to complaints to the Local Government Ombudsman
- 1.2 In general terms, the Monitoring Officer's ability to assist the Council in maintaining standards and good governance will depend on members and officers upholding such standards:
- (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
- 1.3 The main statutory references for the Monitoring Officer's functions are set out in paragraph 4 of this Part of the Constitution.

2 WORKING ARRANGEMENTS

- 2.1 Having excellent working relationships with members and officers will assist in the discharge of the statutory responsibilities of the Monitoring Officer. Equally, a speedy flow of relevant information and access to debate, particularly in the early decision-making stages, will assist in fulfilling responsibilities. Members and officers must, therefore, work with the Monitoring Officer and ~~her~~ their staff to discharge the Council's statutory and discretionary responsibilities.
- 2.2 The following arrangements and understandings between the Monitoring Officer, Members and Senior Managers 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 require the Monitoring Officer to consider the use of statutory and non-~~e~~-statutory powers in relation to issues regarding ethical standards, probity, propriety, procedural or other constitutional issues;
 - (b) have advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Council at which a 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 or Committee meetings;
 - (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 or Committee meetings;
 - (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 ~~her~~ the Monitoring Officer's functions;
 - (e) 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;
 - (f) meet regularly with the Head of Paid Services 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;
 - (h) in accordance with statutory requirements, make a report to the Council, as necessary on the staff, accommodation and resources she requires to discharge her statutory functions;
 - (i) have an appropriate relationship with the Leader, Deputy Leader, the Mayor and other Group Leaders together with members of the ~~Audit and~~ Standards Committee with a view to ensuring the effective and efficient discharge of Council business;
 - (j) develop effective working liaison and relationship with the Council, Auditors and the Local Government 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);

- (k) maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality;
- (l) give informal advice and refer for investigation if deemed appropriate allegations of elected member misconduct in consultation with an independent person;
- (m) subject to the approval of the ~~Audit and~~ Standards Committee, be responsible for preparing any training programme for members on ethical standards and Code of Conduct issues;
- (n) to prepare the Councils' Corporate Governance Statement each year for approval by the ~~Audit and Standards~~ Committee
- (o) appoint one or more a deputy/deputies and keep ~~him / her~~them briefed on any relevant issues that ~~he / she~~they may be required to deal with in the absence of the Monitoring Officer. The ~~Deputy/Deputies~~ will only act in the absence of the Monitoring Officer if urgent action is required which cannot await the return of the Monitoring Officer or at the direction of the Monitoring Officer.

3 MEMBER AND OFFICER RESPONSIBILITIES

- 3.1 To ensure the effective and efficient discharge of the arrangements set out 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.
- 3.2 Where the Monitoring Officer receives a complaint of alleged member misconduct, ~~she~~they shall 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 apology. However, it is recognised that the Monitoring Officer may determine that if the matter is of such importance that an investigation is the only appropriate response.
- 3.3 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.
- 3.4 To ensure the effective and efficient discharge of this Protocol, the Council 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.

4 SUMMARY OF MAIN MONITORING OFFICER FUNCTIONS

Description	Source
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

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| 3. Appointment of Deputy | Section 5 Local Government and Housing Act 1989 |
| 4. Report on resources | Section 5 Local Government and Housing Act 1989
Localism Act 2011 |
| 5. Investigate misconduct in compliance with Regulations | Localism Act 2011 |
| 6. Establish and publish a register of Members Disclosable Pecuniary Interests | Code of Conduct for Members |
| 7. Advise to members on interpretation of Code | Section 92 LGA 2000 |
| 8. Compensation for maladministration | Government guidance, Council's Solicitor / Legal Team |
| 9. Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members | |