

MONITORING OFFICER PROTOCOL

1. Introduction

- 1.1 Section 5 of the Local Government and Housing Act 1989 (the 1989 Act) requires local authorities to appoint a Monitoring Officer. This protocol provides some general information on the statutory role the Monitoring Officer undertakes and how the functions will be discharged within Spelthorne Borough Council.
- 1.2 The current responsibilities of the Monitoring Officer role rest with the Group Head of Corporate Governance, Farida Hussain, who undertakes to discharge her statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. In doing so, she will also safeguard, so far as is possible, councillors and staff, whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.
- 1.3 A summary list of the Monitoring Officer's functions appears in the **Appendix** to this protocol. The Monitoring Officer's ability to discharge these responsibilities will depend, to a large extent, on councillors and staff:
 - a) complying with the law (including any relevant Codes of Conduct),
 - b) complying with any statutory guidance and other guidance/advice issued from time to time by the Standards Committee and the Monitoring Officer,
 - c) not doing anything that would bring the Council, their offices or professions into disrepute, and
 - d) making lawful and proportionate/reasonable decisions.
- 1.4 In general terms the Monitoring Officer's ability to discharge his/her duties also depends on good working relations with councillor and staff colleagues, particularly the Council's Chief Officers and Heads of Service (together Senior Officers), and also access to information and debate during the decision-making process.
- 1.5 The Monitoring Officer has appointed Karen Limmer, Temporary Principal Solicitor, as the Deputy Monitoring Officer. Karen Limmer will perform the functions of the Monitoring Officer where Farida Hussain is unable to act. The Monitoring Officer is assisted from time to time by staff in Committee Services and Legal Services but the responsibility of discharging the functions of Monitoring Officer is a personal one.

2. Working Arrangements/Understandings

- 2.1 Good working relations with councillors and staff will assist in the discharge of the statutory responsibilities of the Monitoring Officer and

ensure the Council's interests are safeguarded. 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. Councillors and staff must, therefore, work with the Monitoring Officer (and his staff) to discharge the Council's statutory and discretionary responsibilities.

- 2.2 The following arrangements and understandings between the Monitoring Officer, councillors and Senior Officers are designed to help ensure the effective discharge of the Council's statutory powers and duties.
- a) **Lawfulness etc** – Councillors and Chief Officers must alert the Monitoring Officer to all emerging issues that may become a concern to the Council including in particular issues around legal powers to do something or not (e.g. lawfulness) ethical standards, probity, procedural or other constitutional matters and give advance notice to the Monitoring Officer of meetings (whether formal or informal) where these issues are likely to arise.
 - b) **Attendance at and access to papers for meetings** – The Monitoring Officer will have the right to attend and be heard at any meeting of the Council, the Committees and the Officer Management Team (MAT) before any binding decision is taken (including a decision not to take action) and have access in advance to the agendas, minutes, reports and related papers for such meetings.
 - c) **Liaison with the Statutory Officers** – The Monitoring Officer will meet with the Head of Paid Service (the Chief Executive) 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.
 - d) **The Council's Constitution** – The Monitoring Officer will monitor and review the operation of the Constitution in consultation with the Head of Paid Service (the Chief Executive) and the Chief Finance Officer where appropriate to ensure that the aims and principles of the Constitution are given full effect.
 - e) **General Advice** – The Monitoring Officer will give general advice on the interpretation and application of the Council's Constitution to councillors and staff alike (i.e. responsibility for functions, procedural rules, codes and protocols, standing orders, member allowances scheme etc.).
 - f) **Registers** – The Monitoring Officer will compile and maintain the Council's Registers of Members' Interests and Gifts and Hospitality.
 - g) **Training** – The Monitoring Officer will be responsible for preparing and implementing a training programme for Members on the

Council's ethical framework subject to the approval of the Standards Committee.

- h) **External Relations** – The Monitoring Officer will develop good and effective working relations with the Council's Auditors and the Local Government Ombudsman (including the giving and receiving of relevant information whether confidential or otherwise).
- i) **Internal Relations** – The Monitoring Officer will have a special relationship of mutual trust and respect with the Mayor, Deputy Mayor and the Chair and Vice-Chair of the Committees with a view to ensuring the effective and efficient discharge of the Council's functions.
- j) **Complaints/Investigations** – The Monitoring Officer will
 - receive and act on any complaints made under the Member Code of Conduct.
 - conduct investigations into matters referred to him by a hearing panel of the Members' Code of Conduct Committee and make reports or recommendations in respect of them to the hearing panel.
 - be expected to make enquiries into allegations of misconduct in the absence of a written complaint being received and if appropriate will make a written report to the Standards Committee unless he/she and the Chairman of the Standards Committee agree a report is not warranted.
 - have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of his functions when carrying out any investigation.
- k) **Appointment of Deputy** – The Monitoring Officer will appoint a Deputy and keep him/her briefed on any relevant issues that he/she may be required to deal with where the Monitoring Officer is unable to act.
- l) **Resources** – The Monitoring Officer will report to the Council from time to time on the staff, accommodation and resources required to discharge his/her functions. Where the Monitoring Officer requires specialist advice on any matter concerning his/her statutory responsibilities, he/she will seek Counsel's Opinion and will have a budget to enable him/her to do so.
- m) **Deferral of Report** – In consultation with the Mayor of the Council the Monitoring Officer may defer the making of a formal report under Section 5 of the 1989 Act where another investigative body is involved.

- n) **Maladministration** – Chief Executive, Deputy Chief Executives and Heads of Service must consult the Monitoring Officer prior to making any compensation payments for alleged or actual maladministration found against the Council.
- 2.3 To ensure the effective and efficient discharge of the above working arrangements/understandings, councillors and Senior Officers will report any breach of statutory duty or material breach of Council policy/procedures and other vices or constitutional concerns to the Monitoring Officer as soon as practicable.
 - 2.4 Senior Officers agree to inform and explain the terms of this protocol to their service managers so that they understand the issues highlighted in paragraphs 2.1 and 2.2 above and report concerns accordingly.
 - 2.5 The Chief Finance Officer will ensure that 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's role.
- 3. Breach of the Members' Code of Conduct and this Protocol**
- 3.1 Complaints against any breach of the Members' Code of Conduct must be referred in accordance with the Council's published 'Arrangements for Dealing with Complaints about Councillors'. Complaints against any breach of this protocol by a Member will be referred to the Standards Committee and to the Leader of the relevant political party group.
 - 3.2 Complaints against any breach of this protocol by an Officer may be referred to the Chief Executive.

SUMMARY OF MONITORING OFFICER FUNCTIONS

| Description | | Key Source |
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| 1. | Appointment of Deputy | Section 5 Local Government and Housing Act 1989 |
| 2. | Report on resources | Section 5 Local Government and Housing Act 1989 |
| 3. | Establish and maintain Registers of Councillors' and Co-Opted members' Interests and Gifts and Hospitality | Section 81 Local Government Act 2000, Section 29 Localism Act 2011 and the Policy on Gifts, Hospitality and Sponsorship and under the Member's Code of Conduct |
| 4. | Considering whether an interest is a sensitive interest | Section 32 Localism Act 2011 |
| 5. | Receive copies of whistleblowing allegations of misconduct | Confidential Reporting Code, Council Constitution |
| 6. | Key role in promoting and maintaining high standards of conduct through support to the Standards Committee | Article 10 of the Council's Constitution |
| 7. | Advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all councillors | Article 10 of the Council's Constitution |
| 8. | Report on contraventions or likely contraventions of any enactment or rule of law | Section 5 Local Government and Housing Act 1989 |
| 9. | Report on any maladministration or injustice where the Local Government and Social Care Ombudsman in England (Ombudsman) has carried out an investigation | Section 5 Local Government and Housing Act 1989 |
| 10 | Compensation for maladministration | Section 92 Local Government Act 2000 |