

## **MONITORING OFFICER PROTOCOL**

### **1. 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 sets out the Monitoring Officer's role in relating to the statutory duty to promote and maintain high standards of conduct under the Localism Act 2011.
- 1.2 The role of the Monitoring Officer rests with the Director of Legal and Governance. The Monitoring Officer may nominate a member of staff to act as Deputy Monitoring Officer while absent or ill and has appointed the Assistant Directors of Legal and Governance as Deputy Monitoring Officers. The Deputies will act only in the absence of the Monitoring Officer.
- 1.3 This Protocol should be read in conjunction with Articles 12 and 15 of the Constitution which sets out all Monitoring Officer functions. It should also be read in conjunction with the procedure for investigating standards complaints. A list of the functions of the Monitoring Officer appears in the attached Schedule.

### **2. WORKING ARRANGEMENTS**

- 2.1 It is vital that Members and Officers work with the Monitoring Officer and his or her staff, to effectively discharge the Council business, statutory responsibilities and promote the corporate health of the Council.
- 2.2 The Monitoring Officer's duties will be discharged in accordance with the Council's Constitution, legislative requirements and relevant Government guidance. The Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:-
  - (a) complying with the law (including any relevant Codes of Conduct);
  - (b) complying with any general guidance, codes or protocols issued from time to time by the Monitoring Officer;
  - (c) making lawful and proportionate decisions;
  - (d) generally, not taking action that would bring the Council, their offices or professions into disrepute;
  - (e) seeking early advice on issues relating to constitutional or ethical matters;

- (f) raising alerts to issues that may become of concern to the Authority about legal powers to do something or not, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise; and
- (g) Reporting to the Monitoring Officer at the earliest opportunity convictions of criminal offences which might amount to a breach of the Members Code of Conduct.

2.3 The Monitoring Officer will:

- 2.3.1 Have advance notice and access to information (including agendas, minutes, reports and related papers) of all relevant meetings of the Authority, (including meetings at which Officer delegated decisions are taken) at which a binding decision may be made (including meetings where there may be a failure to take a decision which should be taken);
- 2.3.2 Have the right to attend (and be heard) any meeting of the Authority (including meetings at which Officer delegated decisions are taken) before any binding decision is taken (including a meeting where there may be failure to take a decision where one should be taken).
- 2.3.3 Have advance notice of Executive Management Team meetings, agendas, reports and the right to attend and speak at those meetings. Meet regularly with the Head of Paid Service and the Section 151 Officer to consider and recommend action in connection with corporate Governance issues, matters of concern regarding legal, ethical standards probity, procedural, constitutional issues that are likely and do arise;
- 2.3.4 In undertaking or arranging investigations will have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of the functions.
- 2.3.5 Report to Council as necessary on resources.

**3. RELATIONSHIPS**

- 3.1 The Monitoring Officer will develop effective working liaison and relationship to ensuring effective and efficient discharge of Council business with:
  - (a) The Lord Mayor, Chairs of Cabinet, Scrutiny and Policy Development, Regulatory, Audit and Standards Committees of the Council; and
  - (b) The District Auditor and the Local Government Ombudsman or their successors;

3.2 Refer any breaches to, or give and receive any relevant information, whether confidential or otherwise, (through appropriate protocols, if necessary), to the bodies in 3.1 (b).

**4. PROCEDURE FOR DEALING WITH COMPLAINTS REGARDING CITY, PARISH AND TOWN COUNCILLORS AND CO-OPTED MEMBERS**

4.1 The procedure for dealing with complaints that a member of the City Council, Parish and Town Councils or a Co-opted Member has failed to comply with the Members' Code of Conduct is set out in Appendix A.

4.2 The Monitoring Officer reserves the right to deal with any issues arising in the course of business that concerns the conduct or alleged conduct of a Member in the absence of a complaint if the Monitoring Officer deems it reasonable and appropriate to do so.

## SCHEDULE

A list of the functions of the Monitoring Officer

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
3. Appointment of Deputy	Section 5 Local Government and Housing Act 1989
4. Report on resources	Section 5 Local Government and Housing Act 1989
5. Maintain register of Members Interests and gifts and hospitality	Localism Act 2011
6. to be responsible for the operation and maintenance of the whistleblowing policy	Whistleblowing Policy and Procedure (in the Officers' Code of Conduct)
7. Proper Officer - Local Government Access to information regulations	Part 2 of the Constitution 12.03 (f)
8. Advise on vires, maladministration, impropriety, probity	Part 2 of the Constitution 12.03 (h)
9. Advise whether executive decisions are within policy framework	Part 2 of the Constitution 12.03 (g)

## Appendix A

### SHEFFIELD CITY COUNCIL

#### PROCEDURE FOR DEALING WITH COMPLAINTS REGARDING CITY, PARISH AND TOWN COUNCILLORS AND CO-OPTED MEMBERS

##### 1. Introduction

1.1 Under the Localism Act 2011, the Council has duty to promote and maintain high standards of conduct for its elected and co-opted members and have arrangements in place to deal with complaints.

1.2 This Procedure sets out how the Council will deal with a complaint alleging a breach of the Members' Code of Conduct by:-

- Sheffield City Councillors or co-opted members of the Council
- Bradfield Parish Councillors
- Ecclesfield Parish Councillors
- Stocksbridge Town Councillors

(In this Procedure the term 'Member' is used to describe a Councillor or Co-opted Member)

1.3 In dealing with complaints we will be fair to both the complainant and Member and progress matters in accordance with the timescales set out in the Procedure. Complaints will be handled in the strictest confidence at all times.

##### 2. Monitoring Officer

2.1 Gillian Duckworth, Director of Legal and Governance, is the Council's Monitoring Officer. This is a statutory role, responsible for ensuring that the Council, its Members and officers carry out their functions in a lawful and ethical manner. The role includes supporting the Audit and Standards Committee and the three Independent Persons in dealing with complaints alleging a breach of the Members' Code of Conduct.

##### 3. Independent Persons

3.1 The Council appoints Independent Persons from outside the Council to assist the Monitoring Officer and Audit and Standards Committee in considering complaints. Sheffield currently has appointed three Independent Persons - Stuart Carvell, Marvyn Moore and David Waxman.

3.2 The Independent Person must be consulted at various stages in the

complaints process and also before the Audit and Standards Committee makes a finding as to whether a member has failed to comply with the Code of Conduct and decides on action to be taken in respect of a Member.

#### **4. Making a Complaint**

4.1 Complaints alleging a breach of the Members' Code of Conduct should be made in writing using the complaint form and sent to Gillian Duckworth, Monitoring Officer, Sheffield City Council, Town Hall, Sheffield S1 2HH or email [gillian.duckworth@sheffield.gov.uk](mailto:gillian.duckworth@sheffield.gov.uk). The complaint form is available from:-

- Website - [www.sheffield.gov.uk/standardscommittee](http://www.sheffield.gov.uk/standardscommittee)
- Email - [committee@sheffield.gov.uk](mailto:committee@sheffield.gov.uk)
- Phone - 0114 273 5033

4.2 If you need advice or assistance in submitting a complaint please contact Philippa Sewell in Democratic Services (email [philippa.sewell](mailto:philippa.sewell) or phone 0114 273 4015).

4.3 Details of the complaint, including the name of the complainant, will be shared with the Member. The complainant can request on the complaint form that their identity is kept confidential. Requests for confidentiality will be considered by the Monitoring Officer, in consultation with the Independent Person.

4.4 Anonymous complaints will not be considered.

#### **5.0 Acknowledging the Complaint/Informing the Member**

5.1 The Monitoring Officer will acknowledge receipt of the complaint in writing within 5 working days and provide the complainant with a copy of this Procedure and the Code of Conduct.

5.2 The Member will be informed in writing within 5 working days that a complaint has been made about them. This will include the name of the complainant and details of the complaint. They will also receive a copy of this Procedure and the Code of Conduct. To assist the Monitoring Officer in assessing the complaint, the Member will be invited to submit within 10 working days a written statement of fact in response to the complaint.

5.3 The Monitoring Officer will also inform the Leader of the relevant political Group, Group Whip and Chair of the Audit and Standards Committee that a complaint has been received and provide a summary of the complaint.

5.4 Where a complaint relates to a Parish or Town Councillor, the Monitoring Officer will also inform the Clerk of that Council of the name of the Member and details of the complaint. The Clerk will also be kept informed of the progress and the outcome of the complaint.

## **6. Assessment by the Monitoring Officer**

6.1 Before assessment of the complaint, it may be necessary for the Monitoring Officer to request further information or clarification from the complainant and/or Member.

6.2 The Monitoring Officer, in consultation with the Independent Person, will consider the complaint, any remedy sought by the complainant, any written statement of fact submitted by the Member and any other information obtained. In assessing the complaint, the Monitoring Officer will take into account:-

- The seriousness of the allegation.
- The effectiveness of the remedies available.
- If a significant amount of time has elapsed since the events which are the subject of the complaint.
- If the allegation relates to a cultural or recurring issue relating to standards within the Council.
- If the matter should be dealt with by some other method, e.g. police investigation.
- If complaints have been made about the Member relating to similar issues in the past.
- The impact on the complainant or reputation to the Council caused by the conduct.
- If the complaint appears to be trivial or vexatious or is part of a series of complaints from the complainant.
- Whether the conduct occurred during political debate or could be regarded as a political expression of views or opinion.

6.3 Following consultation with the Independent Person, the Monitoring Officer will then consider if the allegation constitutes a potential breach of the Code of Conduct and take one of the following courses of action:-

- (1) Take no action or
- (2) Take other action through informal resolution or
- (3) Refer the matter for investigation

6.4 The complainant and the Member will be informed in writing within 5 working days of the outcome and the reasons for the decision.

6.5 Where a complaint is not referred for investigation, the Monitoring Officer will seek to deal with the matter within 8 weeks.

## **7. Informal Resolution by the Monitoring Officer**

7.1 Where the Monitoring Officer has decided to take other action this will seek to resolve the complaint informally and without determining if an actual breach of the Code has taken place. Both the complainant and Member will have to agree to the outcome of any informal resolution.

7.2 The Monitoring Officer, in consultation with the Independent Person, may take any of the following actions:-

- Take such steps as they think appropriate to prevent a future potential breach of the Code including training, guidance and introducing or amending policies/protocols.
- Ask the Whips to address the issue raised within their political parties or with an individual Member.
- Mediate between the parties involved to resolve the issues.
- Seek an apology from the Member.
- Any other action capable of resolving the complaint.

7.3 The complainant and Member will be informed in writing of the outcome of any informal resolution within 5 working days. The Chair of the Audit and Standards Committee and relevant Group Leader and Group Whip will also be informed that the complaint has been resolved.

7.4 Where a complaint relates to a Parish or Town Councillor, the Monitoring Officer will also inform the Clerk of that Council that the complaint has been resolved.

7.5 Where it has not been possible to agree an informal resolution, the Monitoring Officer, in consultation with the Independent Person, will refer the matter for investigation and inform the complainant and Member within 5 working days.



## **8. Investigation**

- 8.1 If a complaint has been referred for investigation, the Monitoring Officer, in consultation with the Independent Person, will appoint a person to undertake the investigation and this may be either a Council Officer or an outside agent, depending on the complexity and subject of the complaint.
- 8.2 The Investigating Officer will inform the complainant and Member of the process and proposed timescale of the investigation. The investigation may involve interviewing both parties and possibly other witnesses, together with reviewing any relevant documentation or paperwork.
- 8.3 The Investigating Officer will prepare a draft report on the outcome of the investigation and provide the complainant and Member with a copy for review and comment.
- 8.4 The Investigating Officer will submit a final version of the report to the Monitoring Officer that will make a finding that either (a) there has been a failure to comply with the Code of Conduct or (b) there has not been a failure to comply with the Code of Conduct. The final report will also be sent to the complainant and Member.
- 8.5 The Monitoring Officer will submit the Investigating Officer's report to the Consideration Sub-Committee.
- 8.6 An investigation will be completed within 12 weeks of a referral by the Monitoring Officer. The Consideration Committee will meet within one month of the final report being submitted to the Monitoring Officer.

## **9. Consideration Sub-Committee**

- 9.1 The Sub-Committee will consider the Investigating Officer's report and, after taking the views of the Independent Person into account, can:-
- (a) take no action where there is no evidence of a failure to comply with the Code of Conduct or
  - (b) take no action where there is no evidence of a failure to comply with the Code of Conduct but make a recommendation to the authority with a view to promoting and maintaining high conduct of standards in general (e.g. proposed changes to internal procedures or training for Members) or
  - (c) ask the Monitoring Officer, where possible, to seek a local resolution to the complaint or

(d) refer the matter to an Audit and Standards Committee Hearing.

9.2 The complainant and Member will be informed in writing within 5 working days of the outcome and the reasons for the decision.

## **10. Local Resolution**

10.1 Where the investigation finds evidence of failure to comply with the Code of Conduct, the Monitoring Officer, in consultation with the Independent Person, may attempt a local resolution, avoiding the necessity of a hearing, and take any of the following actions:-

- Take such steps as they think appropriate to prevent a future potential breach of the Code including training, guidance and introducing or amending policies/protocols.
- Ask the Whips to address the issue raised within their political parties or with an individual Member.
- Mediate between the parties involved to resolve the issues.
- Seek an apology from the Member
- Any other action capable of resolving the complaint

10.2 Both the complainant and Member will have to agree to the outcome of any local resolution.

10.3 The Monitoring Officer will inform the complainant and Member in writing within 5 working days of the outcome of any agreed local resolution.

10.4 If a local resolution has not been possible, the Monitoring Officer, in consultation with the Independent Person and Chair of the Audit and Standards Committee, will refer the matter to an Audit and Standards Committee Hearing and inform the complainant and Member in writing within 5 working days.

## **11. Audit and Standards Committee Hearing**

11.1 The Audit and Standards Committee Hearing Sub-Committee comprises 3 Councillors and 1 non-voting co-opted Independent Member.

11.2 The Sub-Committee will meet within two months of a referral by the Consideration Sub-Committee to consider the allegation and Investigating Officer's report and make clear findings as to the facts of the matter and whether a breach of the Code of Conduct has occurred.

11.3 The Hearing Sub-Committee will meet in public unless it decides that all or part of the meeting should be held in private in accordance with the Access to Information Procedure Rules in the Council's Constitution.

11.4 In advance of the Hearing there will be a pre-hearing process to allow matters at the Hearing to be dealt with more fairly and economically.

11.5 The complainant and Member will be given the opportunity to attend the Hearing and present witnesses. The Monitoring Officer, Investigating Officer and Independent Person will also attend. The procedure at the Hearing will include:-

- Making findings of fact
- Deciding if there has been a breach of the Code of Conduct
- Consider the remedies/sanctions available if there is a finding that the Member has breached of the Code of Conduct

11.6 Full details of the pre-hearing and hearing process are set out in the Procedure at Hearings. The Member and complainant will be provided with a copy of the Procedure.

#### 11.7 A Finding of No Breach of the Code of Conduct

11.7.1 If the Sub-Committee finds that the Member did not breach the Code of Conduct no further action will be taken in respect of the complaint. However, the Sub-Committee can make a recommendation to the authority with a view to promoting and maintaining high standards of conduct in general (e.g. proposed changes to internal procedures or training for Members).

#### 11.8 A Finding of a Breach of the Code of Conduct

11.8.1 If the Sub-Committee finds that a breach of the Code of Conduct has occurred they may make any of the following recommendations and may specify to whom they wish them to be directed:-

- Recommending to the Member's Group Leader (or in the case of un-grouped members, recommend to Council or to Committees) that he/she be removed from any or all Committees or Sub-Committees of the Council or Shadow Portfolio responsibilities.
- Recommending to the Leader of the Council that the member be removed from the Cabinet, or removed from particular Portfolio responsibilities.

- Instructing the Monitoring Officer to arrange training for the member.
- That policies/procedures are amended.
- That a briefing/information note be issued.
- That an apology be given.
- That the Member is censured in writing and a copy of the letter is published on the Council's website.
- Take no action where it is not considered appropriate in the circumstances to impose a sanction.

11.9 The Monitoring Officer will inform the complainant and the Member of the outcome from the Sub-Committee hearing in writing within 5 working days.

11.10 The findings and decision of the Sub-Committee will be also be available on the Council's website and copies will be supplied to the Chief Executive, Leaders of all the political Groups and the Group Whips.

11.11 Where the matter relates to a Parish or Town Councillor, the Clerk of that Council will be informed of the outcome of a Hearing.

## **12. Appeals**

12.1 There is no right of appeal for the complainant or Member against a decision of the Monitoring Officer, Consideration Sub-Committee or Hearing Sub-Committee.

12.2 If the complainant feels that the Council has failed to deal with their complaint properly, they can make a complaint to the Local Government Ombudsman.

## **13. Reports**

13.1 A quarterly report will be presented to meetings of the Audit and Standards Committee on the complaints received and how they were dealt with. An annual report will also be submitted to Full Council with a summary of all Standards Complaints.

## **14. Data Protection**

14.1 Complaints will be handled in the strictest confidence at all times. We will ensure that any information received as part of the handling of the complaint is disclosed only to those who can demonstrate a valid need to

know it. However, when a complaint is considered at an Audit and Standards Committee Hearing then any information will be dealt with in accordance with the Access to Information Procedure Rules in the Council's Constitution.

14.2 Complaints records will be stored safely and securely.

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