

STANDARDS COMMITTEE

27 OCTOBER 2022

REPORT OF THE MONITORING OFFICER

A.1 REVIEW OF THE MONITORING OFFICER'S PROTOCOL

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

For the Standards Committee to review and discuss the Monitoring Officer's Protocol (the Protocol) and suggest any proposed amendments to that Protocol for consideration by Full Council.

EXECUTIVE SUMMARY

In March 2017 the Standards Committee reviewed the Monitoring Officer's Protocol, attached as Appendix A, and having considered the contents, resolved that it was satisfied with the contents and therefore did not wish to make any amendments.

As part of its work programme for 2022-23, the Standards Committee agreed to review the Monitoring Officer's Protocol and if any changes are required, to recommend these to Full Council for approval and adoption..

The Protocol only relates to dealing with matters arising from the Standards Framework relating to Members' interests and complaints, and does not cover the wider responsibilities of the Monitoring Officer for the Council as detailed within the Constitution.

As highlighted in the overarching principles of the Protocol, the Monitoring Officer is not the legal adviser for or to Town and Parish Councils and the role only extends to these councils in relation to the promotion and maintenance of high standards of conduct. If a complaint identifies criminal conduct or breach of other regulation by any person, the Monitoring Officer is under an obligation to notify and/or refer to the Police or other regulatory agencies.

This Protocol operates in conjunction with the terms of reference of the Standards Committee, Sub-Committee, the Complaints Procedure, attached as Appendix B, and Independent Person's Protocol. The Complaints Procedure provides an in depth process in which alleged breach of Members' Code of Conduct complaints must be dealt with a number of actions to be carried out by the Monitoring Officer.

This Complaint Procedure is a staged process and the initial stage of determination when a complaint is received is delegated to the Monitoring Officer from the Standards Committee. The Monitoring Officer will then take various factors into consideration, as detailed within the Complaints Procedure, including In reaching a decision in respect of how to progress the complaint the Monitoring Officer will take account of the following factors where appropriate:-

- Was the Member acting in their official capacity?

- Was the Member in office at the time of the alleged misconduct?
- Is the complaint of a very minor or trivial nature?
- Is the complaint vexatious or malicious?
- Are there historical matters?
- Is there a potential breach of the Code?
- Assessment of public interest?
- Is additional information required prior to making a decision?.

Following consideration of a complaint, the Monitoring Officer issues a Decision Notice setting out the matters taken into account and the reasons for such decision. The Monitoring Officer provides anonymised updates regarding complaints to the Standards Committee at each of its scheduled meetings.

Although, the Protocol refers to the Complaints Procedure and has its own overarching principles, it is considered that the Protocol could be strengthened, thus further reflecting and supporting the Complaints Procedure, by expanding some of the actions in some instances.

Section 1(j) of the Protocol states “*The Monitoring Officer will consult with one of the Independent Persons on complaints received and throughout the process in accordance with the Complaints Procedure*”, this could be enhanced with the following inclusion from the Complaints Procedure:

Section 4.1 – The Monitoring Officer will review every complaint received and, may consult with one of the Independent Persons before taking a decision as to whether the complaint:

4.1.1 Merits no further action

4.1.2 Merits early informal resolution or mediation

4.1.3 Merits further investigation

The decision as to how the complaint is to be progressed will normally be taken within 15 working days of receipt of the complaint and will be considered in accordance with the Assessment Criteria included at Annex D of the Complaints Procedure. There is no right of appeal for a complainant or Member against a decision of the Monitoring Officer or of the Standards Committee, but a complaint may be made to the Local Government Ombudsman. This paragraph from the Complaints Procedure could be included within the Protocol but reference to the Ombudsman, should be amended to the Local Government and Social Care Ombudsman, in addition it is suggested that the Protocol should make reference to a Decision Notice being issued to record the outcome.

The Overarching Principles of the Protocol at

1 (m) refers to in providing information, in any manner at any stage in the process, the Monitoring Officer must be satisfied that they have the legal power to do so and the requirements of the Data Protection Act 1998 and Freedom of Information Act 2000 have been considered, as reflected in the Council’s Constitution.

The legislation has changed and the above should be amended to read:

(m) In providing information, in any manner at any stage in the process, the Monitoring Officer must be satisfied that they have the legal power to do so and the requirements of the Data Protection Act 2018 and the UK General Data Protection Regulation (GDPR), and Freedom of Information Act 2000 have been considered, as reflected in the Council’s Constitution.

Paragraph 4(d) of the Protocol refers to the Deputy Chief Executive, in this instance this would now also be undertaken by the Deputy Monitoring Officer, in the Monitoring Officer's absence (Schedule 4 of Part 3 of the Constitution).

RECOMMENDATION(S)

It is recommended that the Committee review the Monitoring Officer's Protocol and determine whether they agree with the suggested proposed amendments to that Protocol, as set out in the Report and/or any additional changes through their debate for consideration by Full Council.

REASON(S) FOR THE RECOMMENDATION(S)

Any amendment to the Monitoring Officer's Protocol must be considered by Full Council for approval and adoption because it is a key document within Part 6 of the Constitution. Although the Monitoring Officer has delegated powers to make changes within the Constitution following restructures and changes in legislation, because the Protocol relates to the Monitoring Officer, it is good governance for the Standards Committee to approve these changes.

ALTERNATIVE OPTIONS CONSIDERED

Alternatives have not been considered in this instance as it is part of the Standards Committee's work programme and falls within the remit of the Committee, to review the Monitoring Officer's Protocol and determine as to whether they deem to make recommendations for amendments to Full Council.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Monitoring Officer's Protocol is within the Corporate Plan 2020/24 Priority Themes of delivering high quality services and strong finances and governance.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

The Monitoring Officer is a statutory appointment under s.5 Local Government and Housing Act 1989.

This Protocol has been produced in light of the provisions of the Localism Act 2011 and associated regulations and will be kept under review and amended where necessary.

Section 28(8) of the Localism Act 2011 provides the definition and restriction of the Independent Person. The Council has adopted an Independent Person Protocol which sets out some general principles.

FINANCE AND OTHER RESOURCE IMPLICATIONS	
There are no implications of the proposal that impact on current resources.	
USE OF RESOURCES AND VALUE FOR MONEY	
The following are submitted in respect of the indicated use of resources and value for money indicators:	
A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	Nothing to add in the context of this report
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	The content of this report demonstrates the Council's approach to good governance and decision making.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	Nothing to add in the context of this report.
MILESTONES AND DELIVERY	
If the Standards Committee recommend amendments to the Monitoring Officer's Protocol, it is recommended that these be included within the agenda for the Full Council meeting to be held on 24 January 2023.	
ASSOCIATED RISKS AND MITIGATION	
There are no particular risks associated with the Committee's review of the Protocol as the Protocol is fit for purpose as it currently stands. However, there is an opportunity within this work programme cycle to review and strengthen the Protocol.	
OUTCOME OF CONSULTATION AND ENGAGEMENT	
It is requested that Members and Independent Persons review and discuss the Monitoring Officer's Protocol as key stakeholders and determine whether they wish to recommend any amendments to Full Council. Full Council will then determine as to whether it wishes to adopt any amendments, and should that be so these will be amended within the Protocol and subsequently published.	
EQUALITIES	
In line with the Public Sector Equality Duty, public bodies such as the Council must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.	
The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex, sexual orientation.	

The proposed amendments to the Protocol do not impact on the protected characteristics because how the Protocol is applied will be undertaken with due regard to the Public Sector Equality Duty.

SOCIAL VALUE CONSIDERATIONS

There is an element of social value relating to the Monitoring Officer's Protocol in that the public must have confidence that complaints raised against Members that relate to the Members' Code of Conduct will be looked at in a fair manner. The Protocol and associated procedures are considered robust to ensure this confidence.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030

Not applicable.

OTHER RELEVANT IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder	Not applicable
Health Inequalities	Not applicable
Area or Ward affected	Not applicable

ANY OTHER RELEVANT INFORMATION

Not applicable.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

The work programme for the Standards Committee was determined at its meeting of 06 April 2022. It is therefore requested that the Committee review the Monitoring Officer's Protocol and make recommendations for any amendments they consider necessary for consideration by Full Council.

PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.

The Standards Committee last reviewed the Monitoring Officer's Protocol on 27 March 2017 and determined that it was satisfied with the current Monitoring Officer's Protocol and therefore had no amendments that it wished to make at that time. Minute 21 of that meeting applies.

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

Tendring District Council Independent Person's Protocol
Minutes of the meeting of the Standards Committee 27 March 2017

APPENDICES

Appendix A – Tendring District Council Monitoring Officer’s Protocol
Appendix B – Tendring District Council Complaints Procedure

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