

TENDRING DISTRICT COUNCIL MONITORING OFFICER PROTOCOL

This Protocol relates to the discharge of the Monitoring Officer functions in relation to the assessment of an allegation that a Member of the District, Town or Parish Council has failed to comply with the Council's Members' Code of Conduct.

1. Overarching Principles:

- (a) The Monitoring Officer is a statutory appointment under s.5 of the Local Government and Housing Act 1989.
- (b) 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.
- (c) The Monitoring Officer will discharge their statutory responsibilities with a positive determination contributing to promotion and maintenance of high standards of conduct, in a manner that enhances the overall reputation of the Council, in particular:
 - Complying with the law (including any relevant Codes of Conduct);
 - Complying with any general Guidance issued including consideration of Best Practice;
 - Complying with the procedures adopted by the Standards Committee following such guidance;
 - Complying with the Council's Constitution and standing orders; and
 - Acting impartially in the interests of fair and natural justice.
- (d) The Monitoring Officer must establish and maintain a Register of Interests of Members and co-opted Members of the Authority.
- (e) The Monitoring Officer is employed by Tendring District Council and owes their primary responsibility to the Authority rather than to any individual Member or group of Members. Accordingly, when they are of the opinion that providing advice to a Member or group of Members on a matter is incompatible with their role as adviser to the Authority, or any action which they may have to take on behalf of the Authority, they may decline to provide such advice, but may at their discretion, secure that such advice is provided from an independent source at the expense of the Authority.
- (f) Where the advice or recommendation of the Monitoring Officer is departed from by the Standards Committee or Sub-Committee, in accordance with administrative law, full reasons will be provided by the relevant Committee in making its decision.
- (g) This Protocol operates in conjunction with the terms of reference of the Standards Committee, Sub-Committee, the Complaints Procedure and Independent Person's Protocol.
- (h) The Monitoring Officer is the principal adviser to the Standards Committee and Sub-Committee. Additional advice and support is provided by Officers within the Legal and Democratic Services teams.

- (i) The Monitoring Officer is not the legal adviser for or to Town and Parish Councils and the role only extends in relation to the promotion and maintenance of high standards of conduct at these Authorities.
- (j) The Monitoring Officer will ~~consult with one of the Independent Persons~~ **act** on complaints received and throughout the process in accordance with the Complaints Procedure. **Under Section 4.1 of that Procedure the Monitoring Officer will review every complaint received and, before taking a decision, may consult with one of the Independent Persons as to whether the complaint:**

- (i) Merits no further action;**
- (ii) Merits early informal resolution or mediation; or**
- (iii) Merits further investigation.**

A formal Decision Notice of that decision will be prepared and circulated to the interested parties.

There is no right of appeal for the complainant or for the Member against a decision of the Monitoring Officer or the Standards Committee though a complaint can be made to the Local Government and Social Care Ombudsman.

- (k) In circumstances where either the Monitoring Officer or one of the Officers has made a complaint, witnessed the breach or previously assisted with the complaint, internal procedures will be implemented to ensure a conflict of interest does not exist. These procedures will consist of maintaining an information barrier and restricted access to the matter in consideration; this is referred to as “conflicted out”.

In practical terms, in these circumstances, the Monitoring Officer or Officer will take no part in the process unless called upon either as the complainant or as a witness.

- (l) In instances (exceptional circumstances) where the Monitoring Officer decides to refer a complaint to the Standards Committee or Sub-Committee for initial assessment or further investigation, in accordance with the Complaints Procedure (see flowchart), any approved information as is readily available, which would assist the Standards Committee or Sub-Committee in its function of considering the allegation will be attached to their Report.
- (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 ~~1998~~ **2018, the UK General Data Protection Regulation (GDPR)** and Freedom of Information Act 2000 have been considered, as reflected in the Council’s Constitution.
- (n) It is recognised that, where a complaint is referred for investigation, this may not be personally conducted by the Monitoring Officer. The investigator instructed will be suitably qualified with the requisite experience and may include another senior officer of the Council, a senior officer of another Authority or an appropriately experienced consultant, ensuring that independence and impartiality is maintained. Wherever possible and if appropriate to do so, the Monitoring Officer will seek external resources from outside of the County of Essex.

2. Receipt of Allegations:

- (a) If the allegation or complaint does not refer to the Code of Conduct the matter will not be considered under the Localism Act or associated specific Complaints Procedure. The Monitoring Officer will treat this as a general complaint and forward it to be dealt with under the Council's general formal complaints process, as appropriate.
- (b) The Monitoring Officer will keep the complaint file and associated papers in accordance with the Retention and Destruction Policy.

3. Consultation with the Independent Persons:

- (a) The Monitoring Officer and supporting Officers will facilitate the contact with Independent Persons for the purposes of discussions with the Member subject of the complaint, the Complainant and the Monitoring Officer. Direct contact without the Monitoring Officer's knowledge is not permitted and the Monitoring Officer should be notified immediately by the Independent Person if direct contact is attempted by the parties.
- (b) The Monitoring Officer will allocate roles for the Independent Persons in accordance with their Protocol and each party will be notified who the relevant Independent Person is and that they will be in contact shortly.
- (c) The Monitoring Officer does not have to agree with the Independent Person but if a different view is taken the Monitoring Officer will consult with another Independent Person in the first instance, before making a final decision.

4. Standards Committee and Sub-Committee:

- (a) The Monitoring Officer, in consultation with the relevant Chairman of the Standards Committee or Sub-Committee will decide on the type of attendance permitted for an Independent Person when considering complaints.
- (b) All meetings of the Standards Committee or Sub-Committee are considered to be open to the public and press unless (c) and (d) below apply.
- (c) The Monitoring Officer will advise the Standards Committee or Sub-Committee when to go into private session and exclude public access to the meeting in accordance with the Access to Information Procedure Rules, as set out in the Council's Constitution.
- (d) In accordance with Access to Information Procedure Rules, if the Monitoring Officer or ~~Deputy Chief Executive~~ **Deputy Monitoring Officer, in the Monitoring Officer's absence**, considers it appropriate, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with the meeting at which those reports are to be discussed is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.
- (e) Any decision departing from the Monitoring Officer's recommendation or advice will be supported with full reasons and recorded within the public part of the minutes for the meeting.