



## **MONITORING OFFICER PROTOCOL**

### **1.0 INTRODUCTION TO 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 provides some general information on how those statutory requirements will be discharged.
- 1.2 The role of the Monitoring Officer rests with the Director Legal Services.
- 1.3 A summary list of the Monitoring Officer's responsibilities appears in the Annex attached. 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; and
  - (d) generally, not taking action that would bring the Council, their offices or professions into disrepute.

### **2.0 WORKING ARRANGEMENTS**

- 2.1 Having good working relations with Members and Officers will assist in the discharge of the statutory responsibilities by the Monitoring Officer. 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. It must also be recognised that the Monitoring Officer and his/her Deputy have a role that is akin to policing the system and become involved in reviewing and deciding whether there have been contraventions of legislation/rules or protocols – by Officers and Members. Officers and Members therefore realise that the working relationship cannot interfere with those duties. Members and Officers must, therefore, work with the Monitoring Officer (and his/her staff) to discharge the Council's statutory and discretionary responsibilities.
- 2.2 The following arrangements and understandings between the Monitoring Officer, Members and Management Team are designed to ensure the effective discharge of the Council's business and functions. The Monitoring Officer will:-
- 2.2.1 Resources:**
- (a) report to the Council, as necessary on the staff, accommodation and resources s/he requires to discharge his/her statutory functions;
  - (b) have sufficient resources to enable him/her to address any matters concerning his/her Monitoring Officer functions;
  - (c) have control of a budget sufficient to enable him/her to seek Counsel's opinion on any matter concerning his/her functions;
  - (d) have an appointed deputy and keep him/her briefed on any relevant issues that s/he may be required to deal with in the absence of the Monitoring Officer. The Deputy Monitoring Officer may also deputise in the event of conflict or perceived conflict of interest (see below).

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### **2.2.2 Access to information/meetings:**

- (a) be alerted by Members and Officers to any issue(s) that may become of concern to the authority, including, in particular issues around legal powers to do something or not, Councillor complaints, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (b) have advance notice, (including receiving 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 a failure to take a decision where one should have been taken);
- (c) have the right to attend (including the right to be heard) any meeting of the authority (including meetings at which Officer delegated decisions are taken) before any binding decision is taken (including a failure to take a decision where one should have been taken);
- (d) be one of the Officers on the Management Team and will have advance notice of those meetings, agenda and reports and the right to attend and speak;
- (e) in carrying out any investigation(s), have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of his/her functions.

### **2.2.3 Work in relation to Officers:**

- (a) 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, (Councillor conduct – as may be appropriate), probity, propriety, procedural or other constitutional issues that are likely to (or do) arise;
- (b) meet regularly with the Head of Paid Service and the Section 151 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;
- (c) have the authority, on behalf of the Council, to complain to the District Auditor and the Local Government Ombudsman, or other relevant Central Government departments or bodies or refer any breaches or give and receive any relevant information, whether confidential or otherwise, through appropriate protocols, if necessary;
- (d) in consultation as necessary with the Chief Executive and s151 Officer, to defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body (including a Court/Tribunal) is involved;
- (e) make arrangements to ensure effective communication between his/her office and clerks to the Parish and Town Councils on Monitoring Officer and Councillor Conduct issues;
- (f) oversee and suggest amendments to the Employee Code of Conduct and maintain a Register of Employee declarations on gifts/hospitality and interests in accordance with the Code's requirements. This Register will be available for inspection and may be provided on request from Members, Officers or to the public.



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### **2.2.4 Ombudsman complaints and Whistleblowing:**

- (a) prepare reports as required by the Local Government Act 1974 and the Local Government and Housing Act 1989 in relation to complaints which have been the subject of investigation by the Local Government Ombudsman and which have revealed maladministration;
- (b) have oversight of the Whistleblowing arrangements and consideration of those complaints.

### **2.2.5 Councillor complaints:**

- (a) give informal advice to Members in relation to informal resolution of a complaint;
- (b) deal with in accordance with the agreed procedure (See appendix A Flowchart for Councillor complaints handling) and Complaints procedure Appendix B.
- (c) consider and accept/reject complaints relating to a District, Town or Parish Councillor (or co-opted Member); and refer complaints to Town or Parish Council for consideration and resolution as may be required;
- (d) re-direct complaints that are unrelated to Councillor Conduct to the appropriate complaints system of the Council/ or other authority (including, where relevant, the Police);
- (e) informally resolve a complaint relating to a District, Town or Parish Councillor (or co-opted Member) with a meeting, mediation or training;
- (f) investigate complaints against a District, Town, or Parish Councillor (or co-opted Member), or appoint internal or external officers or parties to undertake this on their behalf, in accordance with the approved complaints handling procedure having consulted the Independent Person before such a decision is made.
- (g) make arrangements for a Finance & Assets (Ethical Governance) Sub-Committee meeting (through the Democratic Services Manager), including Members sitting on the Sub-Committee, and, where relevant, Town or Parish co-optees' attendance;
- (h) make arrangements for the Sub-Committee to be held in exempt session, unless representations are received;
- (i) undertake any post Sub-Committee decision training or instruct others (internally or externally) to do so;
- (j) be responsible for preparing any training programme for Councillors on the Code of Conduct issues;
- (k) establish, maintain and publish the statutory register of Members' interests for District, Town and Parish Councillors;
- (l) consider written requests for dispensations from Members and Co-opted Members of East Cambridgeshire District Council and to grant these if legally appropriate and reasonable to do so as the Council's Proper Officer.

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### **2.2.6 Constitution:**

- (a) consult with the Members and Officers of the Council, review and monitor the Constitution and make recommendations on changes to the Constitution and decision making processes.

### **3.0 MEMBER AND OFFICER RESPONSIBILITIES**

To ensure the effective and efficient discharge of the arrangements set out in paragraph 2 above, Members and Officers will report any breaches of statutory duty or Council policies or procedures and other vices or constitutional concerns to the Monitoring Officer, as soon as practicable.

### **4.0 ADVICE**

The Monitoring Officer is also available for Members and Officers to consult on any issues relating to the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (eg Council Procedure Rules, Policy Framework, Terms of Reference, Scheme of Delegations).

### **5.0 MONITORING THE PROTOCOL**

Annually, the Monitoring Officer will report to the Finance & Assets Committee on Councillor complaints and whether the arrangements set out in the Protocol have been complied with and will include any proposals for amendments in the light of any issues that have arisen during the year.

### **6.0 CONFLICTS AND INTERPRETATION OF THIS PROTOCOL**

- 6.1 Where the Monitoring Officer has received a complaint of conflict relating to another investigation or advice provided, or believes that one may be perceived, or receives a complaint regarding an investigation relating to a complaint against a Councillor (i.e. concerning the investigation/ or the investigator) then the Monitoring Officer may discuss this issue with the Chief Executive or S151 Officer and/or may refer the matter to the Council's Deputy Monitoring Officer or appoint an external party to act as Deputy in this matter or in relation to complaints regarding an investigation/investigator will consider this or his/her Deputy will consider this and confirm their decision/response on the complaint.
- 6.2 The Monitoring Officer will be responsible for interpretation of this guidance.



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**ANNEX:**

### **A. SUMMARY OF MONITORING OFFICER FUNCTIONS**

<b>Description</b>	<b>Source</b>
1 Report on contraventions or likely contraventions of any enactment or rule of law in relation to the District Council.	Section 5 and 5A Local Government and Housing Act 1989.
2 Report on any maladministration or injustice where Ombudsman has carried out an investigation.	Section 5 and 5A Local Government and Housing Act 1989.
3 Appointment of Deputy.	Section 82A Local Government Act 2000
4 Report on sufficiency of resources.	Section 5 and 5A Local Government and Housing Act 1989.
5 Establish, maintain and publish registers of Members' interests.	Section 29 Localism Act 2011
6 Maintain, review and monitor the Constitution.	Constitution
7 Proper Officer for the receipt of dispensations.	Section 33 Localism Act 2011
8 Proper Officer for access to information guidance.	Constitution
9 Officer (with Deputy) for receipt of Councillor Complaints and determination of whether to reject/ investigate or undertake informal action.	Constitution & Localism Act 2011
10 Advise on vires issues and bias/ predetermination.	Section 5 and 5A Local Government and Housing Act 1989 & Constitution
11 Maintains register of Officer declarations of interests of direct or indirect pecuniary or non-pecuniary interests/ gifts or hospitality or closed membership of organisations.	Employee Code of Conduct & S117 Local Government Act 1972

### **APPENDIX A**

#### **EAST CAMBRIDGESHIRE DISTRICT, TOWN & PARISH COUNCILLOR COMPLAINTS HANDLING FLOW CHART**

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### **APPENDIX B**

#### **Complaints handling/ criteria for rejecting**

Any complaint should be on the relevant Councillor complaint form, signed by the complainant. When the Authority receives the complaint, then the form will be directed to the Council's Monitoring Officer. All supporting evidence should be forwarded with the complaint form. If this is a complaint about a Councillor's conduct, then:

#### **Preliminary (within 5 working days):**

- ❑ The Monitoring Officer will endeavour to acknowledge complaint within 5 working days & can seek additional information/supporting evidence if required.

#### **Note that:**

- ❑ If a complainant does not provide sufficient identifying details about him/herself, or information on the complaint, so that the complaint will be difficult to investigate, or take any other action, then the complaint is likely to be rejected.
- ❑ The Councillor who is subject to the complaint will (unless exceptional circumstances apply) be informed that a complaint has been received, and of your name).
- ❑ If this complaint is about a Town or Parish Councillor, and a complainant has not already made a complaint to the Town or Parish, then this will usually be referred to the Town or Parish Clerk for the Parish or Town Council to consider under their complaints procedure. This does not prevent a complainant from making a complaint to the District Council, once the complaint has been considered by the Town or Parish Council. However, if a complainant decides to pursue a further complaint on the same matter to the District Council, any action by the Town or Parish Council will be taken into account by the District Council in its decision on whether to take any further action on the complaint. The Town or Parish Council may refer a complaint to the District Council's Monitoring Officer if they demonstrate that it is not practical for them to deal with it.

#### **Stage 1**

- ❑ The Monitoring Officer will undertake an initial pre-assessment and consideration as to whether this complaint satisfies initial tests.

#### **Note that likely criteria for rejection at this stage are:**

- ❑ If the Councillor was not acting in their capacity as a Councillor, or giving the impression of doing so – then the complaint is likely to be rejected.
- ❑ If the Councillor is no longer a member of the Authority, or Parish/Town Council within its area then the complaint will be rejected.
- ❑ If this is a complaint that a Councillor has committed an offence under section 34 of the Localism Act 2011, or any other criminal act whilst acting or giving the impression of acting as a Councillor, this will be referred to the Police *and shall not be referred back to the Town or Parish Council or dealt with under the District Council's complaint handling procedure* (as this may prejudice any action that the Police may take).
- ❑ If more specific information about the complaint is required, then the Monitoring Officer may write to request this before further determination of the complaint. If that occurs, then the complaint will not have been rejected at that stage, but will not proceed until this further information has been received. Subject to there being exceptional circumstances not to, any further information will be provided to the Councillor for comment. If this information is not provided, then the complaint is likely to be rejected.
- ❑ If there is no basis for rejecting the complaint at this Stage, the Monitoring Officer will inform the Councillor subject to complaint and provide a copy of the complaint form and documents to them unless a complainant has demonstrated that exceptional circumstances apply and the Monitoring Officer has accepted that it is possible to progress the complaint anonymously. It will



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then progress to Stage 2. The Monitoring Officer will request the Councillor's comments on the complaint be made within a reasonable time period.

### **Stage 2 (this Stage will be undertaken in consultation with an Independent Person ('IP'<sup>1</sup>)):**

- ❑ The Monitoring Officer will consider the complaint/supporting information and any response provided by the Councillor subject to the complaint.
- ❑ If the complaint does not demonstrate a potential breach of the Code of Conduct, then it will be rejected.
- ❑ Complaints that appear to be very minor, trivial, or tit for tat are also likely to be rejected.
- ❑ If the complaint is vexatious or malicious then the complaint is likely to be rejected.
- ❑ If the complaint relates to an incident that appears to have taken place over 3 months before the complaint was submitted, which may make it difficult to investigate the complaint, or unreasonable to take further action at this stage, then it is likely that the complaint may be rejected.
- ❑ If a similar complaint (to the facts or incident) has been submitted and has been subject to an investigation or other action relating to the relevant Code, then it is likely to be rejected.
- ❑ If the complaint been subject to an investigation by another regulatory body/body and in the opinion of the Monitoring Officer nothing more would be gained by further action being taken, it is likely that no further action will be taken.

### **Stage 3**

- ❑ The Monitoring Officer will confirm the decision with reasons to a complainant in writing and a copy will be sent to the Councillor that is subject to the complaint. The decision may be:
  - no further action;
  - proposal for informal local resolution (meeting, apology, mediation or training); or
  - referral for investigation.
  -
- ❑ Stages 1-3 will usually take place within 20 working days – subject to further information being obtained.

### **Stages 4-6 (investigation/ consideration of any investigation report and final hearing will involve consultation with an IP<sup>2</sup> and the final hearing a consultation with a Town/Parish co-optee where applicable**

- ❑ If a decision to investigate is taken, then a complainant and the Councillor subject to the complaint would both be expected to co-operate and assist with this investigation, including, although not limited to, providing witness evidence to an investigator attending a final hearing and answering questions at that hearing. Failure to do so may result in no further action.
- ❑ If the investigator finds no breach, then any report detailing this information will be considered by the Monitoring Officer in consultation with the IP. There is unlikely to be any further action. If the report discloses a potential breach, then the matter will be referred to a Finance & Assets (Ethical Governance) Sub-Committee before elected Councillors from this Authority.
- ❑ The Sub-Committee will consider the complaint in consultation with the IP (and in the case of complaint relating to a Parish or Town Councillor, a co-opted Parish or Town Councillor). The Sub-Committee will be held in private session, unless representations are received not to do so. A complainant (and the Councillor subject to the complaint) would be expected to attend any Sub-Committee meeting where the complaint is considered (unless both a complainant and

<sup>1</sup> As defined by s28(8) Localism Act 2011

<sup>2</sup> Requirement for involvement under section 28(7) Localism Act 2011.



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the Councillor who is subject to the complaint, agree that this can be dealt with as a paper hearing). Note that the IP and co-opted Councillors will not be entitled to vote on the decision, but will be consulted before the final decision is made. If the Sub-Committee finds that the Councillor has breached the Code of Conduct then possible sanctions are:

- no action;
  - the Councillor apologises;
  - training;
  - the Councillor seeks to restore relations with other parties (e.g. through mediation)
  - censure of the Councillor;
  - recommend censure at full Council.
  - where the decision relates to a Parish or Town Councillor, then the Sub-Committee may recommend to the Parish or Town Council that they censure the Councillor at their next Council meeting;
  - a Press Notice be issued;
  - any other form of sanction that does not prevent the Councillor from undertaking their duty to attend Council meetings or infringe their Human Rights.
- A Public summary will be produced within 5 working days and published. Copies will be sent to relevant parties, including, where relevant the Town or Parish Council. Copies will be available for inspection and placed on the Council's website. In the event of a finding of breach of the Member Code of Conduct, the Councillor will be named.