

## Part 5: Section 5 - Monitoring officer protocol

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**The Monitoring Officer is a statutory appointment under Section 5 of the Local Government and Housing Act 1989. This Protocol provides some general information on how those statutory requirements will be discharged at Bury Council.**

The current responsibilities of the Monitoring Officer role rest with the Council Solicitor (Director of Law and Governance) who undertakes to discharge his/her statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Council. In doing so he/she will also safeguard, so far as is possible, Members and Officers whilst acting in their official capacities, from legal difficulties and/or criminal sanctions. The Monitoring Officer has a broad role in ensuring the lawfulness and fairness of corporate decision making, ensuring compliance with Codes and Protocols, promoting good governance and high ethical standards.

The main functions of the Monitoring Officer at Bury Council are:

- a) To report to the Council and to the Cabinet in any case where he/she is of the opinion that any proposal or decision of the authority has given rise to or is likely to or would give rise to any illegality, maladministration or breach of statutory code under Sections 5 and 5A of the Local Government and Housing Act 1989; (LGHA 89)
- b) To investigate any matter which he/she has reason to believe may constitute, or where he/she has received an allegation that a matter may constitute, a reportable incident under Sections 5 and 5A of the LGHA 89;
- c) To act as the principal adviser to the authority's Standards Committee;
- d) To maintain the register of members' interests;
- e) To act as the Proper Officer for the preparation, publication and retention of records of decisions taken by or on behalf of the Council and the Executive;
- f) To have responsibility for responding to complaints to the Local Government Ombudsman
- g) To undertake, with others, investigations in accordance with the Council's Whistleblowing procedures

In general terms, the Monitoring Officer's ability to discharge these duties and responsibilities will depend, on Members and Officers; complying with the law (including any relevant Codes of Conduct) complying with any General Guidance issued making lawful and proportionate decisions; and complying with the Council's Constitution and standing orders; generally, not taking action that would bring the Council, their offices or professions into disrepute. It is essential that Members and Officers communicate effectively with the Monitoring Officer and seek advice when required on any issues relating to constitutional or ethical matters.

## Working arrangements

Having excellent 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. Members and officers must, therefore, work with the Monitoring Officer (and his/her staff) to discharge the Council's statutory and discretionary responsibilities. The following arrangements and understandings between the Monitoring Officer, Members and Chief Officers are designed to ensure the effective discharge of the Council's business and functions.

The Monitoring Officer will:

### **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) appoint a deputy and keep him/her briefed on any relevant issues that he/she may be required to deal with in the absence of the Monitoring Officer. The Deputy will only act in the absence of the Monitoring Officer if urgent action is required which cannot await the return of the Monitoring Officer.

### **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, ethical standards, 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 a member of the Executive 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.

**Relationships:**

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, ethical standards, 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;

report to the Council, annually, on the Constitution and any necessary or desirable changes following consultation, in particular, with the Leader, the Head of Paid Service and Section 151 Officer;

c) in accordance with statutory requirements, make a report to the Council, as necessary on the staff, accommodation and resources he/she requires to discharge his statutory functions;

d) have an appropriate relationship with the Leader, Deputy Leader, Opposition Group Leaders and the Chairs of, Full Council, Standards Committee and Scrutiny Committees with a view to ensuring the effective and efficient discharge of Council business;

e) develop effective working liaison and relationship with the District Auditor and the Local Government Ombudsman (including having the authority, on behalf of the Council, to complain to them, refer any breaches to them or give and receive any relevant

information, whether confidential or otherwise, through appropriate protocols, if necessary) and settle any compensation payments for alleged or actual maladministration found against the Council in consultation with the Chief Executive and the appropriate Head of Service;

f) maintain and keep up-to-date relevant statutory registers for the declaration of members' interests, gifts and hospitality;

### **Standards and Governance Matters:**

a) promote and maintain high standards of conduct under the Localism Act 2011 and the Council's adopted procedures for all matters relating to the Code of Conduct; which will include giving informal advice and undertaking relevant enquiries into allegations of misconduct and, if appropriate, making a written report to the Standards Committee (unless the Chair of the Standards Committee agrees a report is not necessary);

b) in consultation, as necessary, with the Leader of the Council, Cabinet and the Standards Committee defer the making of a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved;

c) subject to the approval of the Standards Committee, be responsible for preparing any training programme for members on ethical standards, the Constitution and Code of Conduct issues;

d) advise on all applications from Council employees (or prospective employees) for exemption from political restriction in respect of their posts and where appropriate sign the certificate of opinion required by the independent adjudicator provide information in response to a contact from a member of the public about an elected member(s) provided that it would not compromise the Monitoring Officer should a formal complaint be made subsequently by the member of the public.

f) Complaints about any breach of Bury Council's Code of Conduct for Members must be referred in the first instance to the Monitoring Officer, who will make determinations in consultation with the Independent Person. In exceptional circumstances, the Monitoring Officer will refer a complaint for assessment by the Standards Assessment Sub-Committee

g) The Monitoring Officer will provide an annual report to the Council's Standards Committee on Member Complaints.

To ensure the effective and efficient discharge of the arrangements set out above, Members and officers will report any breaches of statutory duty procedures and other vires or constitutional concerns to the Monitoring Officer, as soon as practicable

The Monitoring Officer retains the right in all cases to make a statutory report where, after consultation with the Chief Executive and the Section 151 Officer, he/she is of the opinion that this is necessary in order to respond properly to a reportable incident. In addition, in appropriate cases, the Monitoring Officer may refer matters to the Police for investigation.

### **Monitoring the Protocol Annually**

The Monitoring Officer will report to the Standards Committee regarding 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.

### **Sanctions for Breach of Protocol**

Complaints of a breach of this Protocol by an Officer will be referred to the relevant Strategic Director and/or the Chief Executive for appropriate action to be considered, including disciplinary investigation if appropriate.