

# **Guildford Borough Council**

**Report to:** Corporate Governance & Standards Committee

**Date:** 18 January 2024

**Ward(s) affected:** All

**Report of Director:** Transformation and Governance

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**Report Status:** Open

## **Guildford Borough Council and Waverley Borough Council Monitoring Officer Protocol**

### **1. Executive Summary**

- 1.1 Section 5(1) Local Government and Housing Act 1989 requires every Council to designate an Officer as the Council's Monitoring Officer. The Monitoring Officer is designated by Council and may or may not be an employee of the Council.
- 1.2 As part of the current work programme to update the constitutions of both Guildford Borough Council (GBC) and Waverley Borough Council (WBC), the Joint Executive Head of Legal and Democratic Services has deemed the Monitoring Officer Protocol as a high priority, to ensure that both councils have the proper procedures in place to allow the Monitoring Officer to effectively discharge their statutory obligations.
- 1.3 The law does not prescribe exactly how the Monitoring Officer is to carry out their functions. Therefore, this protocol describes the manner in which the Council expects the Monitoring Officer to

discharge these functions and how it expects Officers and Members to co-operate with the Monitoring Officer in order to enable them to discharge these functions effectively.

- 1.4 This report was considered initially by the Joint Constitutions Review Group (JCRG) at its meeting on 18 December 2023. The JCRG supports the adoption of the proposed Protocol by both councils and has referred it to this Committee and Waverley's Standards & General Purposes Committee for formal consideration. The JCRG also felt that similar protocols should be developed for the two other statutory officer posts: Head of Paid Service and the Section 151 (Chief Finance Officer).
- 1.5 The Committee is asked to consider the proposed Monitoring Officer Protocol, as set out in **Appendix 1** to this report, and to recommend its adoption by the Council at its extraordinary meeting on 23 January 2024 for inclusion in the Council's Constitution.
- 1.6 The outcome of the consideration of this item by Waverley's Standards & General Purposes Committee on 8 January 2024, will be reported to this Committee.

## **2. Recommendation to Committee**

That the Committee resolves to:

- 2.1 Recommend to the Council the adoption of the proposed Monitoring Officer Protocol, as set out in Appendix 1 to this report for inclusion in the Council's Constitution.

## **3. Reason(s) for Recommendation:**

- 3.1 To protect the interests of the Council, and to provide guidance on how it expects Officers and Members to co-operate with the Monitoring Officer in order to enable them to discharge these functions effectively.

#### **4. Exemption from publication**

4.1 No part of this report is exempt from publication.

#### **5. Purpose of Report**

5.1 This report asks the Committee to consider the Monitoring Officer Protocol proposed by the Joint Constitutions Review Group, as set out in Appendix 1 to this report.

#### **6. Strategic Priorities**

6.1 The recommended Monitoring Officer Protocol will support the Council's strategic priorities and commitment to open, democratic and participative governance.

#### **7. Background**

7.1 The Monitoring Officer is responsible for ensuring that the Council and its Members act lawfully, do not cause maladministration, and comply with the Code of Conduct for Members. The Monitoring Officer is the Council's primary source of advice on all legal issues, and to Members on their legal obligations, but also has specific statutory duties, such as investigating complaints of Member misconduct and making public report to the Council in cases of illegality.

7.2 The purpose of this protocol is to enable Members to make use of the Monitoring Officer's ability to provide them with practical advice on legality and conduct, by setting out how the Monitoring Officer will carry out their functions. Section 5(1) Local Government and Housing Act 1989 and the Localism Act 2011 requires the Council to designate an Officer as the Council's Monitoring Officer and gives that Officer personal responsibility to:

- Report on actual, and anticipated, illegality within the Council;
- Report cases where the Ombudsman has found maladministration on the part of the Council;
- Maintain the Register of Members' Interests; and

- Administer, assess and investigate complaints of Members' misconduct.

7.3 It is recognised that an effective Monitoring Officer positively engaged in the discharge of the Council's business, is essential to the effective running and sound governance of the Council.

## **8. Equality and Diversity Implications**

8.1 The Committee will be responsible for having due regard to the requirements of the Public Sector Equality Duty (Equality Act 2010) when making any recommendations concerning governance arrangements.

## **9. Financial Implications**

9.1 There are no financial implications arising from this report. Any proposals, projects, or suggestions from the groups with financial implications will either be contained within approved budgets or considered as part of the Service and Financial Planning cycle.

## **10. Legal Implications**

10.1 The legal position in relation to the legislation and related Code

- Section 5(2)(a) and (b) Local Government and Housing Act 1989.
- Section 81(1) Local Government Act 2000
- Section 29 Localism Act 2011 (registration of interests).
- Members' Code of Conduct, in accordance with the Localism Act 2011.

## **11. Human Resource Implications**

11.1 There are no direct human resource implications arising from this report. Any appointment to the role of Executive Head of Legal & Democratic Services and designation to the role of Monitoring Officer must be made in accordance with the Officer Employment Procedure Rules at Part 4 of the Constitution.

**12. Background Papers**

None

**13. Appendices**

Appendix 1: Proposed Monitoring Officer Protocol