

**Report to:** Governance Committee

**Date of meeting:** 13 November 2024

**By:** Deputy Chief Executive

**Title:** Protocol for the Exercise of Monitoring Officer Duties

**Purpose:** To consider and comment on the proposed Protocol for Reports the use of reports under S5. Local Government and Housing Act 1989.

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## **RECOMMENDATION:**

**The Governance Committee is recommended to agree the proposed Protocol set out in Appendix 1.**

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### **1. Background**

1.1 The requirement for councils to appoint a Monitoring Officer and the principal responsibilities of the officer are set out in s5. Local Government and Housing Act 1989.

1.2 The Monitoring Officer is responsible for overseeing the propriety and lawfulness of the Council and for taking action, or ensuring action is taken, to prevent or correct proposals or decisions which may be unlawful, which may contravene the constitutional requirements of the Council or amount to maladministration.

1.3 The Monitoring Officer has a duty to report to the Council and the Cabinet in any case where they are of the opinion that any proposal, decision or omission is or is likely to be illegal or to constitute maladministration.

1.4 During the last few years there has been an increased focus on the roles of the three statutory officers (Monitoring Officer, Chief Finance Officer and Head of Paid Service) in ensuring propriety and lawfulness of councils in challenging times. This led to the preparation of a code of practice, published in July 2024, by the three relevant professional bodies CIPFA, SOLACE and LLG (Lawyers in Local Government). The code of practice emphasises the importance of the three statutory officers working closely together on matters of good governance and compliance. Whilst such arrangements are in place at the County Council, they are not written down.

### **2. The Protocol**

2.1 The protocol attached at Appendix 1 of the report seeks to explain how the three statutory officers work together to ensure the Council's business is carried out in a lawful and compliant way, with specific reference to the duty held by the Monitoring Officer. There is nothing in the protocol which proposes any change to these arrangements. It will be helpful for officers and members for the Council to adopt a clear written account of the arrangements.

2.2 The Protocol has been reviewed by James Goudie KC who has advised that in his view it is lawful and proportionate. It sets out the arrangements that are required for the effective operation of the role including that the Monitoring Officer:

- Is legally qualified and is responsible for the in-house legal service.
- Is a member of the senior leadership team.
- Has direct access to and or regular scheduled meetings with the Chief Finance Officer and Chief executive/Head of Paid Service.
- Has direct access to the Council's political leaders.
- Has lead responsibility for the effective governance and constitutional arrangements of the Council.
- Operates within a corporate culture of compliance, propriety and transparency.

- Has direct input into or access to all significant policy proposals, decisions and commitments by the Council before they are finalised.

These are in place and are consistent with the requirements identified Code of Practice on Good Governance for Local Authority Statutory Officers (produced by SOLACE, CIPFA and Lawyers in Local Government).

2.3 The Protocol sets out the process for where the Monitoring Officer, having consulted with the Chief Finance Officer and Chief Executive, considers it necessary to report a matter to Full Council or the Executive and the efforts that have been made to resolve issues before reaching this stage.

2.4 It is not proposed that a report is issued in the case of every instance of unlawfulness. To do so would often be disproportionate to the issues being considered and would diminish the significance of issuing a report. It is also the case that the Council has in place a range of alternative mechanisms and measures for ensuring that issues are reported and brought to the attention of Members. The Protocol sets out the principles and approach that will be taken by the Monitoring Officer in deciding whether or not to issue a report and the factors which will be given consideration. These include:

- Whether senior officers and relevant Members have been or will be made aware in other ways.
- Whether the action or omission is technical, administrative or purely procedural.
- Whether the matter carries little or no monetary value and involves no harm or loss to any person.
- Whether the matter is evidence of a more fundamental failure of governance or policy.
- Whether the matters have no impact upon residents, service users, suppliers or any other third party.
- Whether the issue could be a regular occurrence and evidence of a more fundamental failing.

2.5 The Council has in place a range of alternative arrangements by which the objective of ensuring there is democratic oversight by Members and operational assurance is met and this may be achieved through a number of mechanisms other than the use of s5 reporting.

Examples include:

- Summaries of decisions of the Local Government Ombudsman (LGO) where there has been a finding of fault reported to Cabinet and Council through the Council's established performance monitoring and reporting framework.
- The LGO's annual report which is reported to the Governance Committee and/or Standards Committee as well as performance data regarding compliance with timescales for the provision of information under statutory obligations.
- Where the LGO issues a report, it is to be made available to all Members and be reported to the relevant Lead Member.
- The outcomes of statutory inspections, such as those from Ofsted, CQC and HMI are made available to all Members and reported to Cabinet and relevant Scrutiny Committees.
- Reports on the outcome of internal complaint investigations, internal audit reports or other investigations undertaken internal or externally and which include findings of failings or non-compliance being reported to relevant senior management and elected member forums, including those meeting in public.
- The Council's Annual Governance Statement will set out the governance framework for the Council and any ongoing governance issues including those which may amount to non-compliance with requirements.

### **3 Conclusion and Reasons for Recommendation**

3.1 The Governance Committee is recommended to agree the proposed Protocol. The Protocol highlights the duties of the Monitoring Officer, how transparency is maintained and how Members

are assisted in maintaining democratic oversight and operational assurance. The Protocol sets out the proposed approach that will be taken in relation to s5 reports in terms of when they will be made and the process that will be followed which is it considered to be proportionate and will maintain the significance of such an action.

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