

## Chapter 40

### NEW FOREST DISTRICT COUNCIL

#### CODE OF PRACTICE

##### ROLE AND RESPONSIBILITIES of the MONITORING OFFICER

###### A. GENERAL INTRODUCTION TO STATUTORY RESPONSIBILITIES

1. The Monitoring Officer is a statutory appointee under section 5 of the Local Government and Housing Act 1989. This Code of Practice provides some general information on how the Monitoring Officer's function will be discharged in New Forest District Council.
2. The Monitoring Officer undertakes to discharge her statutory responsibilities in a manner that enhances the overall reputation of the Council. In doing so she will, so far as possible, safeguard Members and Officers acting in their official capacities from legal difficulties and/or criminal sanctions.
3. A summary of the statutory responsibilities is at Annex 1. In general terms, the Monitoring Officer's ability to discharge these duties and responsibilities will largely depend on Members and Officers:-
  - a) complying with the law of the land (including any relevant Codes of Conduct);
  - b) complying with any Local Codes adopted by the Council;
  - c) complying with any general guidance issued from time to time by the Monitoring Officer;
  - d) making lawful and proportionate decisions; and
  - e) not taking action that would bring the Council, their offices or professions into disrepute.

###### B. WORKING ARRANGEMENTS

4. Excellent working relations between the Monitoring Officer and Members and Officers will help her discharge her statutory responsibilities and keep the Council out of trouble. Equally, a speedy flow of relevant information and access to debate (particularly at the **early stages** of any decision-making by the Council) will help her fulfill her responsibilities. Members and Officers must, therefore, work with the Monitoring Officer (and her staff) to discharge the Council's statutory and discretionary responsibilities.
5. The following arrangements are designed to ensure the effective discharge of the Council's business and functions.

The Monitoring Officer will:-

- (a) be alerted by Members and Officers to any issue(s) that may become of concern to the Council, including in particular issues about 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 Members or of the Executive Management Team at which a binding decision of the Council may be made (including a failure to take a decision where one should have been taken);
- (c) have the right to attend any meeting of Members or of the Executive Management Team (including the right to be heard) before any binding decision is taken (including a failure to take a decision where one should have been taken);
- (d) in carrying out any investigation(s) have unqualified access to:
  - i. any information held by the Council and
  - ii. any Officer who can assist her in the discharge of her functions;
- (e) ensure the other statutory officers (Head of Paid Service and the Chief Finance 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;
- (f) meet regularly with the Head of Paid Service and the Chief Finance 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;
- (g) report to Members, as and when necessary, on any necessary or desirable changes to the Council's Constitution following consultation with other officers as appropriate;
- (h) report to Members, as and when necessary, on the staff, accommodation and resources she requires to discharge her statutory functions;
- (i) have a relationship of respect and trust with the Chairman and Vice-Chairman of the Council, the Leader and Deputy Leader of the Council, Portfolio Holders, the Leaders of Opposition Groups, and the Chairmen of the Regulatory Committees and Overview and Scrutiny Panels, with a view to ensuring the effective and efficient discharge of Council business;

- (j) develop an effective working relationship with the Council's external Auditor and the Local Government Ombudsman (including having the authority, on behalf of the Council, to complain to the same, refer any breaches to the same or give and receive any relevant information, whether confidential or otherwise, through appropriate procedures, if necessary) and settle any compensation payments for alleged or actual maladministration found against the Council;
  - (k) maintain the statutory registers for the declaration of members' interests (including those for Parish and Town Councils in the District);
  - (l) give informal advice and undertake relevant enquiries into allegations of misconduct (in the absence of a written complaint)
  - (m) in consultation, as necessary, with the Chairman of the Council and the Executive, defer making a formal report under Section 5 Local Government and Housing Act 1989 where another investigative body is involved;
  - (n) make arrangements to ensure effective communication between her office and the Clerks to Parish and Town Councils in the District on Monitoring Officer and ethical issues;
  - (o) have sufficient resources to enable her to address any matters concerning her Monitoring Officer functions;
  - (p) be responsible for preparing any training programme for Members and/or officers of the District Council and/or of Parish and Town Councils on ethical standards and Code of Conduct issues; and
  - (q) nominate a deputy during any period of absence from work, and keep the deputy briefed on any relevant issues that s/he may be required to deal with.
6. To ensure the effective and efficient discharge of the arrangements set out in paragraph 5 above, Members and Officers will report any breaches of statutory duty or Council policies or procedures and other constitutional concerns to the Monitoring Officer, as soon as practicable.
7. The Monitoring Officer is also available for Members and Officers to consult on any issues about the Council's legal powers, possible maladministration, impropriety and probity issues, or general advice on the constitutional arrangements (such as Standing Orders, policy framework, terms of reference, scheme of delegations etc).
8. To ensure the effective and efficient discharge of this Code of Practice, the Chief Finance Officer will ensure adequate insurance and indemnity arrangements are

in place to protect and safeguard the interests of the Council and the proper discharge of the Monitoring Officer role.

**C. SANCTIONS FOR BREACH OF THE CODE OF CONDUCT AND THIS CODE OF PRACTICE**

9. Complaints about any breach of the Council's Code of Conduct must be referred to the Monitoring Officer who will arrange for them to be dealt with under the Council's agreed procedures. Complaints against any breach of this Code of Practice by a Member will be referred to the Monitoring Officer and, if the Member is a member of a Political Group, to the Leader of that Group. Complaints against any breach of this Code of Practice by an Officer will be referred to the relevant Head of Service, Executive Director and/or the Chief Executive.

## SUMMARY OF MONITORING OFFICER FUNCTIONS

Description		Source
1	Report on contraventions or likely contraventions of any enactment or rule of law	Section 5 Local Government and Housing Act 1989
2	Report on any maladministration or injustice where Ombudsman has carried out an investigation	Section 5 Local Government and Housing Act 1989
3	Appointment of Deputy	Section 5 Local Government and Housing Act 1989
4	Report on resources	Section 5 Local Government and Housing Act 1989
5	Advise on the Public Interest Disclosure Act 1998 concerning disclosure of information in the public interest	Whistleblowing at Work Policy in Council Constitution
6	Investigate misconduct in compliance with Code of Conduct and Council's agreed procedures	Section 28 Localism Act 2011
7	Establish and maintain registers of members' interests	Section 29 Localism Act 2011
8	Advice to members on interpretation of Code	Code of Conduct
9	Key role in promoting and maintaining high standards of conduct	Section 27 Localism Act 2011
10	Ethical framework functions in relation to Parish Councils	Chapter 7 Localism Act 2011
11	Compensation for maladministration	Local Government Act 2000 Section 92
12	Advice on constitutional issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members	Statutory Government Guidance on Council Constitutions, paragraph 8.21