

5.10 Part 5.10 Monitoring Officer Protocol

Paragraph	Subject
5.10 – 1	Introduction
5.10 – 2	Functions
5.10 – 3	Discharge of Functions
5.10 – 4	Conflicts
5.10 – 5	Deputy Monitoring Officer
5.10 – 6	Advice
5.10 – 7	Interpretation of This Protocol
5.10 – 8	Sanctions for Breach of This Protocol
5.10 – 9	Review of Monitoring Officer Protocol
5.10 – 10	Approval of This Protocol
5.10 – Appendix A	A Non-Exhaustive List of Monitoring Officer FunctionsaAnd Responsibilities
5.10 – Appendix B	Extract from ‘Conflicts of Interest’ report issued by the National Audit Office

5.10 – 1 Introduction

A ‘Monitoring Officer Protocol’ is one of a number of measures designed to assist local authorities and the public generally.

This protocol explains the role and functions of the Monitoring Officer for Amber Valley Borough Council (‘the Authority’) and the governance arrangements for ensuring that this fundamental role is carried out effectively at all times.

Appendix A to this protocol sets out a non-exhaustive list of responsibilities which the Monitoring Officer is required to, or can legitimately be expected to, discharge to support the Authority in the public interest.

Working together to deliver

From the outset this protocol declares, and recognises, the self-evident truth that the ability of any Monitoring Officer to undertake and discharge the duties of this critical role effectively, on behalf of

the Authority and the public, depends crucially, to some large extent, upon Members and the Authority's officers, consultants and others:

- establishing and maintaining good professional working relationships which are reciprocated;
- the flow of relevant and timely information and access to debate (particularly at the early stages of any decision-making by the Council or by the Cabinet);
- willingly complying with the law;
- willingly complying with any relevant Codes of Conduct, codes or protocols issued from time to time;
- making lawful and proportionate decisions through evidence-based decision-making; and
- generally, not taking action that would bring the Authority, their offices or professions into disrepute.

Standards Matter

As the 14th report of the Committee on Standards in Public Life 'Standards matter: A review of best practice in promoting good behaviour in public life' (January 2013) stated on page 7 at para. 13: *'Public office will always involve the distribution of resources among competing claims and politics will inevitably always be a competition for power. As a result, the opportunities for abuse of position are considerable. If the UK is to reap the benefits of maintaining high ethical standards in public life we need to remain vigilant about preserving them.'* It is the Monitoring Officer's full-time role to be vigilant and promote active governance in support of the Authority's performance of its full-time duties and activities.

The 14th report identified on page 6 at para. 12 that: *'Much of this inappropriate behaviour involves deliberate attempts to get around codes of practice and conduct rather than a failure to understand what is expected. The implication is that the principles of conduct in public life are some way from being universally accepted, whatever lip service may be paid to them. Individually and collectively people have a great capacity to find ways of acting within the letter but not the spirit of acceptable behaviour and to rationalise their reasons for so doing.'*

Earlier in the 14th report (on page 8 at para.8) the Committee on Standards in Public Life succinctly wrote their 'key message':-

'Our key message is this. Much of the basic infrastructure to support high standards is now in place. Most public services and public office-holders have adopted statements of high level principles and codes of practice and are subject to some form of external scrutiny. But it is self-evident, not least from recent events, that these mechanisms by themselves are not enough. Many of those whose integrity has been called into question in recent months and years seem to have

behaved inappropriately not because they were unaware of what was expected but because they did not find it expedient. High standards of behaviour need to be understood as a matter of personal responsibility, embedded in organizational processes and actively and consistently demonstrated, especially by those in leadership positions. This report presents some ideas about how this may be achieved’.

Therefore, whilst the responsibility for discharging the functions of Monitoring Officer is a personal one, the degree of success is dependent to some large extent upon the level of genuine support which is given to the Monitoring Officer post, including from Members of the Authority and the officer corps, consultants and others, with the *‘embedding of ethical principles in the policies, practices and culture of each organisation, reinforced by peer pressure. High standards cultures constantly convey the message that behaving ethically is essential and failing to live up to principles is unacceptable’* (page 8 at para. 15).

The statutory role of the Monitoring Officer is thus both ‘proactive’ (i.e. preventative) as well as ‘reactive’ and the demands placed on the post by statute are considerable, especially where a local authority is seeking to deliver and then embed continual improvements (including addressing cultural issues within the organisation) and also where undergoing significant structural strategic and operational changes, whether ‘step-change’ or ‘transformational’.

This protocol needs to be read in conjunction with other documents such as, for example:-

- (1) the ‘Protocol on Member/Officer Relations’;
- (2) the Members’ Code of Conduct;
- (3) the Officer Code of Conduct; and
- (4) the Seven Principles of Public Life which are the basis of the ethical standards expected of public office holders.

Particular Context – Strategic and Political

As the Authority increasingly moves more and more to new ways of working (including outsourcing) in pursuit of its vision to be more of a strategic commissioning body, the importance of embedding good ethical behaviour and governance is all the more important. This is so that the public can have confidence in those new ways, not least because where contractual arrangements have been made (e.g. with the private sector, or the voluntary and community sector) Members still almost invariably retain responsibility for the discharge of the ‘functions’ of the Authority. ‘Service’ provision is distinct from the discharge of ‘functions’. Members need to exert effective and proper control

over such functions in the public interest i.e. there must be effective governance measures in place and complied with.

For example, as electoral cycles and public opinion do not necessarily coincide with commissioning arrangements (including contracts), Members can find themselves being held to account for acts and omissions on the watch of others. Accountability of Members is in the hands of the electorate (and the public expects and requires good government from those individuals in office and in power) and such holding to account is required by the criminal law to the public at large.

The Monitoring Officer role thus exists for good reason to support the Authority as a corporate body. To ensure the proper discharge of the Monitoring Officer role solely in the public interest, the Monitoring Officer role shall be independent of any outside service provider. This avoids any actual or perceived conflicts of interest (including conflicts of loyalties between this Authority and any other body) (see **Appendix B** to this Protocol). Managing conflicts of interest is an integral part of good governance and avoids unnecessary reputational and other damage where things go wrong. It also has the advantage of the Monitoring Officer being under the direct control of the Authority as a corporate legal body, with an undivided and visible focus on this vital role as the Authority moves forwards in the uncharted waters of the future, and being directly accountable to the Authority itself.

Duty to Authority

The Monitoring Officer is appointed and employed by Amber Valley Borough Council and owes their primary responsibility to the Authority rather than to any individual Member or group of Members or other Officers. As a result the Monitoring Officer role needs to be centre stage and kept in the loop as a valued contributor to, and lead officer on, the governance structure to ensure delivery of the Authority's desired outcomes.

The principles of good governance of the Authority are paramount.

Political Impartiality Requirement

The Monitoring Officer is required to be politically impartial and so must not be used as a 'political assistant' or as a political pawn by any Member of the Authority or anyone else. The Authority has taken no decision to employ any 'political assistant' as defined in section 9 of the Local Government and Housing Act 1989 and the Monitoring Officer post is a politically restricted post under section 2 of that Act.

Whilst the Monitoring Officer needs to have 'political awareness', the discharge of his/her duties must be done impartially in the interests of the Authority as a whole and all Councillors must refrain from seeking to drag the Monitoring Officer into party politics, whether inside the Council Chamber or outside the Council Chamber. There are thus various provisions which put down firm parameters within which the Authority's officers must operate and which Members must fully respect to avoid public resources being used to affect public support for a political party in breach of the law and the Members' Code of Conduct. Political advice, personal interests and private interests are distinct from legitimate local authority business undertaken solely in the public interest. The Committee of Inquiry into the Conduct of Local Authority ('the Widdicombe Report') (1986) highlighted this.

Moreover, when the Monitoring Officer is of the opinion that providing advice to a Member or a group of Members on a matter is incompatible with their role as an adviser to the Authority, or any action which they may have to take on behalf of the Authority, they may decline to provide such advice, but may at their discretion, secure that such advice is provided from an independent source at the expense of the Authority but only where it relates to legitimate council business.

Doing the job in the public interest

The statutory responsibilities of the Monitoring Officer shall be discharged, in the public interest, with a positive determination contributing to the Authority's statutory duty to promote and maintain high standards of conduct, in a manner that enhances the overall reputation of the Council. The personal statutory duty imposed on the Monitoring Officer under section 5 of the Local Government and Housing Act 1989 has priority over the duty to the Authority.

Value of relationship management

The key importance of relationship management in contributing to the overall corporate health and the success of the Authority cannot be underestimated. The Monitoring Officer is therefore placed centre-stage within the Authority and with Members as regards this '24/7' need to lead, manage and deliver on the relationship interface.

This is why the role of the Monitoring Officer has been made mandatory by Parliament with the provision of his/her staff and other resources and why the statutory duties are required by law to be performed personally by the Monitoring Officer. Indeed, the personal discharge by a single individual enhances the prospects of effective relationship management as Members and Officers alike can establish, maintain and develop their individual relationships with that one person. It is akin to the rationale behind having the 'elected mayor' concept – a single point of readily available contact and accountability. It is therefore impermissible to downplay, undermine, belittle and dilute

this role and the Authority commits themselves to safeguarding the Monitoring Officer role in the public interest.

How conflicts of interest can affect the relationship

As aspects of the Monitoring Officer's role (who ever occupies the post) involve 'policing the system', conflicts of interest can inevitably arise including personal conflict. No human being relishes being told 'no' and held to account. Therefore, an individual's assessment of the effectiveness of their relationship with the Monitoring Officer may on occasions be consciously or subconsciously adversely influenced by past, present or future personal interest or private interests (including electoral advantage) rather than solely by the public interest. This is a risk to the public interest if not adequately managed and guarded against.

This underlines the need for effective checks and balances, with proper organisational support. It also irrefutably demonstrates that Members and Officers must not allow their own individual actual or perceived transient view of their working relationships to wrongly interfere with, damage and undermine the ability of any Monitoring Officer to undertake his/her duties. By discharging such duties some relationships may, by necessity, be damaged to some degree. This is why the description of the Seventh Nolan Principle of 'Leadership' in the Seven Principles of Public Life states: *'Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs'*. Consequently, Members and Officers must commit themselves to work constructively with the Monitoring Officer in order to achieve the outcome of good governance and highest possible standards of ethical behaviour for the benefit of the people of the Borough of Amber Valley and beyond.

Flow of relevant and timely information and access to debate

As has been stated earlier, the role of the Monitoring Officer is not just reactive but also is proactive. It is an enabling role – a delivering role. This means that to be truly effective the Monitoring Officer needs to be brought into relevant discussions at an early formative stage as an influential adviser. This avoids unnecessary expenditure being incurred as a result of understandable enthusiasm holding sway over what can legitimately be undertaken in accordance with law and procedure.

The flow of relevant and timely information requires the holding of appropriate conversations with Members and Officers. Where in doing so the Monitoring Officer liaises with Members of another political group (or Members of another political group speak to the Monitoring Officer), such communication should not be viewed as inappropriate, providing it relates to legitimate council

business. Specific reference should be had to the 'Protocol on Member/Officer Relations' including respecting confidentiality.

At the corporate core

The Monitoring Officer post is the lynch-pin for economic, efficient and effective governance and administration of a modern, dynamic and delivering local authority and that is why Parliament has made it:-

- a mandatory appointment under Section 5 of the Local Government and Housing Act 1989; and
- a politically restricted post under Section 2(1)(e) of that Act.

Principled Behaviour

The Monitoring Officer assists the Council, Members and Officers to uphold the Seven Principles of Conduct in Public Life:-

- (1) Selflessness;
- (2) Integrity;
- (3) Objectivity;
- (4) Accountability;
- (5) Openness;
- (6) Honesty;
- (7) Leadership.

A particular risk area is in regulation (such as planning and licensing). The Committee on Standards in Public Life's report 'Striking the Balance - Upholding the Seven Principles of Public Life in Regulation' (published on 15 September 2016) made a number of best practice recommendations for regulatory bodies including relating to 'evidence-based decision-making'. The Monitoring Officer shall therefore be entitled to due support from all Members and Officers in upholding principled behaviour.

Statutory protection in the public interest

Given the Monitoring Officer's crucial role in ensuring good governance and ethical behaviour, the Monitoring Officer's post is given extra statutory protection to ensure the role is undertaken in the public interest without fear or favour.

The rationale, therefore, behind this specific statutory protection afforded to the Monitoring Officer is that such an officer, in the proper exercise of their statutory duties, is required to 'speak truth to

power' in the public interest. This must be done even where, for example, such advice would be potentially unpopular and may represent clear dissent from any prevailing political leadership's views. For example, the 'inconvenient truth' has to be faced in the public interest rather than ignored or denied.

The public interest requires professional advice to be given even if there is a danger of such advice being wrongly misconstrued (e.g. as being undermining, disrespectful, disloyal, insubordinate or politically motivated). Such professional advice does not, of course, have to be accepted by Members if there is good reason not to do so. Where the Monitoring Officer's advice is rejected, full written reasons shall be given to the Monitoring Officer, whether or not specifically requested by or on behalf of the Monitoring Officer. Article 13.2 ('Principles of decision making') of the Authority's Constitution refers to 'the taking of professional advice from Officers'.

5.10 – 2 Functions

The chief responsibilities can be summarised as:-

(a) **Statutory Report** - the duty to report to the Council under section 5 of the Local Government and Housing Act 1989 (and to the Cabinet under section 5A of that Act) in any case where the Monitoring Officer is of the opinion that any proposal, decision or omission is or is likely to be illegal or to constitute maladministration;

(b) **Members' Code of Conduct** - a range of functions relating to the conduct of councillors (for example, establishing and maintaining the Register of Interests of Members and co-opted Members of the Authority and advising the Standards and Appeals Committee);

(c) **Constitution** - specific functions under the Authority's Constitution (for example monitoring the operation of the Constitution and notification of motions).

5.10 – 3 Discharge of Functions

5.10 - 3.1 To ensure the effective undertaking of these duties, the Monitoring Officer will:-

(a) **Statutory Officer Liaison Meetings** - have regular meetings with the Head of Paid Service and the Chief Finance Officer/Section 151 Officer in order to review current and likely future issues with legal, constitutional or ethical implications;

(b) **Engagement With ‘Independents’** - maintain good liaison and working relations with the Independent Person(s), the Authority’s external auditors and the Local Government Ombudsman;

(c) **Up to Date Knowledge** - ensure that Councillors and Officers are kept up to date on new legislation and changes in the law which are relevant to the carrying out of the Council’s activities. This will generally take the form of reports and/or briefing notes to councillors and officers. Also, where appropriate, it will involve training sessions;

(d) **Proportionality** - the Monitoring Officer will always seek to prevent and/or resolve any potential maladministration or illegality by identifying alternative and legitimate means of achieving the objective of the purpose without compromising the statutory duty to report.

5.10 - 3.2 Arrangements and Understandings

In addition, the following arrangements and understandings between the Monitoring Officer, Councillors and Officer colleagues and others are designed to help ensure the effective discharge of the Monitoring Officer function:-

(a) **Proactive Involvement** - the Monitoring Officer is consulted at an early stage on new policy proposals and on matters which have potentially significant legal implications rather than just being called in to ‘fire-fight’ after damage has occurred;

(b) **Watching Brief** - the Monitoring Officer will have copies of all reports to Council, Committees, Sub-Committees, to the Leader of the Cabinet, the Cabinet, and its Committees and Sub-Committees and to any working groups in which the Authority is involved (for the avoidance of doubt this will include any Joint Committees);

(c) **Being Alerted** - the Monitoring Officer is informed of all emerging issues of concern of a legal, ethical or constitutional nature;

(d) **Terms of Appointment** - in cases where third parties are appointed to act for the Authority, it will be necessary for the relevant Chief Officer/Head of Service to ensure that the terms of appointment satisfactorily address issues relating to lawfulness and compliance with the Authority’s Constitution (including procurement rules).

(e) **Direct Access** - the Monitoring Officer will have the right to place an item of business on the

Council/Cabinet/Committee/Sub-Committee agenda and the absolute right to report to the Council from time to time on the Constitution and on any necessary or desirable changes following consultation as far as practicable with the Head of Paid Service and consultation as far as practicable with the Executive Director (Resources) in their role as the Council's Chief Finance Officer/Section 151 officer.

5.10 - 3.3 Rights of The Monitoring Officer

The Monitoring Officer will have the following rights:

5.10 - 3.3.1 Resources

(a) to report to full Council as s/he sees fit on the staff, accommodation and resources s/he requires to discharge his/her statutory functions;

(b) to have sufficient resources to enable him/her to address any matters concerning his/her Monitoring Officer functions;

(c) to have control of a budget sufficient to enable him/her to seek legal advice (including Counsel's opinion) either internally or from an independent external solicitor or barrister, on any matter within his/her functions;

(d) to nominate a member of his/her staff as a Deputy Monitoring Officer and to keep him/her briefed on any relevant issues that s/he may be required to deal with where the Monitoring Officer is unable to act owing to absence or illness, and the Monitoring Officer may also refer a matter to his/her Deputy Monitoring Officer in the event of conflict or perceived conflict of interest (see at 4 below).

5.10 - 3.3.2 Access to information/meetings

(a) to be alerted by Members and the Authority's officers, consultants and others to any emerging 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) to have sufficient advance notice (including receiving agendas, minutes, reports and related papers) of all relevant meetings of the Authority (including occasions at which the officer delegated decisions are taken and joint meetings with other bodies) at which a binding decision may be made (including a failure to take a decision where one should have been taken) and including (whether

formal or informal) meetings between Chief Officer(s)/Head(s) of Service or the Mayor/Deputy Mayor Leader/Deputy Leader of the Council or the Leader/Deputy of the Cabinet or Chairs of Committee where any procedural, lawfulness or other constitutional issues are likely to arise and will have the right to attend and speak at such meetings (see DETR Guidance 'New council constitutions - Guidance to English authorities');

(c) to have the right to attend (including the right to be heard) any meeting of the Authority (including occasions 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) to be a member of the Senior Management Team and to have advance notice of all those meetings, the right to receive agenda, reports and related papers and minutes and to attend and speak;

(e) in carrying out any investigation(s), to have unqualified access to any information held by the Authority and to any officer, consultant or others who can assist in the discharge of his/her functions. This includes confidential e-mails relating to the business of the Authority sent to the Authority including from any Member, whether from a private e-mail address or not.

5.10 – 3.3.3 Relationships

(a) to have direct access to other statutory officers (Head of Paid Service and the Chief Finance Officer/Section 151 Officer) and to keep them (as well as himself/herself) 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) to meet regularly with the Head of Paid Service and the Chief Finance Officer/Section 151 Officer to consider and recommend action/omission 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) to have a close working relationship of respect and trust with the Mayor, Deputy Mayor, the Leader of the Council/Cabinet, the Deputy Leader of the Council/Cabinet, other Group Leaders and Deputy Group Leaders, and Chairs and Vice Chairs of the Authority's committees and sub-committees, with a view to ensuring the effective and efficient discharge of the Authority's business;

(d) to develop effective working liaison and relationship with the Council's External Auditors, the Local Government Ombudsman (LGO), the Housing Ombudsman (HO), the Information

Commissioner (IC), the Office of Surveillance Commissioners (SC), and the Surveillance Camera Commissioner (SCC) (including having the unqualified authority, on behalf of the Council, to complain to the same, refer any breaches or give and receive any relevant information, whether confidential, exempt or otherwise, through appropriate protocols, if necessary) including their successors;

(e) in consultation, as necessary, with all Group Leaders or their Deputies, to defer the making of a formal statutory report under section 5 or section 5A of the Local Government and Housing Act 1989 where another investigative body is involved (including the police, a court or a tribunal);

(f) to make arrangements to ensure effective communication between his/her office and clerks to parish councils on Monitoring Officer and standards issues.

5.10 - 3.3.4 Local Ombudsman Complaints

(a) to 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 whether or not that maladministration has caused injustice;

(b) to prepare reports to Members where considered necessary to bring to their attention issues of importance arising out of complaints made to the Local Government Ombudsman whether or not investigated or maladministration found;

(c) to be consulted by the Head of Paid Service, Chief Finance Officer/Section 151 Officer and Head(s) of Service prior to the making of any compensation payments for alleged or actual maladministration found against the Authority

5.10 - 3.3.5 Housing Ombudsman Complaints

(a) to oversee complaints made to the Housing Ombudsman;

(b) to prepare reports to Members where considered necessary to bring to their attention issues of importance arising out of complaints made to the Housing Ombudsman whether or not investigated or maladministration found;

(c) to be consulted by the Head of Paid Service, Chief Finance Officer/Section 151 Officer and Head(s) of Service prior to the making of any compensation payments for alleged or actual

maladministration found against the Authority.

5.10 - 3.3.6 Statutory Inspection by the Office of Surveillance Commissioners/ Surveillance Camera Commissioner

(a) to oversee statutory inspections periodically made by the Office of Surveillance Commissioners and Surveillance Camera Commissioner;

(b) to prepare reports to Members where considered necessary to bring to their attention issues of importance arising out of statutory inspections and to implement recommendations arising from such statutory inspections.

5.10 - 3.3.7 Standards Matters

(a) to refer relevant matters to the Standards and Appeals Committee or to full Council;

(b) to make arrangements for, prepare reports for, and advise meetings of, the Standards and Appeals Committee or of full Council;

(c) to give informal advice to Member(s) in relation to informal resolution of a complaint;

(d) to prepare any training programme for Members on ethical standards and Code of Conduct issues;

(e) to establish, maintain and publish the statutory registers of Members' Interests;

(f) to receive written requests for dispensations from Members and Co-opted Members of the Authority and to refer such requests to the Head of Paid Service;

(g) to establish, maintain and publish the Register of Gifts and Hospitality relating to Members;

(h) to establish, maintain and publish the Register of Officer Declarations of interests of direct or indirect pecuniary or non-pecuniary interests / gifts or hospitality or closed membership of organisations.

5.10 - 3.3.8 Constitution

(a) to review and monitor the Constitution in accordance with the arrangements set out in the Constitution and to consult with the Head of Paid Service and the Chief Finance/Officer before

taking any report to the relevant body to make recommendations or to report directly to full Council.

5.10 - 3.4 Duty to Report to the Monitoring Officer

5.10 - 3.4.1 To ensure the effective and efficient discharge of the above working arrangements / understandings /rights Members and Senior Officers shall report any breach of statutory duty or material breach of Authority's policy/procedures and other vires or constitutional concerns to the Monitoring Officer as soon as practicable.

5.10 - 3.5 Duty to Promote Better Understanding of the Role of the Monitoring Officer and the duty to Support the Monitoring Officer in the Discharge of His/Her Functions

5.10 - 3.5.1 The Head of Paid Service, the Chief Finance Officer/Section 151 Officer and Heads of Service shall inform and explain the terms of this protocol to their service managers so that they understand this protocol and report concerns accordingly.

5.10 - 3.5.2 The Chief Finance Officer/Section 151 Officer shall ensure that adequate insurance arrangements are in place to protect and safeguards the interests of the Authority and the proper discharge of the Monitoring Officer's role.

5.10 – 4 Conflicts

5.10 - 4.1 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 Head of Paid Service and/or
- may refer the matter to the Council's Deputy Monitoring Officer or
- appoint an external party to act in this matter or in relation to complaints regarding an investigation / investigator and to report back for decision by an officer who has in no actual or perceived conflict.

5.10 – 5 Deputy Monitoring Officer

5.10 - 5.1 The Monitoring Officer will nominate a member of his/her staff to act as Deputy Monitoring Officer when unable to act owing to absence or illness and to assist in the performance of his functions. Due to this requirement, the Council shall comply with its obligation to provide the

Monitoring Officer with such resources, as are in the personal opinion of the Monitoring Officer required, including staff under the Monitoring Officer's control. The Monitoring Officer will keep them briefed on emerging issues.

5.10 - 5.2 The Deputy Monitoring Officer post does not attract such extra protection that is afforded to the Monitoring Officer role but the Authority accepts that, given the importance to the Authority and to the public of getting advice without fear or favour, the Deputy Monitoring Officer post shall when that person exercises Monitoring Officer duties receive the same level of protection which the Monitoring Officer post has in law and under the Authority's Constitution.

5.10 - 6. Advice

5.10 - 6.1 The Monitoring Officer is also available full-time for Members and officers to consult proactively and/or reactively regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to (or do) arise.

5.10 - 6.2 Where the Monitoring Officer is unable to personally act 'owing to absence or illness', and the matter cannot reasonably wait, then the person nominated as his deputy for the purposes of section 5 of the Local Government and Housing Act 1989 by the Monitoring Officer from time to time from amongst his staff shall undertake such duties. It is currently the Principal Solicitor.

5.10 - 7. Interpretation of This Protocol

5.10 - 7.1 The Monitoring Officer shall be responsible for the interpretation of this Protocol.

5.10 - 8. Sanctions for Breach of This Protocol

5.10 - 8.1 Complaints of a breach of this Protocol by an officer, consultant or others (other than a Member) will be referred to the Head of Paid Service for appropriate action to be considered, including disciplinary investigation.

5.10 - 9. Review of Monitoring Officer Protocol

5.10 - 9.1 In order to ensure that the Authority delivers good governance, the Authority shall keep this Monitoring Officer Protocol under regular review and a report on its effectiveness or otherwise shall be made to full Council at least annually.

5.10 - 10. Approval of This Protocol

5.10 - 10.1 This Monitoring Officer Protocol was approved by the Standards and Appeals Committee at its meeting on 30 November 2016.

5.10 - 10.2 Amber Valley Borough Council adopted the Monitoring Officer Protocol at its meeting on 25 January 2017.

5.10 - Appendix A

A non-exhaustive list of Monitoring Officers functions and responsibilities

	Description	Source
	Statutory Reports to full Council	
1.	Duty to report to full Council if at any time it appears to the Monitoring Officer that any proposal by the Authority, by any committee or sub-committee of the Authority, by any person holding any office or employment under the Authority or by any joint committee on which the Authority are represented constitutes, has given rise to, or is likely to, or would give rise to a contravention by such body or person of any enactment or rule of law.	Section 5 of the Local Government and Housing Act 1989
2.	Duty to report to full Council if at any time it appears to the Monitoring Officer that any decision by the Authority, by any committee or sub-committee of the Authority, by any person holding any office or employment under the Authority or by any joint committee on which the Authority are represented constitutes, has given rise to, or is likely to, or would give rise to a contravention by such body or person of any enactment or rule of law.	Section 5 of the Local Government and Housing Act 1989
3.	Duty to report to full Council if at any time it appears to the Monitoring Officer that any omission by the Authority, by any committee or sub-committee of the Authority, by any person holding any office or employment under the Authority or by any joint committee on which the Authority are represented constitutes, has given rise to, or is likely to, or would give rise to a contravention by such body or person of any enactment or rule of law.	Section 5 of the Local Government and Housing Act 1989
4.	Duty to report to full Council on any maladministration or injustice where the Local Ombudsman has carried out an investigation and made such a finding.	Section 5 of the Local Government and Housing Act 1989

	Statutory Reports to Cabinet	
5.	Duty on Monitoring Officer to report to the Cabinet if at any time it appears to him/her that any proposal, decision or omission, in the course of the discharge of functions of the Authority, by or on behalf of the Cabinet, constitutes, has given rise to or is likely to or would give rise to (a) a contravention by the Authority's Cabinet or any person on behalf of the Cabinet, of any enactment or rule of law; or (b) any such maladministration or failure as is mentioned in Part III of the Local Government Act 1974 (but no duty shall arise unless the Local Commissioner has conducted an investigation into the proposal, decision or omission).	Section 5A of the Local Government and Housing Act 1989
	Personal performance by MO	
6.	Duty on Monitoring Officer to personally perform duties under section 5 of the Local Government and Housing Act 1989	Section 5(7) of the Local Government and Housing Act 1989 and Council's Constitution at Article 12.5
7.	Duty on Monitoring Officer to nominate as his/her deputy for the purposes of section 5 of the Local Government and Housing Act 1989 a member of his/her staff to act where the Monitoring Officer is unable to act owing to absence or illness.	Section 5(7) of the Local Government and Housing Act 1989
8.	Duty on Monitoring Officer to consider and report on the adequacy of resources for the performance of his/her duties and for the Authority to provide the Monitoring Officer with such staff, accommodation and other resources as are, in his/her opinion, sufficient to allow those duties to be performed.	Section 5(1)(b) of the Local Government and Housing Act 1989 and the Authority's Constitution at Article 9.5
	Standards	
9.	To assist the Authority to discharge their statutory duty to promote and maintain high standards of conduct by members and co-opted members.	Section 27(1) of the Localism Act 2011
10.	To ensure that a failure to comply with the Authority's Code of Conduct is not dealt with except in accordance with section 28(6) Localism Act 2011 arrangements.	Section 28(6) of the Localism Act 2011

11.	To establish, and maintain a Register of Interests for all 45 Members and also all Co-opted Members of the Authority	Section 29(1) of the Localism Act 2011
12.	To secure that a copy of the Register of Interests for all 45 Members and also all Co-opted Members of the Authority is available for inspection at a place in the Authority's area at all reasonable hours.	Section 29(5)(a) of the Localism Act 2011
13.	To secure that the Register of Interests for all 45 Members and also all Co-opted Members (if any) of the Authority is published on the Authority's website.	Section 29(5)(b) of the Localism Act 2011
14.	To establish, and maintain a Register of Interests for all 12 Members and also all Co-opted Members (if any) of the Aldercar and Langley Mill Parish Council	Section 29(1) of the Localism Act 2011
15.	To establish, and maintain a Register of Interests for all 6 Members and also all Co-opted Members (if any) of Alderwasley Parish Council .	Section 29(1) of the Localism Act 2011
16.	To establish, and maintain a Register of Interests for all 15 Members and also all Co-opted Members (if any) of Alfreton Town Council	Section 29(1) of the Localism Act 2011
17.	To establish, and maintain a Register of Interests for all 16 Members and also all Co-opted Members (if any) of Belper Town Council	Section 29(1) of the Localism Act 2011
18.	To establish, and maintain a Register of Interests for all 12 Members and also all Co-opted Members (if any) of Codnor Parish Council	Section 29(1) of the Localism Act 2011
19.	To establish, and maintain a Register of Interests for all 12 Members and also all Co-opted Members (if any) of Crich Parish Council	Section 29(1) of the Localism Act 2011
20.	To establish, and maintain a Register of Interests for all 9 Members and also all Co-opted Members (if any) of Denby Parish Council	Section 29(1) of the Localism Act 2011

21.	To establish, and maintain a Register of Interests for all 9 Members and also all Co-opted Members (if any) of Dethick, Lea and Holloway Parish Council	Section 29(1) of the Localism Act 2011
22.	To establish, and maintain a Register of Interests for all 12 Members and also all Co-opted Members (if any) of Duffield Parish Council	Section 29(1) of the Localism Act 2011
23.	To establish, and maintain a Register of Interests for all 5 Members and also all Co-opted Members (if any) of Hazelwood Parish Council	Section 29(1) of the Localism Act 2011
24.	To establish, and maintain a Register of Interests for all 21 Members and also all Co-opted Members (if any) of Heanor and Loscoe Parish Council	Section 29(1) of the Localism Act 2011
25.	To establish, and maintain a Register of Interests for all 8 Members and also all Co-opted Members (if any) of Holbrook Parish Council	Section 29(1) of the Localism Act 2011
26.	To establish, and maintain a Register of Interests for all 8 Members and also all Co-opted Members (if any) of Horsley Parish Council	Section 29(1) of the Localism Act 2011
27.	To establish, and maintain a Register of Interests for all 7 Members and also all Co-opted Members (if any) of Horsley Woodhouse Parish Council	Section 29(1) of the Localism Act 2011
28.	To establish, and maintain a Register of Interests for all 7 Members and also all Co-opted Members (if any) of Idridgehay, Alton and Ashleyhay Parish Council	Section 29(1) of the Localism Act 2011
29.	To establish, and maintain a Register of Interests for all 9 Members and also all Co-opted Members (if any) of Ironville Parish Council	Section 29(1) of the Localism Act 2011
30.	To establish, and maintain a Register of Interests for all 9 Members and also all Co-opted Members (if any) of Ironville Parish Council	Section 29(1) of the Localism Act 2011

31.	To establish, and maintain a Register of Interests for all 9 Members and also all Co-opted Members (if any) of Kilburn Parish Council	Section 29(1) of the Localism Act 2011
32.	To establish, and maintain a Register of Interests for all 9 Members and also all Co-opted Members (if any) of Kirk Langley Parish Council	Section 29(1) of the Localism Act 2011
33.	To establish, and maintain a Register of Interests for all 5 Members and also all Co-opted Members (if any) of Mackworth Parish Council	Section 29(1) of the Localism Act 2011
34.	To establish, and maintain a Register of Interests for all 5 Members and also all Co-opted Members (if any) of Mapperley Parish Council	Section 29(1) of the Localism Act 2011
35.	To establish, and maintain a Register of Interests for all 3 Members and also all Co-opted Members (if any) of Pentrich Parish Council	Section 29(1) of the Localism Act 2011
36.	To establish, and maintain a Register of Interests for all 8 Members and also all Co-opted Members (if any) of Quarndon Parish Council	Section 29(1) of the Localism Act 2011
37.	To establish, and maintain a Register of Interests for all 21 Members and also all Co-opted Members (if any) of Ripley Town Council	Section 29(1) of the Localism Act 2011
38.	To establish, and maintain a Register of Interests for all 7 Members and also all Co-opted Members (if any) of Shipleigh Parish Council	Section 29(1) of the Localism Act 2011
39.	To establish, and maintain a Register of Interests for all 5 Members and also all Co-opted Members (if any) of Shottle and Postern Parish Council	Section 29(1) of the Localism Act 2011
40.	To establish, and maintain a Register of Interests for all 10 Members and also all Co-opted Members (if any) of Smalley Parish Council	Section 29(1) of the Localism Act 2011

41.	To establish, and maintain a Register of Interests for all 12 Members and also all Co-opted Members (if any) of Somercotes Parish Council	Section 29(1) of the Localism Act 2011
42.	To establish, and maintain a Register of Interests for all 10 Members and also all Co-opted Members (if any) of South Wingfield Parish Council	Section 29(1) of the Localism Act 2011
43.	To establish, and maintain a Register of Interests for all 8 Members and also all Co-opted Members (if any) of Swanwick Parish Council	Section 29(1) of the Localism Act 2011
44.	To establish, and maintain a Register of Interests for all 5 Members and also all Co-opted Members (if any) of Turnditch and Windley Parish Council	Section 29(1) of the Localism Act 2011
45.	To establish, and maintain a Register of Interests for all 5 Members and also all Co-opted Members (if any) of Weston Underwood Parish Council	Section 29(1) of the Localism Act 2011
46.	To secure that a copy of all 31 parish/town council's Register of Interests is available for inspection at a place within the Borough of Amber Valley at all reasonable hours	Section 29(6)(a) of the Localism Act 2011
47.	To secure that a copy of all 31 parish council's Register of Interests is published on Amber Valley Borough Council's website	Section 29(6)(b) of the Localism Act 2011
48.	To provide all 31 parish councils with any data it needs to comply with its requirement to publish its register on its website where it has one.	Section 29(6)(c) of the Localism Act 2011
49.	To receive notification of any disclosable pecuniary interest on taking office	Section 30(1) and (2) of the Localism Act 2011. Council's Constitution Part 5.1
50.	To cause the interests notified to be entered into the relevant Register of Interests (whether or not they are disclosable pecuniary interests)	Section 30(4) of the Localism Act 2011 Council's Constitution Part 5.1

51.	To receive notification of disclosable pecuniary interests in matters being considered at meetings or by a single member	Section 31(3) of the Localism Act 2011 Council's Constitution Part 5.1
52.	To consider whether an interest (whether or not a disclosable pecuniary interest) is a sensitive interest for the purposes of the Localism Act 2011	Section 32 of the Localism Act 2011 Council's Constitution Part 5.1
53.	To be the proper officer to receive written requests for dispensations	Section 33 of the Localism Act 2011 Council Constitution Part 3
54.	To be the lead officer providing advice to individual Members of the Code of Conduct for Members including probity	Council's Constitution at Article 12.3
55.	To deliver induction training to Members and refresher training on the Code of Conduct for Members and evaluate its effectiveness, taking any necessary follow-up action	Section 27(1) of the Localism Act 2011
56.	To promote the Seven Principles of Public Life and ensure the Code of Conduct for Members when viewed as a whole is consistent with these Seven Principles	Section 28(1) of the Localism Act 2011
57.	To receive complaints under the Member Conduct Complaint Process in respect of any Borough Councillor or any Parish Councillor	Council's Constitution Article 12.3 and Part 5.1 Member Complaints Procedure
58.	Upon receipt of a complaint to send a (redacted) copy of the complaint to the Member and the Independent Person.	Council's Constitution Part 5.1 Member Complaints Procedure
59.	To consult with the Independent Person as regards the initial assessment of the complaint.	Council's Constitution Article 12.3 and Part 5.1 Member Complaints Procedure
60.	To arrange for an investigation to be undertaken where the Monitoring Officer decides such an investigation is necessary (including appointing an investigator)	Council's Constitution Article 12.3, Part 3 and Part 5.1 Member Complaints Procedure

61.	To convene a Hearings Panel and arrange a local hearing into the complaint in consultation with the Independent Person where no informal or conciliated outcome	Council's Constitution Article 12.3, Part 5.1 Member Complaints Procedure
62.	To arrange training for the sanctioned Member and to evaluate effectiveness of training delivered	Council's Constitution Part 5.1 Member Complaints Procedure
63.	To undertake periodic audits of all Register of Interests of Members and Co-opted Members, and take any follow-up action needed in a proactive manner	Good practice.
64.	To make recommendations for revisions or improvements in the Code of Conduct for Members	Council Constitution Article 12 Good practice
65.	To assist the Council evolve their standards needs by seeking out best practice including raising and embedding ethical awareness through use of the published reports of the Committee on Standards in Public Life	Council Constitution Article 15
Register of Gifts and Hospitality		
66.	To establish and maintain a Register of Gifts and Hospitality for Members and Co-opted Members	Council's Constitution Part 5.1
67.	To periodically inspect each department's 'Hospitality Book' and take any follow-up action needed in a proactive manner.	Good practice
68.	To periodically inspect the register of officer declarations under section 117 of the Local Government Act 1972 (at least annually)	Council's Constitution Part 5.7 Good practice
Constitution		
60	To assist the Council in their duty to establish and maintain up to date their Constitution	Section 9P of the Local Government Act 2000 Council Constitution Article 12.3 and 15
61.	To provide advice on reviewing and revisions of the Constitution to the Standards and Appeals Committee	Council's Constitution Article 12.3 and 15

62.	To submit a report direct to the Council in any case where the Monitoring Officer's advice is not accepted	Council's Constitution Article 15.3
63.	To make changes to the Constitution agreed by the Council and changes in the law and to make minor inconsequential amendments such as to correct typographical errors and to ensure that the Constitution is maintained up-to-date, and any such changes to be communicated to all Members of the Council	Council's Constitution Article 12.3
64.	To ensure that a copy of the Constitution is made available to each Member of the Council upon delivery to the Monitoring Officer of that Member's declaration of acceptance of office on the Member first being elected to the Council	Council's Constitution Article 16
65.	To assist ensuring that copies of the Constitution are available for inspection by the public at all reasonable hours at the Authority's principal office	Section 9P of the Local Government Act 2000 Council Constitution Article 16
66.	To assist ensuring that the Authority supplies a copy of the Constitution who requests a copy and pays any reasonable fee set by the Authority for such copy	Section 9P of the Local Government Act 2000
67.	To ensure compliance with the Local Transparency Code 2015 as regards the Constitution being published on the Authority's website	Local Government Transparency Code 2015
68.	To assist the Mayor uphold and promote the purposes of the Constitution and to interpret the Constitution	Council's Constitution Article 5
69.	To assist the Mayor discharge the responsibility of being the conscience of the Council	Council's Constitution Article 5
70.	To be the proper officer for the purpose of the access to information rules including as regards whether reports should be excluded due to exempt information	Council's Constitution Part 3 and Part 4.2
71.	To receive requests under the common law 'need to know' and to decide	Council's Constitution Part 3
72.	To require the calling of an Extraordinary meeting of the Council	Council's Constitution Part 4.1

73.	To accept or reject and record Motions on Notice from any Member of the Council	Council's Constitution Part 4.1
74.	To provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all members	Council's Constitution Article 12
75.	To receive copies of certificates under the Local Authorities (Contracts) Regulations 1997 for the purposes of the Local Authorities (Contracts) Act 1997	Regulation 4 of the Local Authorities (Contracts) Regulations 1997
76.	To review a decision to include land in the Authority's list of assets of community value under section 92 of the Localism Act 2011	Council Constitution Part 3
	Annual Governance Statement	
77.	To actively participate as a member of the Strategic Corporate Governance Group within the Council and assist in the production of the Annual Governance Statement and to proactively reduce risk to the Authority.	Good practice
78.	To liaise and constructively engage with the Council's external auditors and the police	Good practice
	Maladministration and injustice	
79.	To be the lead contact officer with the Local Government Ombudsman	Good practice
80.	To 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 whether or not that maladministration has caused injustice	Good practice
81.	To prepare reports to Members where considered necessary to bring to their attention issues of importance arising out of complaints made to the Local Government Ombudsman whether or not investigated or maladministration found.	Good practice
	Whistle-blowing	

82.	To be responsible for the effective operation of the Council's whistle-blowing policy (public interest disclosures)	Good practice
83.	To be the Whistleblowing Officer	Council Decision
84.	To assist in ensuring compliance with the Council's Anti-Fraud and Corruption Policy	Good practice
85.	To assist in ensuring compliance with the Council's Anti-Bribery Policy	Good practice
Freedom of Information		
86.	To be the Freedom of Information Officer with authority to take all appropriate action in connection with the Freedom of Information Act 2000 to ensure that all the Council's operations covered by the Act comply with the statutory requirements	Council Decision
87.	To act as the qualified person for the purposes of section 36 of the Freedom of Information Act 2000	Section 36 of the Freedom of Information Act 2000.
Environmental Information Regulations		
88.	To be the lead officer on requests for information made under the Environmental Information Regulations 2004, ensuring a coherent handling of requests for information across the legislative framework	Good practice
Data Protection - Councillor notification to ICO		
89.	To liaise with the Data Protection Officer with authority to take all appropriate action in connection with the Data Protection Act 1984 to ensure that all the Council's operations covered by the Act comply with the statutory requirements	Council Constitution

	Member Administration	
	To be one of the proper officers to accept the following:- Declarations of Acceptance of Office (Mayor, Deputy Mayor and Councillors); Written notice of Resignation of Councillors; Notice of relationships to members or senior officers given by candidates for any appointment by the Council Request for inspection of documents by members; Notices under the Local Government (Committees and Political Groups) Regulations 1990.	Council's Constitution
	To be responsible for the custody of the seal of the Council and general documents including maintenance of the terrier of property	Council's Constitution
	Legal Representation and Action	
	To represent the Council in order to conduct proceedings and act as advocate in connection with any tribunal, panel, board or other judicial or quasi-judicial process	Council's Constitution
	Authority to take all necessary action leading to issue by court of warrant of possession	Council's Constitution
	To institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the Monitoring Officer considers that such action is necessary to protect the Council's interests.	Council's Constitution
	To sign any document which is necessary to any legal procedure or proceedings on behalf of the Council by way of authentication unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person	Council's Constitution
	Covert Surveillance (RIPA)	
	To oversee, review and revise the Council's policy under the Regulation of Investigatory Powers Act 2000	Good practice

	To be the lead officer with the Office of the Surveillance Commissioner providing statistical returns	Good practice
	To be the lead officer in respect of the periodic statutory inspections undertaken by the Surveillance Commissioner and to take any necessary follow-up action	Good practice
	Reports	
	To receive all Council/Cabinet and their committees/sub-committees written reports in good time to ensure good governance and to undertake governance checks upon each report to ensure that the Authority is protected.	Good practice
	To be entitled to be present to give advice on oral reports given to Council and their committees/sub-committees	Good practice
	Bias/Perceived Bias	
	To deliver training on, advice and embed an effective understanding of the concept of bias/perceived bias which stands outside the Members' Code of Conduct	Good practice
	To ensure Members and Officers appreciate the need for separation out of roles where conflicts of interest arise and/or where there are perceived conflicts of interest (e.g. outside bodies) and that they stand aside in the public interest	Good practice
	Health and Safety	
	To ensure compliance with the Council's Health and Safety obligations	Good practice
	To raise awareness of the Corporate Manslaughter and Corporate Homicide Act 2007 and relevant responsibilities imposed	Good practice
	Criminal Offences	

	To report to the police for investigation cases which might, in the view of the Monitoring Officer, amount to a criminal offence (such, for example, of breach of section 34 of the Localism Act 2011 in respect of standards in Chapter 7 of that Act and/or the common law offence of misconduct in public office)	Good practice
	Miscellaneous	
	To discharge such other functions, duties and powers as may from time to time be allocated to the Monitoring Officer by law or by the Authority	Law and/or decision of the Authority
	Corporate Leadership	
	To contribute to the effective corporate leadership of the Authority	Good practice

5.10 - Appendix B – Extract from ‘Conflicts of interest’ report issued by the National Audit Office

Part 1

Defining conflicts of interest

What are conflicts of interest?

- 1.1 A conflict of interest is a set of circumstances that creates a risk that an individual’s ability to apply judgement or act in one role is, or could be, impaired or influenced by a secondary interest. It can occur in any situation where an individual or organisation (private or government) can exploit a professional or official role for personal or other benefit. This definition is based on generally accepted standards.
- 1.2 Conflicts can exist if the circumstances create a risk that decisions **may** be influenced, regardless of whether the individual actually benefits. The perception of competing interests, impaired judgement or undue influence can also be a conflict of interest.
- 1.3 Conflicts might occur if individuals have, for example:
- a direct or indirect financial interest;
 - non-financial or personal interests; or
 - conflicts of loyalty where decision-makers have competing loyalties between an organisation they owe a primary duty to and some other person or entity.
- 1.4 Conflicts of interest exist on a spectrum of severity. In public services, they can take many forms, for example:
- accepting hospitality or gifts from private sector companies during a procurement exercise;
 - providing policy advice to government while also working, or consulting, for industry;
 - awarding contracts to suppliers in which the decision-maker has a personal or financial interest; and
 - in the delivery of public services, where individuals or organisations assess service needs as well as providing the services.

Consequences of not recognising the risk of conflicts

- 1.5 It is important to manage conflicts of interest. Not only can they bring decision-making into disrepute but often the perception of conflict alone is enough to cause concern. This can lead to reputational damage and undermine public confidence in the integrity of institutions.
- 1.6 A failure to recognise a conflict of interest can give the impression that the organisation or individual is not acting in the public interest. More seriously, if left unresolved, some conflicts can result in criminal action, for example fraud, bribery or corruption through abuse of position.
- 1.7 There is also a potential risk of legal challenge to decisions made by public bodies. If a decision-maker has a conflict of interest then the decision is potentially vulnerable and could be overturned on judicial review.¹

Background Papers:

Striking the Balance - upholding the 7 principles in regulation (September 2016) - Committee on Standards in Public Life

Conflicts of interest (January 2015) – National Audit Office

Investigation Report London Borough of Barnet by Claer Lloyd-Jones (August 2014)

Options for Strengthening Future Governance Arrangements by Claer Lloyd-Jones (August 2014)

Ethics in Practice: Promoting Ethical Conduct in Public Life (July 2014) – Committee on Standards in Public Life

Ethical standards for providers of public services (June 2014) – Committee on Standards in Public Lifetime

Strengthening Transparency Around Lobbying (November 2013) – Committee on Standards in Public Life

Standards Matter: A review of best practice in promoting good behaviour in public life (January 2013) – Committee on Standards in Public Life

The Committee of Inquiry into the Conduct of Local Authority ('the Widdicombe Report') (1986)