

Part 5.7 - Statutory Governance Officer Protocol

Protocol on good governance for the Head of
Paid Service, Chief Finance Officer (s.151
Officer) and Monitoring Officer

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Introduction

This protocol provides general information, advice and sets expectations for the three statutory roles of head of paid service, chief finance officer and monitoring officer (collectively referred to as Statutory Governance Officers), aimed at enabling them to effectively work together in delivering good governance within the Slough Borough Council (the Council).

These roles are senior, critical and influential positions within the Council. While these three roles have a particular responsibility for stewardship they also come with significant responsibility. Best practice in working arrangements will enable the post holders to perform to the best of their ability. However, where the posts do not operate effectively as a team, or their advice is not afforded proper respect, governance and decision making suffers and the consequences for local communities can be severe.

It is important that the Statutory Governance Officer posts are understood, respected, and given the support required for the role to be undertaken. Additionally, it is important for those in role to understand their roles and responsibilities and the framework within which they operate.

The roles:

The **Head of Paid Service** will often be the Council's Chief Executive. The post holder is the lead council advisor and managerial leader and responsible for ensuring that all the Council's functions are properly co-ordinated, the number, grades and organisation of staff are sufficient to deliver the Council's functions and staff are properly appointed and managed. The post holder is also chief advisor to the Council and responsible for ensuring the best advice is available to the Council at all tiers.

The **Chief Finance Officer** (often referred to as the Section 151 officer), is responsible for the proper administration of the authority's financial affairs. The chief finance officer manages the budget process and must report to the Council on the robustness of the estimates for expenditure and income within the budget, and the adequacy of the proposed financial reserves. The post holder will lead on the Council's financial functions and ensure they are fit for purpose. The post holder must be professionally qualified by virtue of membership of one of the prescribed bodies and suitably experienced.

The **Monitoring Officer** is responsible for ensuring lawfulness and fairness in the operation of the local authority's decision-making process. They are responsible for the maintenance, interpretation and application of the authority's constitution, have a key role in promoting and maintaining high standards of conduct of councillors and officers. The post holder should maintain a register of members' interests and to make determinations on member's sensitive interests.

The law requires that:

- the Head of Paid Service or Chief Finance Officer may not also be the Monitoring Officer to provide balance and avoid conflicts of interest.
- the Council is to provide each with staff, accommodation, and resources sufficient to allow them to perform their duties; and
- each post holder has distinct duties to report to Full Council on certain matters; and

- the Chief Finance Officer and Monitoring Officer must perform their duties personally and appoint a deputy to perform the duties when the post holder is unable to act owing to absence or illness. Such an appointment is a personal matter for the post holder and cannot be determined by the Council.
- there are to be employment protections in respect of these roles.

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The Seven Principles of Public Life

Like all public office holders, the seven principles of public life (sometimes known as the Nolan Principles) apply to these roles and are central to the ethical framework and standards in which they operate. All public office holders are both servants of the public and stewards of public resources. The Statutory Governance Officers play a critical role in embedding these principles across the work of their organisation and the wider public service system. Consequently, the principles should be reflected in the post-holders values and behaviours.

The seven principles of public life are:

Selflessness - Holders of public office should act solely in terms of the public interest.

Integrity - Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity - Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability - Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty - Holders of public office should be truthful.

Leadership - Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

The Golden Triangle

Through working together, the roles ensure good administrative, financial and ethical governance of a local authority in the exercise of its functions. The Statutory Governance Officers are expected to advise clearly with impartiality and integrity. This can mean delivering challenging messages which makes it more important the three work closely together to connect properly with key stakeholders across the Council. For this reason, they are often referred to collectively as the governance 'golden triangle'.

The object of this protocol is to assist the Statutory Governance Officers and the wider Council in maximising joint working arrangements to best effect. They must take their responsibilities seriously and apply their thinking in practice to a host of new situations, variables, and grey areas. This protocol aims to assist the officers in the exercise of their discretion and their relationship with each other, the authority, and key agencies such as the auditor. Working together is key.

This protocol is based on the Code of Practice on Good Governance for Local Authority Statutory Officers produced by Solace, CIPFA and LLG. It supplements other guidance and best practice to support each of the post holders individually.

The Seven Principles of the Golden Triangle

While the seven principles of public life apply to all public office holders and indeed all those in other sectors delivering public services, expectations of the Statutory Governance Officers in local authorities go further. To support these officers, the protocol sets out seven principles of the golden triangle. The principles are intended to provide guidance to the Statutory Governance Officers concerned, explain the roles more clearly to those operating closely with these officers, and provide a context for the roles and requirements.

The seven principles of the Golden Triangle are:

1. Respect Roles & Responsibilities
2. Act Wisely: A duty of enquiry & the exercise of statutory functions
3. Be Robust in working arrangements
4. Resource up: Get the tools to do the job
5. Build Resilience: Appointing Deputies
6. Champion good decision making
7. Effective Oversight: External companies and entities of the authority

1. Understand Roles and Responsibilities

Principle

1.1 The Statutory Governance Officers must work collaboratively to achieve high standards of corporate governance and uphold the seven principles of public life. This requires skills, knowledge, experience, and sufficient expertise in the governance requirements necessary to administer a local authority.

1.2 Requirements of the Statutory Governance Officers:

- A) They must understand their own statutory roles and what is required to adequately perform them. They must seek to inform themselves of the role of the other officers.
- B) They should each ensure arrangements are in place to allow all three to perform their roles to the full.
- C) They should prepare and give their advice comprehensively, professionally and impartially in accordance with the Nolan principles and encourage other officers to do the same.
- D) They must provide mutual trusted support wherever possible but also recognise the separation of powers and duties between the three roles, so each feels able to demonstrate independence and challenge in their meetings to deliver better governance outcomes across the authority.
- (E) They should seek to build and maintain healthy, constructive relationships with each other through regular dialogue, recognising the dangers of conflict within the group and seeking to resolve it in a positive way.
- (F) They should also seek to build constructive relationships with other key members and officers who discharge important responsibilities, such as safeguarding and data protection.

2. Act Wisely: A duty of enquiry & the exercise of statutory functions

Principle

2.1 To be effective and bring about the positive impact and disciplines inherent in the three statutory roles, the post-holders must actively collaborate when decisions are being made. They need to have strategic influence and be present when discussions of significance take place. They have a personal and organisational duty to enquire about and give advice on the proposals, activities, intentions, actions, or omissions of the authority that may be taking place with significant financial or legal implications. To do otherwise is a dereliction of that duty. The exercise of the statutory functions, and the reporting duties placed upon the Chief Finance Officer and the Monitoring Officer require them to decide whether circumstances trigger their personal duty to act.

It is in the authority's interest for the Statutory Governance Officers to take time to consider the matter, explore what further options or assistance may be available and to seek alternative means to achieve the objects for which the duties were enacted, rather than exercising their duty immediately.

2.2 Requirements

- A) The Statutory Governance Officers should be seen as playing an important role in key decisions and policy making undertaken by the Council and play a positive and influential role in ensuring the proper functioning and good management of the Council and its strategic leadership.
- B) The roles of the Statutory Governance Officers are articulated in Articles 12 of the Council's Constitution. The Statutory Governance Officers may individually request that an extraordinary meeting of Full Council is convened in addition to ordinary meetings and the Monitoring Officer may require an item of business to be put on the agenda. The Monitoring Officer and Chief Finance Officer may require a special meeting of Cabinet to be called in addition to ordinary meetings and may include an item for consideration on the agenda of any executive meeting. The Statutory Governance Officers can be required to attend the Audit and Corporate Governance Committee and be requested by that Committee to investigate any concerns of impropriety, financial mismanagement or system failures and to report back to the Committee.
- C) The Statutory Governance Officers, or their senior staff, should ensure that they are consulted by other officers across the Council at an early stage on new policy proposals and on matters which have potential significant financial, legal or ethical implications. The arrangements should require that the relevant chief officer should always consult with them.
- D) Statutory Governance Officers must not allow themselves to be placed in a position where, in their opinion, workloads or other factors prevent them from exercising their duties, including that of enquiry.
- E) The Monitoring Officer is required to maintain and keep under review the Council's Whistleblowing Policy and ensure complaints are investigated appropriately, including

complaints against the Head of Paid Service. Complaints about the Monitoring Officer or Chief Finance Officer should be dealt with by the Head of Paid Service.

- F) The Statutory Governance Officers should seek to resolve issues before they become reportable by exploring legitimate alternatives and avoid issuing a report where permissible. Prior to issuing a report, the post holder must consult with the other Statutory Governance Officers as required by law.

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3. Robust working arrangements

Principle

3.1 The Statutory Governance Officers' duties concern any proposal, decision, course of action or omission of the authority. They need to have access to all data, reports, and parts of the Council that will provide that information, as an early warning system, or as they happen to be able to form their opinions and to fulfil the requirements of their statutory duties.

3.2 Requirements

- A) There must be regular meetings between the Statutory Governance Officers to review current and likely future issues that will raise political, financial, legal, staffing or other issues that may impact on their statutory duties. Minutes should be kept of all meetings to evidence when issues were reported and discussed, and any advice given.
- B) The Statutory Governance Officers should also make time for discussion between each other and their chief officer colleagues, their deputies and audit to consider financial, legal, constitutional or ethical implications of other matters that may arise.
- C) The Chief Finance Officer and Monitoring Officer should have a clear and direct relationship to the Head of Paid Service (chief executive) normally through line management or other equivalent arrangement.
- D) The Statutory Governance Officers should ensure that each other, colleagues and the Council are kept up to date on changes in professional practices and the law which are relevant to the carrying out of the Council's activities via training, reports or briefing notes to officers and members.
- E) The Statutory Governance Officers should maintain good working relations with the Head of Internal Audit and the external audit service, including access to internal and external audit reports. The Statutory Governance Officers meetings should include the regular involvement of the senior auditor and regular liaison should take place with the Council's external auditor.
- F) The Statutory Governance Officers should maintain positive working relationship with external bodies as required to fulfil their individual duties. In particular the Chief Finance Officer should have a positive working relationship with CIPFA and other local government finance networks, the Head of Paid Service should have a positive working relationship with SOLACE, neighbouring local authorities and statutory partners, including the police and

health bodies and the Monitoring Officer should have positive working relationships with the Local Government and Social Care Ombudsman and clerks and members in the parish councils within Slough.

- G) The Statutory Governance Officers must have access to brief the leader, other leading members of the Council, the Mayor, committee chairs and political group leaders, to discuss options, potential policies, decisions, and the required steps to deliver good governance. The Statutory Governance Officers must comply with the Council's Member and Officer Relations Protocol and the Head of Paid Service, acting as Chief Executive, should approve any requests by other officers (with the exception of political assistants) to attend a political group meeting, with particular consideration being given to the appropriateness of attending political group meetings with non-councillors in attendance.
- H) The Statutory Governance Officers have authority: -
- a. to attend meetings, both formal or informal, between chief officers and members of the council or committee chairs with advance notice of any procedural, vires or other constitutional issues are expected to arise.
 - b. to attend meetings of the corporate leadership team with advance notice of the agenda and reports.
 - c. to see all documents and information held by or on behalf of the Council, or held by any officer, member or contractor. This right does not extend to documents and information held by or on behalf of any political group or which relates to an individual member issue or any information held by a contractor which can be refused on the grounds of confidentiality.
 - d. to require any council officer, member, related entity or contractor to provide an explanation of any matter under investigation.
 - e. to report to the Council, and its Cabjnet or committees, including an ability to present written reports and to attend and advise orally.
 - f. to have access to one another and to leading members and the auditor.
 - g. after consultation with one another, to notify the police, the Council's auditors and other regulatory agencies of concerns in respect of any matter and to provide them with information and documents in order to assist them with their statutory functions; and
 - h. to obtain, at the authority's expense, financial, legal or other advice, either internally or from an independent external lawyer or consultant on any matter which it is believed may be a reportable incident.
- I) The Statutory Governance Officers have a positive duty to report illegality, fraud, or corruption to the relevant authorities. The Council's whistleblowing policy confirms that the Monitoring Officer should consider a complaint against the Head of Paid Service and the Head of Paid

Service should consider a complaint against the Monitoring Officer or the Chief Finance Officer.

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4. Resource up: Get the tools to do the job

Principle

4.1 The Council is required to provide the Statutory Governance Officers with staff, accommodation, and resources sufficient to allow their individual statutory duties to be performed.

This requires consideration of the skillset and knowledge of the individual, and the working arrangements by which the Statutory Governance Officers can be informed, participate and engage across the Council. It also covers the specific resources needed with respect to the duty to report.

4.2 Requirements

- A) The Statutory Governance Officers must be individually competent and possess the knowledge and skills required and ensure that staff acting in support of their roles are adequately trained and up to date.
- B) The Statutory Governance Officers must make clear (and satisfy themselves) as to what staff, accommodation and other resources are necessary to perform their duty.
- C) The Statutory Governance Officers should seek to be prudent in stating the staff, accommodation, and other resources they require, acting in accordance with the duty to achieve best value and to be aware of the wider financial, organisational and political environment within which they operate.

5. Build Resilience: Appointing Deputies

Principle

5.1 The statutory duties of the Chief Finance Officer and Monitoring Officer are to be performed personally. Additionally, officers are to make proper provision for where they may be absent or ill by nominating a deputy. The appointment of the deputy is a matter for the individual statutory officer, not the Council.

There is no equivalent requirement for the Head of Paid Service, but it is practical for similar arrangements to be put in place.

Good governance is a wider responsibility, and the Statutory Governance Officers should ensure that there is an understanding and a shared approach to good governance embedded within the organisation, with skills developed across the authority. This wider understanding will assist in building resilience.

Equally, the Statutory Governance Officers should be mindful of the statutory obligations placed on other officers e.g. the statutory scrutiny officer.

5.2 Requirements

- A) The Chief Finance Officer and monitoring officer must each nominate at least one officer to act as their deputy in the event of their absence or illness.
- B) The Head of Paid Service should make arrangements for deputisation of their role. The role of civil contingencies leadership requires co-ordination of cover 24 hours a day, 365 days a year.
- C) The Statutory Governance Officers should seek to ensure robust arrangements are made to embed governance awareness across the Council and develop staff in a manner which ensure a sustainable approach.
- D) The Statutory Governance Officers should ensure that other officers and councillors are reminded of their own statutory obligations.

6. Champion good decision making

Principle

6.1 A focus on decision making is at the heart of the statutory officer responsibilities.

The Council is a body of members and its officers, created and empowered by statute, to make decisions that meet the requirements of statutes, law and good governance.

Decisions must be easy to understand, lawful, implementable, and made in public or based on the principles of transparency and openness. It is the role of the Statutory Governance Officers to ensure this happens, and to act swiftly where the authority falls short.

6.2 Requirements

- A) The Statutory Governance Officers must be satisfied that the Council has appropriate procedures in place and the officers should be able to be satisfied that the report-writer and decision maker have correctly asked themselves the necessary questions and received sufficient professional advice and evidence to be able to make, and have made, a lawful decision.
- B) All draft reports to the Council and its cabinet or committees should as a matter of routine be cleared with the Monitoring Officer and Chief Finance Officer or their senior staff to ensure it contains the correct content and comments on legal, financial, and other relevant matters such as equality considerations, risk and viable alternative options.
- C) The Statutory Governance Officers should ensure that attention has been paid to resident and stakeholder consultation and engagement in report writing and decision making where appropriate. External perspectives are highly relevant in informing good decision making and preventing injustice.

The quality of reports and advice results in member and other decision makers feeling they have been given robust, impartial, and clear advice on matters for their consideration.

7. Effective Oversight: External companies and entities of the authority

Principle

7.1 Where a company or separate legal entity is effectively under the control of the Council, the legislation and controls for the conduct of the Council also apply to that company.

It is a responsibility of the Statutory Governance Officers to understand, and to ensure that their Council understands:

- A) the need for the company/ entity
- B) the arrangements for the Council's interest in the company/entity
- C) that the business case for establishing / acquiring them was sufficient
- D) that business plans and delivery remain relevant to that business case
- E) that the financial and social objectives remain relevant to that business case
- F) that there are proper and transparent governance arrangements for control of the authority's interests, including the identification and management of conflicts of interest, and proper arrangements for scrutiny and accountability.

The external company must also have independent governance arrangements in place, and the Directors must meet their obligations to act on its behalf.

7.2 Requirements

- A) The Statutory Governance Officers must be aware of the local authority's interests in external companies or bodies and the decisions of those bodies that are to be reserved to the Council as a member or investor. They must ensure that there are reporting mechanisms in place for issues of financial, legal or ethical concern in relation to those external companies or bodies.
- B) The Statutory Governance Officers should keep up to date with performance against the business plan and on the social and financial returns on investment in respect of those external companies or bodies that the Council holds an interest in and take appropriate action where this highlights matters of concern.
- C) The Statutory Governance Officers should recognise the need for independent governance arrangements within the company, and the obligation of Directors to act on its behalf.

- D) The Statutory Governance Officers must assist those involved in the affairs of the Council and the Council's companies or bodies to understand those conflicts of interest that will arise between them from time to time; especially where an officer or member of the authority is also a director of, or working for the company or body.

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In times of difficulty:

From time to time, the Council may find itself in financial difficulty, or suffering the results of poor administration or decision making. In such situations, it is the role of the Statutory Governance Officers to work together to flag concerns as early as possible.

The Chief Finance Officer holds a personal duty to report to the authority if:

- A) a decision is made which would involve the authority incurring unlawful expenditure
- B) a decision is made to take an unlawful course of action which would cause a financial loss or deficiency on the part of the authority
- C) a person makes an unlawful entry in the accounts
or
- D) the expenditure of the authority incurred in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.

The Monitoring Officer holds a personal duty to report to the Council if they think a proposal, decision, or omission by a decision maker of the authority contravenes the law. A duty also arises in respect of any maladministration or failure where the Local Government and Social Care Ombudsman has investigated.

Before issuing a report, the Chief Finance Officer or Monitoring Officer must first consult (so far as is practicable) both with the Chief Executive and each other. The Chief Finance Officer and Monitoring Officer should also consider what meetings and information they require access to in order to fulfil their reporting duties. The Chief Finance Officer and Monitoring Officer should also consider whether to consult their representative bodies and any other public body, such as a Government Department, prior to exercising their functions.