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Code of Practice on Good Governance

for

Local Authority Statutory Officers

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# Introduction

The Code of Practice for Good Governance provides advice and sets expectations for the three statutory roles of head of paid service, chief finance officer and monitoring officer, aimed at enabling them to effectively work together in delivering good governance within the authority.

These roles are senior, critical and influential positions within councils. For individuals, it is a privilege to undertake the work, delivering positive results with a tangible impact. While these three roles have a particular responsibility for stewardship they also come with significant responsibility. When done well, the post-holders can leave a Council with a lasting, inspiring legacy. Best practice in working arrangements will enable the post holders to perform to the best of their ability. However, as recent failures have clearly demonstrated, 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 these Statutory 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 the power that they wield, its potential to impact on others and the responsibility that comes with it.

**The roles:**

The core **Chief Executive** role has three overlapping elements: acting as lead council advisor, managerial leader and formal ‘Head of Paid Service’. They are responsible for the design, delivery, co-ordination and integration of council functions, the management arrangements including the accountability of functions and staff. They (or their nominee) are responsible for the numbers, grades, roles appointment and discipline of staff. They are 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 authority on the robustness of the estimates for expenditure and income within the budget, and the adequacy of the proposed financial reserves.

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 and interpretation of the authority’s constitution, have a key role in promoting and maintaining high standards of conduct and should (according to the statutory Guidance) also be the ‘proper officer’ for the purposes of publication of decisions and access to information. The monitoring officer maintains a register of members’ interests and to makes 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 authority is to provide each with staff, accommodation, and resources sufficient to allow them to perform their duties; and
* there are to be employment protections in respect of these roles.

# 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. The three positions 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 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 authority. For this reason, they are often referred to collectively as the governance ‘golden triangle’.

The object of this Code is to assist the three officers and their authorities 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 Code 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.

In supporting their members, Solace, CIPFA and LLG have distinct sets of professional standards and guidance to assist the chief executive, chief finance officer and the monitoring officer. For example:

* Solace has established the ‘Local Government Chief Executives' Development Hub’ as part of the chief executive training and development programme.
* CIPFA have issued a ‘Statement on the role of the Chief Finance Officer in Local Government’ and an accompanying briefing on ‘Balancing local authority budgets and section 114 notices; and
* LLG have produced a ‘Monitoring Officer Protocol’, adopted by many local authorities, and published a ‘Monitoring Officer Handbook’ alongside other relevant materials such as the ‘Code of Governance on the Governance of Council Interests in Companies’, and have developed LLG Inspire to develop the Monitoring Officers of the future.

The Code is recognised by Solace, CIPFA and LLG. Members are expected to uphold the seven principles, which set requirements for individual officers and their authorities.

# 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 three statutory officers in local authorities go further. To support these officers, we set out seven principles of the golden triangle. The principles are intended to provide guidance to the three officers concerned, explain the roles more clearly to those operating closely with these statutory officers, and provide context for conversations about the roles, the requirements and inaction.

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

# Understand Roles and Responsibilities

## Principle

1.1 The three post-holders 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 three statutory 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.

# 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 officer 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 three statutory officers should be seen as playing an important role in key decisions and policy making undertaken by a local authority and play a positive and influential role in ensuring the proper functioning and good management of the local authority and its strategic leadership.

B) The roles of the three statutory officers should be articulated within the local authority’s constitution, clearly stating the rights of officers to attend meetings, have access to documents, to give advice in writing and in person, and to produce reports for the consideration of the Council’s decision-making bodies.

C) The three statutory officers, or their senior staff, should ensure that they are consulted by other officers across the local authority 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 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 three statutory officers should have access to whistleblowing allegations and complaints relevant to their functions.

F) The monitoring officer and chief finance officer, together with the head of paid service, must always seek to resolve issues before they become reportable by exploring legitimate alternatives and avoid issuing a report where permissible.

# Robust working arrangements

## Principle

3.1 The statutory 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 organisation 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.

## **Requirements**

1. There must be regular meetings between the three statutory 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.
2. The statutory 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.
3. 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.
4. The statutory officers should ensure that each other, colleagues and the authority 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.
5. The statutory 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 officer meetings should include the regular involvement of the senior auditor and regular liaison should take place with the authority’s external auditor.

F) The statutory officers must have access to brief the leader, other leading members of the authority and political group leaders, to discuss options, potential policies, decisions, and the required steps to deliver good governance.

G) The three statutory officersmust have authority: -

* 1. 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.
  2. to attend meetings of the senior leadership team (or equivalent term) with advance notice of the agenda and reports.
  3. to see all documents and information held by or on behalf of the authority, 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.
  4. to require any council officer, member, related entity or contractor to provide an explanation of any matter under investigation.
  5. to report to the authority, and its executive or committees, including an ability to present written reports and to attend and advise orally.
  6. to have access to one another, being the chief executive (head of the paid service) monitoring officer and to the s.151 officer, and to leading members or the auditor.
  7. 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
  8. 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.

H) The three statutory officers have a positive duty to report illegality, fraud, or corruption to the relevant authorities. In the rare occasion that a statutory office believes another statutory officer to be guilty of a misdemeanour, relevant governance routes should be followed.

# Resource up: Get the tools to do the job

## Principle

4.1 The authority is required to provide the head of paid service, chief finance officer and monitoring officerwith 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 head of paid service, chief finance officer and monitoring officer can be informed, participate and engage across the authority. It also covers the specific resources needed with respect to the duty to report.

## **4.2 Requirements**

A) The head of paid service, chief finance officer and monitoring officer must be 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 head of paid service, chief finance officer and monitoring officer must make clear (and satisfy themselves) as to what staff, accommodation and other resources are necessary to perform their duty.

C) The head of paid service, chief finance officer and monitoring officer 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.

# 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 authority.

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 three statutory 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 three statutory 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 a member of their staff to act as their deputy in the event of their absence or illness.

B) The head of paid service, or the authority, should make arrangements for deputisation of their role. The role of civil contingencies leadership requires co-ordination of cover 24 hours a day.

C) All three statutory officers should seek to ensure robust arrangements are made to embed governance awareness across the authority and develop staff in a manner which ensure a sustainable approach.

D) The three statutory officers should ensure that other officers and councillors are reminded of their own statutory obligations.

# Champion good decision making

## Principle

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

An authority exists as 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 officers to ensure this happens, and to act swiftly where the authority falls short.

## **6.2 Requirements**

A) The three statutory officers must be satisfied that the authority 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 authority 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 three statutory 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.

## 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 a local authority, the legislation and controls for the conduct of local authorities also apply to that company.

It is a responsibility of the statutory chief officers to understand, and to ensure that their authority understands:

1. the need for the company/ entity
2. the arrangements for a local authority’s interest in the company/entity
3. that the business case for establishing / acquiring them was sufficient
4. that business plans and delivery remain relevant to that business case
5. that the financial and social objectives remain relevant to that business case
6. 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 Head of Paid Service, Monitoring Officer and Chief Finance (S.151) Officer 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 authority 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 head of paid service, chief finance officer and monitoring officer 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 local authority holds an interest in and take appropriate action where this highlights matters of concern.

C) The head of paid service, chief finance officer and monitoring officer should recognise the need for independent governance arrangements within the company, and the obligation of Directors to act on its behalf.

D) The head of paid service, chief finance officer and monitoring officer must assist those involved in the affairs of the authority and the authority’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.

In times of difficulty:

From time to time, local authorities may find themselves in financial difficulty, or suffering the results of poor administration or decision making. In such situations, it is the role of the statutory 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:

* 1. a decision is made which would involve the authority incurring unlawful expenditure
  2. 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
  3. a person makes an unlawful entry in the accounts

or

* 1. 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 authority 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 statutory Guidance issued states that, ‘in order to undertake these roles, the local authority will need to ensure that the monitoring officer and chief finance officer have access as necessary to meetings and papers, and that members consult with her or him regularly’.

Contributors:







With thanks to:

