

## STATUTORY REPORT OF SLOUGH BOROUGH COUNCIL'S MONITORING OFFICER

### SECTION 5 OF THE LOCAL GOVERNMENT AND HOUSING ACT 1989

#### REPORT ON PROPOSED UNLAWFUL RE-DESIGNATION OF THE MONITORING OFFICER ROLE

##### 1. INTRODUCTION

- 1.1. Section 5 of the Local Government & Housing Act 1989 (the 'Act') requires Slough Borough Council (the 'Council') to appoint an Officer to act as the Council's Monitoring Officer. By virtue of paragraphs 44 and 44A of Part I of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853, the designation (including the appointment and removal) of the Monitoring Officer is not an Executive (Cabinet) Function. Therefore, any proposed appointment or removal of an Officer to act as the Council's Monitoring Officer is reserved only for the consideration of and decision by Full Council.
- 1.2. At the Full Council meeting on 24<sup>th</sup> November 2015, the Council elected to designate the role of Monitoring Officer to the Assistant Director, Procurement and Commercial Services, in accordance with the requirement of the Council's Constitution. It is therefore evident that any motion to remove the incumbent designation and re-designate the role of Monitoring Officer to another Officer of the Council is to be decided by Full Council, subject to the correct procedural process being followed in accordance with the Council's Constitution and relevant statutory provision(s).
- 1.3. The Act provides that it is the personal duty of the Monitoring Officer to report formally via a Section 5 Statutory Report to the Council on any proposal, decision or omission by the Council which has given rise to, or is likely to, or would, give rise to, the contravention of any enactment, rule of law or statutory code of practice. This responsibility cannot be delegated to the Council's Deputy Monitoring Officer unless the Monitoring Officer is unable to act due to being absent or ill (section 5(7) of the Act). This means that although the Monitoring Officer may be affected personally by a proposed unlawful action, the Monitoring Officer is nevertheless obliged personally to report to Members and the Monitoring Officer cannot delegate it to the deputy. This is the situation which currently arises.

In any event the Leader of the Council proposes that the Monitoring Officer's deputy be designated as Monitoring Officer in the place of the Monitoring Officer, so the deputy is also personally affected. In order to minimise any personal conflict, the Monitoring Officer has sought external advice on the Leader of the Council's actions which is reflected in this Section 5 Statutory Report at Section 6. **The Monitoring Officer is also not in any way seeking to prevent any proper and lawful scrutiny of his actions or the alleged concerns of the Leader of the Council, but merely seeks to ensure that the Council adopts a lawful approach in doing so, by following the correct procedural rules set out within statutory and constitutional provisions.**

- 1.4. In preparing a Section 5 Statutory Report, the Monitoring Officer must formally consult with the Chief Executive, as Head of the Paid Service, and the Assistant Director of Finance, as S151 Officer. As soon as practicable after completion of the report a copy must be sent to each Member of the Council by the Council's Monitoring Officer. The views of the Interim Head of Paid Service and the Interim S151 Officer are set out below at Sections 9 and 10 respectively of this Section 5 Statutory Report.
- 1.5. All Members of the Council are required by the Act to formally consider the Section 5 Statutory Report at a meeting of the Full Council, which must be held not more than 21 days after copies of the Section 5 Statutory Report have been first sent to them. **In the meantime the Council must ensure that implementation of the proposal which is the subject of the report be suspended until the end of the first business day after the day on which consideration of the report is concluded (sections 5(5)(b) and (6) of the Act).**
- 1.6. Whilst the Section 5 Statutory Report itself is not binding on the Council, should Members decline to follow its recommendations, this could lead to the following consequences:
  - 1.6.1. Individual Members may be in breach of the Councillor Code of Conduct;
  - 1.6.2. The Council's external Auditor could exercise his powers to issue a public interest report and/or declare any expenditure on implementing the decision to be unlawful and/or bring legal proceedings pursuant to its powers under the Local Audit and Accountability Act 2014 (Please see Section 7 of this Section Statutory Report);
  - 1.6.3. Legal proceedings for judicial review could be brought against the Council; and/or
  - 1.6.4. The Secretary of State could exercise his reserve powers under the Local Government Act 1999, as amended, to intervene in the running of the local authority.
- 1.7. This Section 5 Statutory Report presents to Full Council concerns of the Monitoring Officer in relation to the Leader and the Executive (Cabinet) in relation to the Leader individually and the Executive collectively acting 'ultra vires'; i.e. beyond their legal powers afforded to them by either legislation and/or the Council's Constitution and the Council's budget and policy framework.
- 1.8. This Section 5 Statutory Report highlights the proposal promoted by the Leader of the Council that the Council re-designates the Monitoring Officer role. The Council may only do this if it does so for lawful reasons. If it does so without any valid reasons or for improper purposes then this will be unlawful and, therefore, in breach of a rule of law. As set out in this Section 5 Statutory Report, the Leader of the Council has previously purported to re-designate the role acting beyond his powers (ultra vires). The Leader of the Council has, it seems, retracted his attempt to unlawfully re-designate the role after being challenged (as set out in this Section 5 Statutory Report and annexes).

- 1.9. Full Council does have power to re-designate the role of Monitoring Officer. However, this must be done for valid reasons. At this stage despite requesting further information from the Leader of the Council about the reasons for asking Full Council to re-designate the role, no lawful reasons have been advanced. The only reasons that have been suggested are those initially referred to by the Leader of the Council; namely the manner in which the Monitoring Officer dealt with a whistleblowing allegation. These allegations have not been particularised or formally investigated. The Monitoring Officer has had no opportunity to fully respond to these allegations. The allegations amount at most, to disciplinary matters, and even if they are disciplinary matters, they are disciplinary matters which are not being considered through the Council's disciplinary procedures nor through applying the Local Authorities (Standing Orders) Regulations 2001 as amended.
- 1.10. In the absence of any proper reasons having been given, it appears that the proposal to re-designate the Monitoring Officer role is being proposed as a disciplinary action without following disciplinary processes, as a means of avoiding the statutory protection provided by the 2001 Regulations and/or as a means of seeking to legitimise the Leader of the Council's attempted ultra vires actions. These are not lawful reasons and absent any further proper justification, any such re-designation would amount to an action in breach of a rule of law.
- 1.11. The Leader of the Council sought to act beyond his powers (ultra vires) by advising the Monitoring Officer in both his individual capacity as Leader of the Council and on behalf of the Executive, that the Leader of the Council has made a decision to remove the Monitoring Officer's designation from the Assistant Director of Procurement and Commercial Services.
- 1.12. The rationale of the Leader of the Council to take the aforementioned decision as per 1.10 and 1.11 of this Section 5 Statutory Report is that the Monitoring Officer has failed to maintain standards of integrity and public confidence and also because the Leader of the Council is not satisfied that the Monitoring Officer has fulfilled his duties in this regard, which the Leader of the Council alleges has placed the reputation of both the Monitoring Officer and the Council at risk.
- 1.13. Despite attempts by the Monitoring Officer to meet with the Leader of the Council to be afforded a clear rationale and to seek evidence to substantiate the Leader of the Council's concerns and allegations, the Leader of the Council has refused to meet and therefore an opportunity to seek to resolve matters informally has not been afforded to the Monitoring Officer; which does not accord with the transparency and fairness principles that the Council seeks to promote.
- 1.14. Additionally, the Monitoring Officer has made considerable attempts to seek clarification from the Leader of the Council in terms of the statutory and constitutional provisions that the Leader of the Council has relied upon to make his decision to remove the Monitoring Officer. Unfortunately the Leader of the Council has failed to justify the rationale for both taking the decision to remove the Monitoring Officer and also the

statutory and constitutional provisions that afford the Leader of the Council the authority to do so.

- 1.15. Furthermore, the Leader of the Council has failed to act upon guidance from the Monitoring Officer in terms of decision taken and proposed by the Leader of the Council. This guidance from the Monitoring Officer has clearly outlined the unlawfulness of the Leader of the Council's proposed decision and also provided the Leader of the Council an opportunity to retract from his decision so as to prevent him acting unlawfully and also to prevent the Monitoring Officer having to report the matter of unlawfulness to Full Council as per this Section 5 Statutory Report.

This guidance from the Monitoring Officer has also outlined the statutory and constitutional process which the Leader of the Council and the Council must follow if there are serious concerns about the conduct of the Monitoring Officer; this being the Statutory Officer's Disciplinary Process. **Unfortunately, the Leader of the Council has refused to accept or act upon the guidance of the Monitoring Officer and therefore both his actions and any proposed actions continue to be unlawful.** The relevant legal provisions are set out in Sections 4 and 5 of this Section 5 Statutory Report and in the Monitoring Officer's emails to the Leader of the Council as set out in Section 5 of this Section 5 Statutory Report and the associated Annexes 2 - 13.

- 1.16. Regretfully, after consultations with the interim Chief Executive, as the interim Head of Paid Service, the interim Assistant Director of Finance, as the interim S151 Officer, the Council's Internal and External Auditors, and after receiving legal advice from Weightmans LLP and Counsel opinion from Peter Oldham QC; the Monitoring Officer has concluded that in all the circumstances it is incumbent upon him as the Council's statutory Monitoring Officer, to make a formal Section 5 Statutory Report to all Members of the Council setting out the legal position and his concerns.

## 2. COUNCILLOR CODE OF CONDUCT

- 2.1. Part 5.1 of the Council's Constitution prescribes the code of conduct for all Councillors when conducting the business of the Council and/or acting as a representative of the Council. The Councillor Code of Conduct also prescribes in Section 1.6 the 7 principles of public life which Councillors must comply with in the discharge of their duties.
- 2.2. These 7 principles of public life include (1) being Selfless, (2), maintaining integrity, **(3) acting objectively, whereby their decisions are made impartially, fairly and on merit of each case, using the best evidence and without discrimination or bias**, (4) being accountable, **(5) maintaining openness, whereby Councillors must act and take decisions in an open and transparent manner**, (6) being honest, and (7) providing effective leadership and demonstrating these principles in their own behaviour.
- 2.3. Section 2 of the Councillor Code of Conduct outlines how Members are to maintain effective relationships with others and prescribes key behavioural requirements including:

- 2.3.1. Treating others with respect;
  - 2.3.2. **Having a duty to uphold the law**, including the general law against discrimination;
  - 2.3.3. **Never taking any action which would cause significant damage to the reputation and integrity of the Council as a whole**, or its Members generally;
  - 2.3.4. **Not undertaking any act or omission that would undermine the Council's duty to promote and maintain high standards of conduct of Members**; and
  - 2.3.5. When reaching decisions on any matter, **Members must have regard to any relevant advice provided to them by the Council's Chief Finance Officer (S151 Officer) and / or the Monitoring Officer.**
- 2.4. In relation to 2.3 (2.3.1 – 2.3.5) above, the Leader of the Council and the Executive have failed to adhere to the aforementioned requirements of the Councillor Code of Conduct as there has been a failure to adhere to the law, despite guidance from the Monitoring Officer. This potential contravention could cause significant damage to the reputation and integrity of the Council as a whole and could undermine the Council's duty to promote and maintain high standards of conduct of Members.

### **3. MONITORING OFFICER PROTOCOL**

- 3.1. The conduct requirements prescribed for Members as outlined in Section 2 of this Section Statutory Report are further reinforced within Part 5.6 of the Council's Constitution, entitled 'Monitoring Officer Protocol'.
- 3.2. Paragraph 1.2 of Part 5.6 of the Council's Constitution reinforces that the Monitoring Officer's ability to discharge his statutory duty requires Members and Officers to:
  - 3.2.1. **Comply with statute and common law** (including any relevant Code of Conduct which forms part of the Ethical Framework Section of the Council's Constitution).
  - 3.2.2. **Comply with any statutory guidance and other guidance/advice issued by the Audit & Corporate Governance Committee and the Monitoring Officer** from time to time.
  - 3.2.3. **Not do anything that would bring the Council or their offices into disrepute.**
  - 3.2.4. **Make lawful and proportionate/reasonable decisions.**
- 3.3. The Leader of the Council and the Executive have failed to adhere to Section 3.2 (3.2.1-3.2.4) of this report, thus the Monitoring Officer Protocol is invoked as there has been a failure to adhere to the law, despite formal guidance from the Monitoring Officer.

#### 4. STATUTORY DISCIPLINARY PROCESS FOR STATUTORY OFFICERS

- 4.1. The Monitoring Officer post has a specific statutory whistleblowing role. As a result it is recognised that the person in that role will often need to “speak truth unto power” and that this could result in circumstances where Monitoring Officers are placed in a position which could create conflict with politicians and other senior officers. As a result of this crucial and difficult role in ensuring the governance within local authorities, the Monitoring Officer is afforded a degree of statutory protection from arbitrary and capricious dismissal.
- 4.2. The Local Authorities (Standing Orders) Regulations 2001 (as amended), provide that local authorities must incorporate certain standing orders in to their constitution which apply when disciplinary action is to be taken against the Monitoring Officer. The effect of this is that the Monitoring Officer may only be dismissed by a decision of Full Council and prior to any such dismissal there must be consultation with a panel of independent persons constituted for that purpose.
- 4.3. The protection referred to in paragraph 4.2 above is in addition to the protection afforded under general employment law and the Council’s disciplinary procedures.
- 4.4. The Council has a Disciplinary Procedure for the Chief Executive (Head of Paid Service), the Assistant Director of Finance (S151 Officer) and the Monitoring Officer. This procedure was approved by Full Council on 24<sup>th</sup> November 2015, at the same meeting where the Monitoring Officer role was designated by Full Council to the Assistant Director of Procurement and Commercial Services. Please refer to Annex 1 of this Section 5 Statutory Report which outlines both the Full Council decision and the procedure.

The approved Annex 1 report and procedure make it clear that the procedure must be applied where any action is being taken against the Monitoring Officer as any disciplinary action. Although details of the specific concerns relied upon by the Leader of the Council have not been provided it is clear from the correspondence that the concerns relate to conduct. Therefore, any action to be taken by the Council must comply with this procedure. Any action to remove the Monitoring Officer from his post in any other way would be unlawful.

- 4.5. If it were possible for a local authority to simply remove the statutory protection by re-designating a post it would completely undermine the purpose of the Local Authorities (Standing Orders) Regulations 2001 (as amended) and make it totally ineffective.
- 4.6. Additionally, the Council’s general disciplinary policy clearly states that **Managers must deal with disciplinary matters in line with natural justice principles** (paragraph 2.2 of the Council’s general disciplinary policy). Additionally, this policy also clearly outlines that **employees have a right to be informed of the allegations during an investigation and for them to be provided an opportunity to state their case and have this taken into account at a disciplinary hearing before any disciplinary action is considered** (paragraph 2.3 of the Council’s general disciplinary policy). Whilst these are general principles, it is concerning

that the allegations against the Monitoring Officer have not been clarified, nor has the Monitoring Officer been permitted an opportunity to state his case as part of an investigation. **Therefore, the Council is acting in contravention of its own HR policies and procedures.**

## 5. CHRONOLOGY OF EVENTS

- 5.1. This section provides a chronology of events which have resulted in the Monitoring Officer being required to discharge his statutory duty under the Act and issue a formal Section 5 Statutory Report to all Members of the Council setting out the legal position and his concerns.
- 5.2. **Initial email from the Leader of the Council** – On 25<sup>th</sup> August 2016, the Leader of the Council wrote to the Monitoring Officer, formally advising that he had concerns relating to a serious breach and failure on the part of the Monitoring Officer regarding the management of an investigation by the Monitoring Officer. In this email the Leader of the Council alleged that the Monitoring Officer had failed to maintain standards of integrity and public confidence and was also not satisfied that the Monitoring Officer had fulfilled his duties in this regard, which the Leader of the Council alleges had placed the reputation of both the Monitoring Officer and the Council at risk. The Leader of the Council concluded the email by advising the Monitoring Officer that he had solely taken the decision to ‘remove’ the role of Monitoring Officer and that the duties would be undertaken by the Deputy Monitoring Officer. This email exchange is provided as Annex 2 to this Section 5 Statutory Report.
- 5.3. **Monitoring Officer’s response** – On 25<sup>th</sup> August 2016, the Monitoring Officer responded to the Leader of the Council’s formal email (5.2 above and Annex 2), outlining concerns about the process by which the Leader of the Council had arrived at his decision and also requesting clarification in terms of the concerns that the Leader of the Council alleged in terms of unsatisfactory conduct, serious breach and failure to maintain integrity. The Monitoring Officer also advised the Leader of the Council of the correct process to follow to investigate alleged concerns, which if were founded, could result in the dismissal of the Monitoring Officer; this being the statutory officers’ disciplinary process. The Monitoring Officer also raised concerns about a failure to follow the correct HR policies and procedures and sought clarification from the Leader of the Council in terms of adherence; particularly in relation to the disciplinary and dignity at work policies and procedures. This email exchange is provided as Annex 3 to this Section 5 Statutory Report.
- 5.4. **Leader of the Council’s response** – On 26<sup>th</sup> August 2016, the Leader of the Council wrote to the Monitoring Officer completely ignoring the concerns and queries of the Monitoring Officer (as per 5.3 above and Annex 3) outlining that the decision had been taken after discussion with Cabinet. This email exchange is provided as Annex 4 to this Section 5 Statutory Report.
- 5.5. **Monitoring Officer’s response** – On 30<sup>th</sup> August 2016, the Monitoring Officer wrote to the Leader of the Council once again outlining the need to clarify concerns and also to outline

that the Leader of the Council needed to follow the correct constitutional and statutory processes in order to address those concerns. The Monitoring Officer also advised that as concerns and queries remained unanswered and outstanding, he would continue as the Monitoring Officer until the correct constitutional and statutory processes were followed. This email exchange is provided as Annex 5 to this Section 5 Statutory Report.

- 5.6. **Leader of the Council's response – Management Instruction** – On 30<sup>th</sup> August 2016, the Leader of the Council wrote to the Monitoring Officer and once again ignored the concerns and queries of the Monitoring Officer and reiterated his response as per Annex 5. This email exchange is provided as Annex 6 to this Section 5 Statutory Report. **It is a matter of significant concern that the Leader of the Council suggests in his email (Annex 6) that he is able to issue a “management instruction” to an Officer of the Council.** In accordance with the Council's Constitution and adopted policies and procedures, the Head of Paid Service is responsible for the management of staff of the Council not the Leader of the Council. Paragraph 14.5 of Part 5.4 of the Council's Constitution entitled 'Member Officer Relations Code' makes it clear that members should only be involved in staff disciplinary (misconduct or capability) issues save in very limited defined circumstances which do not apply here.
- 5.7. **Monitoring Officer's response** – On 30<sup>th</sup> August 2016, the Monitoring Officer wrote to the Leader of the Council once again outlining that all queries and concerns remained outstanding. In the absence of clarification, the Monitoring Officer sought to understand the Leader of the Council's *management instruction* and outlined the correct process that the Leader of the Council should seek to take to address his concerns in a lawful manner, including undertaking an investigation via the statutory officer's disciplinary panel. This email exchange is provided as Annex 7 to this Section 5 Statutory Report.
- 5.8. **Leader of the Council's response** – On 31<sup>st</sup> August 2016, the Leader of the Council wrote to the Monitoring Officer once again failing to address the concerns and queries, outlining that suspension or disciplinary action would not be taken and asking the Monitoring Officer to respect the Leader of the Council's decision. This email exchange is provided as Annex 8 to this Section 5 Statutory Report.
- 5.9. **Monitoring Officer's response - FORMAL MONITORING OFFICER GUIDANCE** – The Monitoring Officer wrote to the Leader of the Council on 02<sup>nd</sup> September 2016 and after continuously having requests for clarification dismissed, provided formal guidance in the capacity of Monitoring Officer. This included clear guidance that the Leader of the Council and the Executive were acting unlawfully and outlining the clear process for investigating, disciplining and removing the Monitoring Officer, subject to concerns being substantiated. The Monitoring Officer also afforded the Leader of the Council an opportunity to retract his unlawful actions to prevent the need for the Monitoring Officer to issue a formal Section 5 Statutory Report to all Members of the Council setting out the legal position and his concerns. This email exchange is provided as Annex 9 to this Section 5 Statutory Report.
- 5.10. **Leader of the Council's response** – The Leader of the Council wrote to the Monitoring Officer on 06<sup>th</sup> September 2016, refusing to accept the Monitoring Officer's



guidance or unlawfulness of his actions and proposed actions. The Leader of the Council did however accept that Full Council had appointed the Monitoring Officer and therefore Full Council would consider re-designation on 27<sup>th</sup> September 2016. This email exchange is provided as Annex 10 to this Section 5 Statutory Report.

- 5.11. **Monitoring Officer's response** – The Monitoring Officer wrote to the Leader of the Council on 08<sup>th</sup> September 2016 once again outlining the unlawful actions of the Leader of the Council and reaffirming his position as the Council's Monitoring Officer. The Monitoring Officer also reiterated his concerns about unlawfulness including unlawful dismissal and the Leader of the Council's attempts to avoid adherence to statutory and constitutional provisions in an attempt to remove the Monitoring Officer. The Monitoring Officer also sought clarification once again in terms of the matters upon which the Leader of the Council was seeking to take a motion for re-designation of the Monitoring Officer role to Full Council on 27<sup>th</sup> September 2016. This email exchange is provided as Annex 11 to this Section 5 Statutory Report.
- 5.12. **Interim Head of Paid Service's response** – The interim Head of Paid Service wrote to the Monitoring Officer on behalf of the Leader of the Council on 09<sup>th</sup> September 2016 reconfirming that the Monitoring Officer's guidance to the Leader of the Council was not accepted, that the Monitoring Officer was still the Monitoring Officer until Full Council re-designated the role and that normal Full Council processes would be followed. Once again, the queries and concerns raised to the Leader of the Council by the Monitoring Officer; particularly in respects to the legal basis for re-designation remained unanswered and the leader of the Council once again refused to accept the formal guidance of the Monitoring Officer in respects to unlawfulness. This email exchange is provided as Annex 12 to this Section 5 Statutory Report.
- 5.13. **Monitoring Officer's response** – The Monitoring Officer wrote to the interim Head of Paid Service and the Leader of the Council on 09<sup>th</sup> September 2016 advising that as queries and concerns remained outstanding and the Leader of the Council had refused to both accept or act upon the Monitoring Officer's guidance to prevent unlawfulness, the Monitoring Officer would be issuing a formal Section 5 Statutory Report to all Members of the Council setting out the legal position and his concerns. This email exchange is provided as Annex 13 to this Section 5 Statutory Report.
- 5.14. The Monitoring Officer wrote to the Interim Head of Paid Service and the Interim S151 Officer on 09<sup>th</sup> September 2016 to outline his concerns relating to unlawfulness and the Leader of the Council and the Executive acting 'ultra vires'. The Monitoring Officer also set out the grounds for and his intention to issue a formal Section 5 Statutory Report to all Members of the Council setting out the legal position and his concerns. The Monitoring Officer also outlined the need for all three statutory officers to meet and for both the interim Head of Paid Service and the interim S151 Officer to input with statutory comments into the report. This email exchange is provided as Annex 14 to this Section 5 Statutory Report.

## 6. FORMAL LEGAL ADVICE

- 6.1. Section 5 (1) (b) of the Act requires the Council to provide the Monitoring Officer with such resources as, in his opinion, are required to perform his duties under the Act. This is also reflected in Paragraph 2.1 (c) of Part 5.6 of the Council's Constitution. The Monitoring Officer has sought external legal advice on the matters raised in this report from Weightmans LLP, a firm which specialises in local government advice and governance. Weightmans have reviewed the report and commented on its contents. Weightmans advice is that the proposed action is unlawful for the reasons now set out.
- 6.2. The purported action of the Leader of the Council and Cabinet to re-designate the Monitoring Officer was plainly beyond his powers as a result of paragraphs 44 and 44A of Part I of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853. The Leader of the Council appears to accept that the action which he sought to take was beyond his powers. However, he has now suggested that such a re-designation should be made by Full Council and the Head of Paid Service has indicated that he will report to Council recommending that such a re-designation be made.
- 6.3. No indication has been given by the Leader of the Council or the Head of Paid Service as to the reasons which will be suggested to Full Council to justify such a re-designation. The only reasons referred to are those initially mentioned by the Leader of the Council that there were concerns about the way in which a whistleblowing allegation was initially investigated. The Monitoring Officer has requested more information about the reasons for the proposed action and has requested meetings with the Leader of the Council. However, despite these requests information has not been forthcoming and the Leader of the Council has declined to meet with the Monitoring Officer.
- 6.4. In the absence of any further information it appears that the Council proposes to consider removing the Monitoring Officer designation:-
  - 6.4.1. With no justification and therefore irrationally; and/or
  - 6.4.2. So as to legitimise the ultra vires decision made by the Leader of the Council, and therefore unlawfully and for an improper purpose; and/or
  - 6.4.3. For disciplinary reasons which have not been investigated and which are not being dealt with through applicable disciplinary procedures and principles and for this reason also irrationally, if not also in breach of those procedures.
- 6.5. If Council were to make a decision in this manner, Weightmans' advice is that it appears that the Council is being asked to make a decision which would be, or would be likely to be, in breach of a rule of law and as a result it is appropriate that the Monitoring Officer prepare a Section 5 Statutory Report under section 5 of the Act.

6.6. Formal guidance from Weightmans LLP is set out at Annex 15 to this Section 5 Statutory Report.

6.7. Advice has also been sought from Peter Oldham QC, who is a senior and experienced barrister and who is also an expert on local government law. His advice is as per 6.7.1:

6.7.1. You have asked for my advice as to whether it would be lawful for the Monitoring Officer to write a report under section 5 of the Local Government and Housing Act 1989 in the circumstances described to me.

Absent further information as to why the Council is proposing to consider removing his designation as Monitoring Officer, in my view he would be acting within his discretion as Monitoring Officer in deciding that the proposed removal would be in breach of a rule or law, or would be likely to be in breach, on the basis that:-

(1) There was no rational basis on which the Council should do so;

(2) It was acting so as to put into effect a wish of the Leader so that the Council was not properly exercising its role under the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 of determining whether to remove the designation;

(3) It was doing so as a result of a disciplinary allegation which should have been dealt with either fairly, in public law terms, or in accordance with the Council's disciplinary procedures, and which has not been.

## **7. EXTERNAL AUDITOR**

7.1. The Council's appointed External Auditor has been consulted and has commented as follows:

7.2. I have noted the report that you have written for the attention of the full Council with regards to the re-designation of monitoring officer role. I intend to request the minutes of the full Council meeting at which your report is raised after which I will be considering whether the matters raised warrant further investigation in line with my duties and powers under the Local Audit and Accountability Act 2014.

## **8. INTERNAL AUDITOR**

8.1. The Council's appointed Internal Auditor has been consulted and has commented as follows:

8.2. We can confirm that we have received and read the STATUTORY REPORT OF SLOUGH BOROUGH COUNCIL'S MONITORING OFFICER SECTION 5 OF THE LOCAL GOVERNMENT AND HOUSING ACT 1989 REPORT ON PROPOSED UNLAWFUL RE-DESIGNATION OF THE

MONITORING OFFICER ROLE. We do not believe it is a requirement within the Council's constitution for the Council's Internal Auditors to comment on a report of this nature. Furthermore, we have not been formally commissioned to undertake any work in relation to this issue and we therefore have no further comment to add at this stage. If our professional advice is required at any stage we would of course be happy to discuss this further.

## **9. HEAD OF PAID SERVICE**

9.1. As required by the Local Government and Housing Act 1989 the Chief Executive as Head of the Paid Service has been formally consulted in relation to this issue and has made the following observations:

9.2. The Interim Head of Paid Service has confirmed that he has no comments to add.

## **10. ASSISTANT DIRECTOR OF FINANCE (S151 OFFICER)**

10.1. As required by the Local Government and Housing Act 1989 the Assistant Director of Finance (S151 Officer) has been formally consulted in relation to this issue and has made the following observations:

10.2. The Interim Assistant Director of Finance (S151 Officer) has confirmed that he has no comments to make at this stage.

## **11. SUMMARY**

11.1. The Leader of the Council individually and the Executive (Cabinet) collectively have purported to act unlawfully in attempting to re-designate the Monitoring Officer role when such a decision is reserved to Full Council.

11.2. In relation to Section 11.1 above, the Leader of the Council individually and the Executive (Cabinet) collectively have failed to follow the guidance of the Monitoring Officer in retracting from their unlawful position and thus their purported decision remains unlawful and they have contravened the Council's Constitution.

11.3. It seems from the comments made by the Leader of the Council is his correspondence that the reason for seeking to re-designate the role of Monitoring Officer is a result of (unspecified) concerns about the conduct and/or capability of the current post holder. Any attempt to remove the current post holder from the role of Monitoring Officer as a result of concerns over conduct/capability must be done pursuant to the Council's agreed policy and procedure for taking such action against any of the statutory officers. Any attempt to do so in any other way would be unlawful.

## **12. RECOMMENDATION**

- 12.1. That the Council confirms that the Assistant Director, Procurement and Commercial Services remain the designated Monitoring Officer of the Council.
- 12.2. That the Council notes the legal advice which has been received by the Monitoring Officer from Weightmans LLP and Peter Oldham QC.
- 12.3. That the Council notes that the implementation of any proposal which is the subject of this report is suspended until the end of the first business day after the day on which consideration of the report is concluded by virtue of sections 5(5)(b) and (6) of the Act.

**Gurpreet Anand – Slough Borough Council's Statutory Monitoring Officer – 19<sup>th</sup> September 2016.**

## **ANNEX 1**

### **SLOUGH BOROUGH COUNCIL**

**REPORT TO:** Council **DATE:** 24th November 2015

**CONTACT OFFICER:** [REDACTED]  
[REDACTED]  
[REDACTED]

**(For all Enquiries)** (01753) 875213

**WARD(S):** ALL

### **PART I**

#### **FOR DECISION**

#### **ARRANGEMENTS FOR THE DISMISSAL OF THE HEAD OF PAID SERVICE, MONITORING OFFICER AND CHIEF FINANCE OFFICER**

##### **1. Purpose of Report**

To advise Members of Regulations which came into force on 11 May 2015 and which introduce new arrangements for dealing with the disciplinary cases involving the Head of Paid Service, the Chief Finance Officer and the Monitoring Officer ("the relevant officers").

##### **2. Recommendation(s)/Proposed Action**

The Council is requested to resolve:

- a) That the provisions set out in Schedule 3 to the Local Authorities (Standing Orders) (England) Regulations 2001 as amended by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 ("the amended regulations") be incorporated into Part 4.7 of the Council's Constitution (the Officer Employment Procedure Rules).
- b) That in accordance with the amended Regulations, a committee be established under section 102(4) of the Local Government Act 1972 for the purposes of advising the Council on matters relating to the dismissal of the Council's Head of Paid Service, Chief Finance Officer and Monitoring Officer. Such panel to be known as the Statutory Officers' Disciplinary Panel ("The Panel"). It's terms of reference are set out in Appendix 1. The Panel will be convened as required.
- c) That the membership of the Panel comprise of three independent persons (as defined in the amended Regulations), who have accepted an invitation to be considered for appointment to the panel issued in accordance with the amended Regulations.
- d) That the Monitoring Officer be authorised to issue invitations to relevant independent persons for consideration for appointment to the Panel and to appoint relevant Independent Persons to the Panel.

e) That the Monitoring Officer be authorised to make any further amendments to the Constitution to ensure that it is compliant with the amended Regulations and any other Regulations relating to the appointment and dismissal of the relevant officers.

### **3 Other Implications**

#### **(a) Financial**

There are no significant financial implications.

#### **(b) Risk Management**

The process is compliant with the Regulations which mitigates any risk.

#### **(c) Human Rights Act and Other Legal Implications**

The recommendations take into account the requirements of the Human Rights Act.

It is not necessary for a committee appointed under section 102(4) of the Local Government Act 1972 to include elected members.

The Regulations do not require an investigation to be carried out, although Council must take into account any investigation which has taken place. In order for the Council to show that a dismissal is fair it must be able to show that a reasonable investigation has been carried out and therefore the terms of reference incorporate provision for investigation.

Another element of showing that a dismissal is fair is a right of appeal. The Regulations make this problematic as the decision is effectively to be taken by full Council and there is therefore no 'higher' body to consider an appeal. However, if as proposed the officer has the opportunity to make representations to the Statutory Officers Disciplinary Panel and then to full Council, this effectively gives the officer the two stage process which is required for a fair procedure.

#### **(d) Equalities Impact Assessment**

No Assessment has been carried out, but all relevant officers will be treated in accordance with equalities principles.

#### **(e) Workforce**

The recommendations comply with the provisions of the Statutory Regulations.

### **4. Supporting Information**

4.1 The Local Authorities (Standing Orders) (England) Regulations 2001 set out provisions in relation to the disciplining and dismissal of the head of paid service, monitoring officer and chief finance officer ('the relevant officers'). In particular, up until recent changes, they provided for the appointment of a designated independent person (DIP) to investigate allegations made against these officers and to provide a binding recommendation in respect of any disciplinary action to be taken against them.

4.2 The Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 amend the 2001 Regulations to remove the requirement of a DIP and to make the following provisions which must be adopted by the Council:

- 1) Only full Council may approve the dismissal of a relevant officer;
- 2) A panel must be set up under the provisions of s.102(4) of the Local Government Act 1972 at least 20 working days before the meeting of full Council with the function of advising the authority on matters relating to the dismissal of relevant officers;
- 3) The 'independent persons' appointed for the purposes connected with standards complaints against members must be invited to be on the Panel with a view to appointing at least two such persons;
- 4) Before voting on dismissal, full Council must take into account:
  - a. Any advice, views or recommendations of the Panel;
  - b. The conclusion of any investigation into the proposed dismissal; and
  - c. Any representations from the relevant officer.

4.3 The requirement to go through the process set out in 2 to 4 above applies where disciplinary action is to be taken against the relevant officer. This process is not required for dismissal by reason of redundancy, expiry of a fixed term contract and permanent ill-health.

4.4 The legislation does not deal with action short of dismissal.

#### **The Statutory Officers' Disciplinary Panel**

4.5 The Panel will be convened as and when required.

4.6 The membership of the Panel will comprise of three independent persons appointed under Section 28(7) of the Localism Act 2011.

4.7 The terms of reference of the Panel are attached at Appendix 1.

#### **Contractual Issues**

4.8 Procedures are incorporated into individual contracts of employment by way of the JNC for Chief Executives and JNC for Chief Officers collective agreements. Therefore, these procedures still have to be followed.

4.9 Any future legislative changes, or changes to JNC terms and conditions of employment, will be incorporated, as applicable, into the contract/s of the relevant officer.

#### **5. Appendices Attached**

Appendix 1 - Terms of Reference

#### **6. Background Papers**



None.

## **Appendix 1**

### **Terms of Reference of Statutory Officers' Disciplinary Panel**

The Panel has the following powers in respect of matters which might lead to the dismissal of, or disciplinary action against the Chief Finance Officer, Monitoring Officer or Head of Paid Service except in relation to matters concerning redundancy, the expiry of a fixed term contract or permanent ill health:

1. To arrange for the investigation of the matter;
2. To consider the investigation report and representations (including in person) by the relevant officer;
3. To make recommendations to Council in relation to the dismissal of the relevant officer.

### **Membership**

The Panel shall consist of 3 independent persons appointed by the Council under Section 28 of the Localism Act 2011 who will be invited to a Panel meeting as and when required. The quorum of the Panel shall be 2 independent persons.

For the purposes of this Panel an independent person is one appointed under Section 28(7) of the Localism Act 2011.

**ANNEX 2**

From: Munawar Sohail

Sent: 25 August 2016 16:27

To: Anand Gurpreet

Cc: Parkin Roger; Walker Linda

Subject: Regarding MO

Dear Gupreet

As you are aware, the Council appointed an External Investigator to address the concerns regarding the appointment of [REDACTED] to the permanent position of HR Director. I am aware that you were interviewed by the appointed investigator as part of this process.

The outcome of that investigation will be taken forward with others involved in the appointment itself but the purpose of this email is to inform you that one of the conclusions from that investigation is there was a failure on your part to investigate satisfactorily the original whistleblowing complaint of 4th July 2016 which was sent to you. The concerns go beyond delay in investigating but there appear to have been failures to deal with a potentially serious breach of processes involving senior officers in the Council and/or to deal with the matter formally and in a more appropriate way.

Your role as Monitoring Officer puts you at the heart of maintaining standards of integrity and public confidence ; in light of these concerns, I am not satisfied that you have fulfilled your duties in this regard and this puts both you and the reputation of the Council at risk.

This email is to confirm that I am removing the role of Monitoring Officer from you and these duties will now be undertaken by your Deputy.

Regards

Cllr Sohail Munawar

Leader of the Council

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### ANNEX 3

**From:** Anand Gurpreet  
**Sent:** 25 August 2016 20:28  
**To:** Munawar Sohail  
**Cc:** Parkin Roger; Walker Linda  
**Subject:** RE: Regarding MO  
**Importance:** High

Dear Councillor Munawar

I must express both my astonishment and disappointment in receiving your email.

I would like clarify the following:

1. I was on annual leave from 24.06.16 – 11.07.16.
2. The whistleblowing complaint was received on 04.07.16 whilst I was on leave and was forwarded to the Deputy Monitoring Officer on 04.07.16 by my MSO to have the matter considered in my absence.
3. The matter was brought to the attention of the Chief Executive [REDACTED] by the Deputy Monitoring Officer and [REDACTED] advised the Deputy Monitoring Officer to await until my return from leave and to discuss the matter with me.
4. I met [REDACTED] for a statutory officers catch up meeting on 12.07.16 at which point she alerted me to the whistleblowing matter and advised me that she had asked the Deputy Monitoring Officer to await my return and wanted me to discuss the matter with the Deputy Monitoring Officer and commence the investigation accordingly.
5. The Deputy Monitoring Officer emailed me the whistleblowing complaint on 12.07.16. **Having just returned from leave, this was the first time that I had seen the whistleblowing complaint.**
6. I wrote to the whistleblower on 13.07.16 advising that I had received the complaint and would be managing the investigation in line with the council's whistleblowing policy.
7. I met the [REDACTED] against whom the complaint had been made, on 13.07.16 to discuss the complaint and advised that I would be formally writing to her to commence an investigation of the complaint. The [REDACTED] verbally advised me that the process had conformed to HR policies and procedures but I advised that I would need to see evidence of this as part of the formal investigation.
8. I wrote to the [REDACTED] on 13.07.16 outlining the basis of the complaint and advising about the nature of the complaint. I also advised the [REDACTED] that as Monitoring Officer, I have a specific duty to ensure that the Council, its officers and its Councillors, maintain the highest standards of conduct and I also have a specific duty to report on any matters which I believe amount to maladministration or which may be illegal, thus I would be conducting the investigation. I also sought assurances in relation to the nature of the complaint through raising a series of questions with the aim of understanding if the complaint was valid and if any rules had not been complied with.
9. The [REDACTED] responded to my request for information on 13.07.16 and provided email evidence of the process that had been followed.
10. I responded to the [REDACTED] on 18.07.16 that I was satisfied that based on the evidence that had been presented both in email form and during our conversation on 13.07.16 but I advised that there was still a need for her to answer my questions as posed on

13.07.16 and provide me with the appropriate assurances before I could conclude the matter.

11. The [REDACTED] responded to me on 20.07.16 by providing answers to my questions and advised me that in her opinion the action taken by her were fair and transparent and she would advise others to take similar action in similar circumstances; albeit she would leave it to my judgement to decide.
12. Between 18.07.16 and 20.07.16, whilst I was awaiting a response from the [REDACTED] in terms of assurance, I took time to once again review all of the evidence presented to me, at which point I realised that there were two attachment emails within other attachment emails which I inadvertently missed during my initial review. However, as I had not formally stated that the case was closed post my initial review; rather I had still sought detailed assurance from the [REDACTED] there was no way that missing information initially was an issue. In fact, the manner in which information was provided to me was concerning (i.e. one email with numerous email attachments which also had numerous email attachments) and thus was a key reason for me not closing the case initially and seeking further assurance and answers to my initial questions in order to enable me to make an informed decision.
13. I wrote to the [REDACTED] on 20.07.16 outlining my concerns about her inability to provide me with the necessary assurance in relation to the whistleblowing complaint; particularly in the context of failure to adhere to HR policies and procedures and the employee code of conduct. As this was an employment and process/procedure related matter, as Monitoring Officer and in response to the whistleblowing allegation, I believed in the first instance the matter should be passed onto the Acting Head of Paid Service with a recommendation that a detailed and independent investigation was undertaken into this matter.
14. The Acting Head of Paid Service wrote to me on 22.07.16 thanking me and advising that he would be commissioning an independent investigator.

Based on the chronology of the above please can you advise me how I failed to investigate the matter of the original whistleblowing complaint satisfactorily? I am particularly interested to understand how my actions were unsatisfactory considering I dealt with the matter in 7 working days; i.e. from being made aware of the matter after returning from leave on 12.07.16 to concluding that a serious breach had occurred and recommending a formal investigation on 20.07.16. If anything the delay was from the [REDACTED] in responding to my questions and in providing me with the required assurance.

Based on the above chronology and the in depth nature of my questions, my assurances sought and my overall investigation, I would welcome clarity and evidence as to how there appears to have been failures to deal with a potentially serious breach of processes involving senior officers in the Council and/or to deal with the matter formally and in a more appropriate way. If this has been identified as an issue as part of the formal investigation into the [REDACTED] please can I be advised why at the conclusion of this investigation I have not been questioned on the outcome and also not been presented with evidence for me to consider and respond. I believe this unfair practice, discrimination and victimisation and a contravention of the Council's Dignity at Work procedure.

Also, if you truly consider there to have been a delay in investigating the matter, I would question and welcome your views on why the Chief Executive [REDACTED] decided to not act on 04.07.16 and awaited my return to speak to me on 12.07.16. Surely if the matter was so serious then the Head of Paid Service/Chief Executive should have alerted you as leader to the matter and should have acted promptly and also considered how to manage the overall situation including how to deal with the

██████████ pending an investigation. Therefore, I believe any delays and serious breaches are the result of inaction and the decisions taken by the Chief Executive ██████████ between 04.07.16 (date of complaint received) and 12.07.16 (date of complaint being brought to my attention). This for me seriously brings into question the judgement of the Chief Executive ██████████ in terms of what constitutes a serious matter; particularly as the ██████████ reports to her.

You are correct that as Monitoring Officer I am at the heart of maintaining standards of integrity and public confidence; I believe that I have fulfilled this requirement throughout my tenure thus far and have many examples of how I have met the requirements of the role, which I am happy to share with you. In fact many members including yourself have praised me as Monitoring Officer as has the Chief Executive ██████████. Since becoming Monitoring Officer I have met regularly with ██████████ as a fellow statutory officer and also the previous leader and yourself as leader on a regular basis. During this time and in all the meeting with ██████████ the previous leader and yourself as current leader, no issues have ever been brought to my attention nor has any such evidence been presented which could suggest that I was not fulfilling my role effectively as Monitoring Officer. During this time I have also received support from the Deputy Monitoring Officer and have always kept her abreast of all matters and she has praised me on many occasions for fulfilling this role effectively; thus your concerns do not accord with the effective manner in which I have to date discharged my statutory duty.

I would welcome further clarity and evidence in terms what are the concerns that have led to dissatisfaction with me in terms of fulfilling my duties as Monitoring Officer and I would welcome clarity and evidence as to how I have put the Council's reputation at risk; something which I have worked hard to ensure is not put at risk and which I can evidence accordingly to you. I am also not sure how I can be blamed by you for putting the reputation of the Council at risk; particularly as the complaint related to a staffing matter; responsibility for which resides primarily with the Head of Paid Service, in which case I would suggest that by not acting between 04.07.16 (date of complaint received) and 12.07.16 (date of complaint being brought to my attention), the Chief Executive ██████████ has put the reputation of the Council at risk.

As I understand it, you are alleging that I have committed as serious breach as Monitoring Officer; i.e. misconduct in my role. Also, as I understand it, you are alleging that I not fulfilled the duties and responsibilities of my role; i.e. capability. As I understand it by removing the role of Monitoring Officer from me on the basis of the aforementioned allegations of serious breach (misconduct) and not fulfilling duties (capability), you are in effect dismissing me as Monitoring Officer. Please can you confirm that this is your position?

Can I please remind you that as a Statutory Officer there is a process and procedure for removing me as Monitoring Officer which if you allege misconduct and capability then the Council is required to convene a panel and an investigation must be led by the Council's independent person. This is a requirement of the Council's constitution and if you are in fact dismissing me without following due process then this is a contravention of the Council's constitution, is unfair, not transparent and is in itself bringing the Council's reputation into disrepute and placing the Council at risk.

Can I also remind you that by Full Council appointing me as Monitoring Officer, my contract of employment was subsequently varied to include Monitoring Officer duties and as such if you are removing me from the role of Monitoring Officer, you are in fact making amendments to my contract of employment without falling due process or affording me due consideration, justification or consultation in line with the Council's constitution and HR policies and procedures. In effect I have been unfairly dismissed from my role.

Please can you clarify your position in terms of whether you are removing me (i.e. dismissing me) from the role of Monitoring Officer on the basis of capability and competency without affording me the correct process or whether you are suspending me (which as I understand it is a neutral act) pending a formal investigation into your concerns.

If the former, please can you advise me of which aspect of the Council's constitution, HR policies and procedures and legislation relating to removing an individual from the post of Monitoring Officer is being relied upon as grounds for the decision you have taken. If the latter, please can you advise how due process will be followed hereon in terms of adhering to the disciplinary policy and process for statutory officers, which requires me to be remunerated whilst I am suspended from the role of Monitoring Officer.

Due to the seriousness of the matter I would welcome a prompt response by Tuesday 30.08.16 in relation to my points above. I can then accordingly consider next steps including whether I need to seek external representation in relation to this matter.

I am committed to continuing to deliver in my role as Monitoring Officer, a role which I pride and take very seriously and also I am committed to meeting with you and the acting Head of Paid Service to discuss this matter further and provide any further clarity.

All that I desire is to be able to work as Assistant Director and Monitoring Officer by being afforded the appropriate respect and courtesy as per the Council's Dignity at Work policy and also being managed accordingly where there are concerns through the appropriate HR policies and procedures. I would also like to be afforded the opportunity to be treated fairly and consistently in a manner which accords to your vision as per yesterday's communication to all staff of the Council being on journey of openness, transparency and excellence in everything we do.

Kind Regards

Gurpreet Anand, LL.M Procurement Law, MBA Strategic Procurement, MCIPS

Assistant Director, Procurement and Commercial Services, (Monitoring Officer)

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**ANNEX 4**

From: Munawar Sohail  
Sent: 26 August 2016 11:41  
To: Anand Gurpreet  
Cc: Parkin Roger; Walker Linda  
Subject: Regarding MO

Dear Gurpreet

I understand there are other related actions being taken against others and until those matters are resolved, it would be inappropriate for me to make any further comment other than those made in my email to you. I would be grateful if you could respect the decision that has been taken.

I would repeat that the issue does not simply relate to any delay and therefore to protect both you and the Council, the decision after discussion with Cabinet, has been taken to simply remove that role from you. Doing this, does not mean that the Council is taking any disciplinary action against you as a result of concerns that have lead to this decision being made.

Regards,

Cllr Sohail Munawar  
Leader of the Council

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## ANNEX 5

From: Anand Gurpreet  
Sent: 30 August 2016 09:52  
To: Munawar Sohail  
Cc: Parkin Roger; Walker Linda  
Subject: RE: Regarding MO  
Importance: High

Dear Councillor Munawar

Thank you for your email below.

I wish to emphasise my absolute respect of your role and position as Leader of the Council.

As you are aware, the circumstances that could give rise to the termination of a Monitoring Officer's role is enshrined in law. The processes and procedures that are required to be followed prior to arriving at any such decision to terminate a Monitoring Officer's role are similarly set out in law.

Further, there is a duty on the Council to show that any termination of a Monitoring Officer's role is fair and has been carried out in compliance with inter alia, the Local Authorities (standing orders) {England} Regulations 2001 as amended by the Local Authorities (standing orders) England Amendment Regulations (2015); the Council's Constitution; the Local Government Act 1972 and the Human Rights Act.

I also believe that a Monitoring Officer's rights to make representations in response to any proposed termination of said role is also enshrined in inter alia, the Council's Constitution, the Council's HR policies and procedures, the Human Rights Act and an individual's contract of employment.

Consequently, I am afraid your response below has not addressed my queries to your unilateral proposal to remove the role of a monitoring officer from my remit as set out in my email of 25th August 2016 (attached herewith) for ease of reference.

Whilst these queries, consequential processes and procedures required to be followed by the Council on one hand and the response/representations required by me on the other hand remain outstanding, I wish to state in certain terms that I am unable to relinquish my role of Monitoring Officer to another member of the Council or to an external party.

I shall therefore continue in this role and will undertake the duties required of me as per my contract of employment and as per the statutory responsibilities and duties required from me and entrusted to me by Full Council and the Council's constitution.

I am still hoping we can formally meet to work a resolution to this matter but I am concerned that the approach that you have taken does not afford me the opportunity to understand the alleged concerns and/or allegations against me and does not afford me the opportunity to respond accordingly.

I am committed to undertaking my duties in a manner that maintains the highest standards and conduct as required of me, of Councillors and of Officers.

I am also committed to reporting actions that may amount to maladministration or unlawfulness so as to enable the Council to take all required and necessary actions in a manner that protects me,

Officers and Councillors and which do not bring the esteemed reputation of the Council into disrepute. To achieve these commitments, I will also continue to work with and instruct the Deputy Monitoring Officer and where the facts of a particular matter requires, delegate to her, either partially or wholly, as appropriate.

Kind Regards

Gurpreet Anand, LLM Procurement Law, MBA Strategic Procurement, MCIPS

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**ANNEX 6**

**From:** Munawar Sohail  
**Sent:** 30 August 2016 10:34  
**To:** Anand Gurpreet  
**Cc:** Parkin Roger; Walker Linda  
**Subject:** Management instructions

Dear Gurpreet,

Thank you for your email. However I would repeat the contents of my email to you of Friday.

"I understand there are other related actions being taken against others and until those matters are resolved, it would be inappropriate for me to make any further comment other than those made in my email to you. I would be grateful if you could respect the decision that has been taken.

I would repeat that the issue does not simply relate to any delay and therefore to protect both you and the Council, the decision after discussion with Cabinet, has been taken to simply remove that role from you. Doing this, does not mean that the Council is taking any disciplinary action against you as a result of concerns that have lead to this decision being made."

Regards,

Cllr Sohail Munawar  
Leader of the Council

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**ANNEX 7**

**From:** Anand Gurpreet  
**Sent:** 30 August 2016 19:23  
**To:** Munawar Sohail  
**Cc:** Parkin Roger; Walker Linda  
**Subject:** RE: Management instructions  
**Importance:** High

Dear Councillor Munawar

Thankyou for your email below.

I note that all of my queries and concerns raised in my earlier emails relating to this matter (attached herewith for ease of reference) remain outstanding.

Subject to your responses and in the absence of any clarity on this matter, I can only outline my understanding of the action taken against me through your "*management instruction*".

Subject to formal confirmation from you to the contrary, my understanding of your "*management instruction*" is as follows:

1. Through your proposal to remove the Monitoring Officer remit from me, I am in effect being "*suspended*" (neutral act), pending a formal investigation into the concerns that you have about the alleged serious failures and breaches on my part.
2. The Council will undertake a formal, fair and transparent investigation in line with applicable constitutional and statutory provisions and HR rules into the alleged concerns that have arisen out of the [REDACTED] investigation. As part of this new investigation against me, I will be afforded the opportunity to understand the allegations and concerns against me relating to serious breaches and serious failures and I will be afforded the opportunity to respond accordingly.
3. The Council will continue to remunerate me as Monitoring Officer whilst I am suspended and until the outcome of the aforementioned investigation results in (a) a recommendation to remove me as Monitoring Officer in accordance with the applicable constitutional and statutory provisions and HR rules; or (b) the suspension is lifted and the role of Monitoring Officer is added back to my remit.

Finally, I remain committed to formally meeting with you to resolve this matter positively and I look forward to hearing from you by return email.

Kind Regards

**Gurpreet Anand, LLM Procurement Law, MBA Strategic Procurement, MCIPS**

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**ANNEX 8**

**From:** Munawar Sohail  
**Sent:** 31 August 2016 10:31  
**To:** Anand Gurpreet  
**Cc:** Parkin Roger; Walker Linda  
**Subject:** RE: Management instructions

Dear Gurpreet,

Thank you for your email. As I have confirmed in my previous emails I and cabinet feels in light of all the circumstances I have set out , for the MO role, this role should be removed from you. This does not amount to suspension or any other disciplinary action.

My reference management instruction is to be clear that the MO role only has been removed. I would be grateful if you could respect the decision.

Regards,

Cllr Sohail Munawar  
Leader of the Council

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## ANNEX 9

**From:** Anand Gurpreet  
**Sent:** 02 September 2016 23:58  
**To:** Munawar Sohail  
**Cc:** Parkin Roger; Walker Linda  
**Subject:** FORMAL MONITORING OFFICER GUIDANCE

Dear Councillor Munawar

Thankyou for your email below.

I note once again that all of my queries and concerns raised in my earlier emails relating to this matter remain outstanding, despite repeated requests to you for clarification.

I also note once again that all my repeated requests to you for us to meet to discuss this matter have been ignored by you.

Therefore, in light of the above, and in order to fulfil my statutory duty as the council's Monitoring Officer, including but not limited to preventing unlawfulness and maladministration, please find below formal guidance to you in my capacity of the council's Monitoring Officer:

As I have indicated in my previous emails you have no grounds for taking the action which you are purporting to.

I have acted entirely reasonably and competently in dealing with this matter.

However, in any event you are seeking to act outside of your powers. As you will no doubt be aware the designation of the Monitoring Officer is not an executive function by virtue of paragraphs 44 and 44A of part I of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853.

This means that only Full Council can remove me as the Council's Monitoring Officer and even then it would have to have proper grounds for doing so.

As leader of the council you only have power to take executive decisions within the Council's constitution and its budget and policy framework.

The action which you are purporting to take is beyond your legal powers, outside of the Council's constitution and also outside of the budget and policy framework. It is also entirely unreasonable, unfair and unjustified.

If you do not withdraw your purported removal of me as Monitoring Officer with immediate effect then I will have no option but to report to Full Council pursuant to my duty under section 5 of the

Local Government and Housing Act 1989 advising Full Council that you are attempting to act in contravention of an enactment (the Local Government and Housing Act 1989 and the 2000 Regulations). I may also bring judicial review proceedings as a result of your attempted unlawful action.

If I do not receive confirmation by 5pm on Tuesday 6th September 2016 that your purported removal of me as Monitoring Officer is withdrawn I will begin taking these steps.

Kind Regards

Gurpreet Anand, LL.M Procurement Law, MBA Strategic Procurement, MCIPS

Assistant Director, Procurement and Commercial Services, (Monitoring Officer)

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**ANNEX 10**

From: Munawar Sohail  
Sent: 06 September 2016 16:14  
To: Anand Gurpreet  
Cc: Parkin Roger; Walker Linda  
Subject: Regarding MO

Dear Gurpreet,

Thank you for your email of 2nd September.

I do not consider that the Local Authority (Standing Order) Regulations 2001 apply as they provide for the dismissal of or of taking disciplinary action against certain officers including the Monitoring Officer. This is not the case in this instance as it merely relates to your designation as Monitoring Officer. Under the Local Government and Housing Act 1989 a Local Authority has a duty to 'designate one of their officers (to be known as "the Monitoring Officer") as the officer responsible for the duties imposed by this section'. You were designated as Monitoring Officer at the Council meeting on 24th November 2015 with effect from the following day. The Council, at any time, is at liberty to designate a different officer for this role. Full Council will therefore consider this matter on 27th September.

Regards

Cllr Sohail Munawar  
Leader of the Council

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## ANNEX 11

**From:** Anand Gurpreet  
**Sent:** 08 September 2016 08:06  
**To:** Munawar Sohail  
**Cc:** Parkin Roger; Walker Linda  
**Subject:** RE: Regarding MO  
**Importance:** High

Dear Councillor Munawar

Thank you for your email of 6th September 2016.

Whilst your email does not explicitly state this, it is clear from its contents that you now accept that you and the Cabinet do not have the power to remove me from my role as Monitoring Officer and that such a decision can only be made by Full Council. It also follows that I am still the Council's Monitoring Officer and will remain such until such time as a lawful decision is made to remove me from that role. **Please confirm that this is the case by return.**

Your email suggests that Full Council will consider this matter at its meeting on 27th September 2016. You do not indicate how the matter will be put before Full Council, who will present any report or information and on what basis any recommendation for re designating the role will be made.

You have previously indicated that there are reasons for re designating the role. These reasons have not been formally put or explained to me nor have they been investigated.

The Monitoring Officer role is statutory with a duty to blow the whistle if a Council is acting unlawfully or proposes to do so. The role is afforded protection via the Local Authorities (Standing Orders) Regulations 2001, as amended, because of this. It is clear from your emails that you are seeking to remove me from my role as Monitoring Officer because of unspecified concerns about my credibility/competence in that role. It is clearly a disciplinary action, albeit one without even any pretence of following due process.

The Monitoring Officer responsibilities are a significant part of my role and any attempt to remove them from me will amount a de facto dismissal which will be unlawful. The statutory protection is in place to prevent the very actions which you are seeking to take and to ensure that Monitoring Officers can only be removed following a fair process and not for **political reasons**. A Council cannot seek to avoid the statutory protection by saying that it is not taking disciplinary action but simply re designating the role. If it were able to do so it would entirely frustrate the purpose of the legislation.

### **Please confirm by return:**

- 1) that you accept that you as Leader of the Council have no power to remove me as Monitoring Officer and this can only be done by Full Council;
- 2) that I remain the Council's Monitoring Officer;
- 3) the process which you say will be followed to put the issue of the position of the Monitoring Officer on the agenda for the next Full Council meeting.

My position remains as set out in my previous email. There are no grounds for removing me as Monitoring Officer. If the Council does wish to remove me as Monitoring Officer it must follow due process as set out in legislation, the Council's Constitution and the Council's disciplinary procedures. If I do not receive confirmation from you by return that the Council either will be taking no action to remove me as Monitoring Officer or will follow a proper process then I will begin the process to issue a report pursuant to section 5 of the Local Government and Housing Act 1989 for consideration by Full Council as soon as possible and no later than 27th September. I may also commence judicial review proceedings against the Council.

I look forward to your urgent response.

Kind Regards

Gurpreet Anand, LLM Procurement Law, MBA Strategic Procurement, MCIPS

Assistant Director, Procurement and Commercial Services, (Monitoring Officer)

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**ANNEX 12**

**From:** Parkin Roger  
**Sent:** 09 September 2016 15:32  
**To:** Anand Gurpreet  
**Cc:** Munawar Sohail; Walker Linda  
**Subject:** FW: Regarding MO  
**Importance:** High

Dear Gurpreet

The leader has passed your email of 8<sup>th</sup> September to me for response, given that I am your line manager and the interim Head of paid Services for SBC.

I understand that the leader has already set out the reasons why the Council considers that the 2001 Regulations do not apply.

I can confirm that a report will be put to full Council in my name which will recommend that Article 12 be amended so that your post is no longer designated as Monitoring Officer. Reasons will be set out in that report. The Council will follow the normal processes in relation to the agenda and report for the meeting. I can confirm that you will remain as Monitoring Officer for the time-being and this will only cease should full Council decide to change the designation.

Kind Regards

Roger

**Roger Parkin**

Strategic Director Customer & Community Services

Slough Borough Council

Tel 01753 875207

Fax 01753 875058

[www.slough.gov.uk](http://www.slough.gov.uk)

Please don't print this email unless you really need to- think of the environment.

**ANNEX 13**

**From:** Anand Gurpreet  
**Sent:** 09 September 2016 19:02  
**To:** Parkin Roger  
**Cc:** Munawar Sohail; Walker Linda  
**Subject:** RE: Regarding MO

Dear Roger

Thank-you for your email

My position remains as set out in my previous email. There are no grounds for removing me as Monitoring Officer. If the Council does wish to remove me as Monitoring Officer it must follow due process as set out in legislation, the Council's Constitution and the Council's disciplinary procedures. The Council must also outline clear rationale with evidence to substantiate my removal as monitoring officer and must afford me an opportunity to respond accordingly to ensure natural justice; which unfortunately has not happened despite numerous requests to the Leader.

Thank-you for confirming and accepting that I am the Council's monitoring officer; something which the leader has failed to formally confirm against the backdrop of his unlawful decision to attempt to remove me as monitoring officer.

As the Leader has not addressed my concerns as Monitoring Officer, which include acting beyond powers afforded by statutory and constitutional provisions, I am left with no alternative other than to discharge my statutory duty and make Full Council aware of my concerns of unlawfulness.

I will therefore now begin the process to issue a report pursuant to section 5 of the Local Government and Housing Act 1989 for consideration by Full Council as soon as possible and no later than 27th September. I may also commence judicial review proceedings against the Council.

Kind Regards

Gurpreet Anand, LL.M Procurement Law, MBA Strategic Procurement, MCIPS

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## ANNEX 14

From: Anand Gurpreet  
Sent: 09 September 2016 19:08  
To: Parkin Roger; Fitzgerald Stephen  
Cc: Walker Linda  
Subject: SECTION 5 STATUTORY MONITORING OFFICER REPORT FOR FULL COUNCIL 27.09.16

Dear both

I am writing to you both in your respective capacities of interim head of paid service and interim S151 Officer.

As you are both aware, I have a statutory duty as the council's Monitoring Officer to report certain matters of concern to Full Council, including but not limited to, matters relating to unlawfulness and maladministration.

The Leader and the Executive (Cabinet) have acted 'ultra vires'; i.e. beyond their legal powers afforded by either legislation and/or the Council's Constitution, through attempting to remove the designation of Monitoring Officer from me. This is unlawful as the designation or removal of the monitoring officer is not an executive function by virtue of paragraphs 44 and 44A of part I of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853.

This means that only full council can remove me as the Council's Monitoring Officer and even then it would have to have proper grounds for doing so. The Leader and the Cabinet only have power to take executive decisions within the Council's constitution and its budget and policy framework. The action which the leader and cabinet have taken and/or are purporting to take is beyond their legal powers, outside of the Council's constitution and also outside of the budget and policy framework. It is also entirely unreasonable, unfair and unjustified as I have not been afforded any robust justification or evidence to substantiate the decision, nor have I been provided with any opportunity to respond; thus a contravention of natural justice.

I have provided the Leader with opportunities to retract both his and the Executive's unlawful position and I have also made requests to meet but unfortunately I have not received any confirmation in either regard.

Therefore, I am left with no alternative other than to report to Full Council pursuant to my duty under section 5 of the Local Government and Housing Act 1989 advising Full Council that the actions that the leader and the executive have taken and / or are attempting to take are in contravention of an enactment (the Local Government and Housing Act 1989 and the 2000 Regulations) and thus unlawful.

I shall be reporting to Full Council on 27.09.16 and in readiness for this I am duty bound to consult with you both in your respective statutory capacities. I have pencilled in for us to meet on 15.09.16 for us to discuss this matter in more detail and I also aim to provide you with a copy of my proposed report by 14.09.16 for you to consider and to also provide comments in your respective statutory capacities.

If possible, it would be helpful to meet sooner and therefore please advise in this regard. I would be most grateful if you could return any comments to me by 5pm on 16.09.16 so that I can meet the deadline prescribed by the Council's democratic process. Should comments not be provided within

the prescribed timescales, I shall submit the report noting that an opportunity was provided to statutory officers but no response was forthcoming. Therefore, it is imperative that we collectively meet sooner than 15.09.16 and most definitely no later than 15.09.16.

Please can I remind you that the contents of this email, any matters we discuss in this regard and the report I present to you for consultation, are strictly private and confidential and must not be discussed with anyone else; particularly as I have a statutory duty to report to all members collectively and any prior dissemination of any information I present to you, including this email, could lead to me being hindered, prejudiced and frustrated in discharging my statutory duty.

Dear Linda - please note as my deputy MO

Kind Regards

Gurpreet Anand, LLM Procurement Law, MBA Strategic Procurement, MCIPS

Assistant Director, Procurement and Commercial Services, (Monitoring Officer)

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## **ANNEX 15 – WEIGHTMANS LLP FORMAL LEGAL ADVICE**

We have been asked to advise the Monitoring Officer of Slough Borough Council (“the Council”) on whether he should prepare a report pursuant to section 5 of the Local Government and Housing Act 1989 (“the Act”).

The Monitoring Officer initially sought advice on the Leader of the Council’s purported decision to remove him from the Monitoring Officer and appoint the Deputy Monitoring Officer as the Council’s Monitoring Officer.

We advised that the designation of the Monitoring Officer is a function which may not be exercised by the executive by virtue of the paragraphs 44 and 44A of part I of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853.

The Monitoring Officer advised the Leader of the Council of the legal position and the Leader of the Council appears to have accepted that he was seeking to act beyond his powers because he has indicated that full council would consider “the matter” (the designation of the Monitoring Officer) on 27 September 2016.

The Monitoring Officer sought clarification of the process which would be followed to report the matter to full Council. The Leader of the Council did not respond but an email was sent to the Monitoring Officer by the Acting Head of Paid Service indicating that a report would be put to full council in his name and that reasons for a proposed re-designation would be set out in that report.

The only “reasons” which have been advanced so far for the proposal to re-designate the Monitoring Officer role were “concerns” about the way in which the Monitoring Officer dealt with an initial investigation into a whistleblowing complaint. We understand that these “concerns” have not been explained, they have not been put to the Monitoring Officer, they have not been investigated, he has not had any opportunity to make representations on those concerns and they have not been deemed to be sufficiently serious to warrant instigating disciplinary procedures.

All local authority decisions must be made in accordance with the law. As public bodies local authorities must make decisions based on sound reasons, taking into account relevant considerations and not for improper purposes.

The Monitoring Officer role is provided additional protection as a result of the Local Authorities (Standing Orders) Regulations 2001, as amended. This provides that where an authority seeks to dismiss any of the three statutory officers the decision must be taken by full council and a panel comprising of at least two independent persons must be convened prior to any council decision.

This additional protection reflects the fact that the Monitoring Officer role is particularly vulnerable to capricious or unjustified action as a result of the statutory whistleblowing responsibilities which are integral to the role.

If an authority could simply obviate the protection afforded by the Regulations by re-designating the role it would frustrate the purpose of the legislation and make it ineffective. The only reasons thus far advanced for the proposal are clearly disciplinary in nature and absent any proper reason for proposing the re-designation the Council appears to be seeking to avoid the requirements of the

Regulations and its own disciplinary processes. This would amount to an improper purpose and make any such decision unlawful and amenable to challenge by way of judicial review. It also appears to be simply an attempt to give effect to the unlawful decision of the Leader of the Council.

In our view on the basis of the information currently available, absent any proper, justifiable reasons for proposing the re-designation of the role of Monitoring Officer any decision would be unlawful and as a result in breach of a rule of law.

The Monitoring Officer has a duty under section 5 of the Act to prepare a report if it appears to him that any proposal is likely to give rise to a breach of a rule of law. This duty is personal to the Monitoring Officer and he may only delegate it to a deputy where he is unable to owing to absence or illness (section 5 (7)).

In our opinion, on the basis of the information currently available to the Monitoring Officer, it is likely that the proposal to re-designate the Monitoring Officer would breach a rule of law and, as a result, his duty under section 5 is engaged.