

TITLE OF REPORT: APPOINTMENT OF ACTING MONITORING OFFICER

REPORT OF THE CORPORATE LEGAL MANAGER

1. SUMMARY

- 1.1 To consider the appointment of an Acting Monitoring Officer to cover the maternity leave of the Council's Monitoring Officer. This is a temporary appointment until the return of the Monitoring Officer.

2. RECOMMENDATIONS

- 2.1 That Council exercises its right to appoint an Acting Monitoring Officer without requiring a recommendation of the Employment Committee.
- 2.2 That the Acting Corporate Legal Manager be designated as Acting Monitoring Officer from the commencement of the Corporate Legal Manager's maternity leave until the Corporate Legal Manager returns from maternity leave.

3. REASONS FOR RECOMMENDATIONS

- 3.1 The recommendation is the best way of ensuring that the Authority complies with its statutory requirements.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The requirement to appoint to the post of Monitoring Officer is a duty, however, it is not necessary for that person to be a lawyer. Another officer within the Council could be appointed to the role, but no other officer currently has the experience necessary to fulfil this post.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 The Chairman of the Standards Committee has been advised of this report.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 The duties of the Monitoring Officer are carried out by the Corporate Legal Manager in the appointed role as Monitoring Officer. The Senior Lawyer is currently appointed as Deputy Monitoring Officer.
- 7.2 The Corporate Legal Manager is expected to commence maternity leave from 8 September 2014 and the Senior Lawyer will be Acting Corporate Legal Manager for the duration of the Corporate Legal Manager's absence.

8. ISSUES

- 8.1 Section 5 of the Local Government and Housing Act 1989 states that Local Authorities must designate one of their officers as the "Monitoring Officer." It is important to note that appointing an officer to this post is a duty rather than a power.
- 8.2 A Council's Monitoring Officer has a broad role in ensuring the lawfulness and fairness of Council decision-making, ensuring compliance with Codes and Protocols, promoting good governance and high ethical standards within the authority.
- 8.3 It is recommended that the current Senior Lawyer (who will also be the Acting Corporate Legal Manager) is appointed as Acting Monitoring Officer from the commencement of the Monitoring Officer's maternity leave, expected to be 8 September 2014.
- 8.4 Additionally there is an ongoing arrangement with Broxbourne Borough Council. The Monitoring Officer at Broxbourne can act as a Deputy Monitoring Officer for North Herts District Council, and will continue in support of the Acting Monitoring Officer.
- 8.5 The post of Senior Lawyer has been covered by a temporary appointment in order to provide support to the Acting Corporate Legal Manager. The Officer in post has been in the role for some time covering for the Senior Lawyer who has been on a Sabbatical. The candidate filling this role is also appointed as an internal Deputy Monitoring Officer.

9. LEGAL IMPLICATIONS

- 9.1 The appointment of the Monitoring Officer is a function for the Full Council. The Constitution ordinarily requires that appointment to the role of Monitoring Officer shall be by recommendation from the Employment Committee. However, because this is a temporary appointment without any need for a selection process, it is appropriate for the Council to make this decision without prior recommendation of the Employment Committee (Council has the power to override any delegation if it chooses to do so).
- 9.2 Failure to appoint an Acting Monitoring Officer could put the Council at risk of challenge for failure to comply with a statutory duty, however, the risk of such challenge is minimal.
- 9.3 The duty under the 1989 Act is to 'designate one of their officers' as Monitoring Officer, however the Monitoring Officer role cannot be designated to either the Head of Paid Service (Chief Executive) following a restriction within the Local Government Act 2000, or the section 151 Officer (Strategic Director of Finance and Regulatory Services) as stated in section 151 Local Government Finance Act 1988.

10. FINANCIAL AND RISK IMPLICATIONS

- 10.1 There are no risks other than that already identified in Paragraph 9.2.

11. HUMAN RESOURCE IMPLICATIONS

- 11.1 There are no contractual implications as the officer appointed to the Acting Corporate Legal Manager role is willing to undertake the duties of Acting Monitoring Officer.
- 11.2 The Acting Monitoring Officer will be subject to those employment rights set out in the Officers' Employment Procedure Rules.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on 1 October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 8.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

13. APPENDICES

- 13.1 Appendix A – Monitoring Officer functions (extract from Constitution).

14. CONTACT OFFICERS

- 14.1 Katie White, Corporate Legal Manager
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MONITORING OFFICER FUNCTIONS (EXTRACT FROM CONSTITUTION)

12.3 Functions of the Monitoring Officer

12.3.1 Maintaining the Constitution

The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for Members, staff and the public.

12.3.2 Ensuring Lawfulness and Fairness of Decision Making

After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Full Council or to the Cabinet in relation to an Executive Function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

12.3.3 Supporting the Standards Committee

The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.

12.3.4 Receiving Complaints about Councillors

The Monitoring Officer will receive complaints of failures to comply with the Members' Code of Conduct and determine, in consultation with the Independent Person, whether a complaint requires formal investigation. The Monitoring Officer may seek to resolve a complaint informally prior to a decision on whether the complaint merits formal investigation.

12.3.5 Conducting Investigations

The Monitoring Officer will arrange formal investigations as appropriate into matters referred to him/her and make reports or recommendations in respect of them to the Standards Committee. Subject to providing a report for information to the Standards Committee, the Monitoring Officer may take no further action where a formal investigation finds no evidence of a failure to comply with the Members' Code of Conduct, or seek an informal resolution (subject to consultation with the Independent Person) where the complainant is satisfied with the outcome.

12.3.6 Advising whether decisions of the Cabinet are within the Budget and Policy Framework

The Monitoring Officer will, in conjunction with the Chief Finance Officer, advise whether decisions of the Cabinet are in accordance with the Budget and Policy Framework.

12.3.7 Providing Advice

The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and Budget and Policy Framework issues to the Councillors.

12.3.8 Restrictions on Posts

The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.