

**TITLE OF REPORT: RE-APPOINTMENT OF ACTING MONITORING OFFICER**

REPORT OF THE HEAD OF PAID SERVICE (CHIEF EXECUTIVE)

**1. SUMMARY**

- 1.1 To consider the re-appointment of the Acting Monitoring Officer following the resignation of the Council's Monitoring Officer. This is a temporary appointment until a permanent appointment is made.

**2. RECOMMENDATIONS**

- 2.1 That Council exercises its right to re-appoint the Acting Monitoring Officer without requiring a recommendation of the Employment Committee.
- 2.2 That the Acting Corporate Legal Manager continues to be designated as Acting Monitoring Officer until a permanent appointment is made.

**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 on the Authority, however it is not necessary for that person to be a lawyer. Another officer within the Council could be appointed to the role, but the Acting Corporate Legal Manager has filled the post for the last twelve months.

**5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

- 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 Corporate Legal Manager has been on maternity leave since 11 August 2014 and has tendered her resignation, with the last day of service being 31 August 2015.

- 7.2 The Senior Lawyer has been Acting Corporate Legal Manager for the duration of the Corporate Legal Manager's absence and was appointed as Acting Monitoring Officer by Council on 24 July 2014 "...from the commencement of the Corporate Legal Manager's maternity leave until the Corporate Legal Manager returns from maternity leave".

## **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 The Medium Term Financial Strategy identifies at section 3.11 that the corporate structure will be reviewed for the reasons set out in the Strategy. The re-appointment of the Acting Monitoring Officer is recommended until such time as the Council has completed this review. The process for making a permanent appointment will be considered once the review is completed and any proposed new structure is known. As the timescales for the completion of the review and any subsequent restructure have not been finalised, it is recommended that the re-appointment as Acting Monitoring Officer be until a permanent appointment is made.
- 8.4 The appointment of the Senior Lawyer as Acting Corporate Legal Manager will continue and is not subject to Council approval.
- 8.5 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 solicitor 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 section 5 of the 1989 Local Government and Housing Act (as amended) is to 'designate one of their officers' as Monitoring Officer, however the Act states the Monitoring Officer role cannot be designated to either the Head of Paid

Service (Chief Executive) or the Chief Finance Officer (Strategic Director of Finance and Regulatory Services).

## **10. FINANCIAL IMPLICATIONS**

10.1 There are no capital or revenue implications arising from this report.

## **11. RISK IMPLICATIONS**

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

## **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 5<sup>th</sup> 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. SOCIAL VALUE IMPLICATIONS**

13.1 There are none.

## **14. HUMAN RESOURCE IMPLICATIONS**

14.1 There are no contractual implications as the officer appointed to the Acting Corporate Legal Manager role is willing to continue to undertake the duties of Acting Monitoring Officer.

14.2 The Acting Monitoring Officer will be subject to those employment rights set out in the Officers' Employment Procedure Rules.

## **15. CONTACT OFFICERS**

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