

COUNCIL
23 NOVEMBER 2017

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

10

TITLE OF REPORT: APPOINTMENT OF ACTING MONITORING OFFICER

REPORT OF THE CHIEF EXECUTIVE
EXECUTIVE MEMBER: N/A
COUNCIL PRIORITY: PROSPER AND PROTECT

1. EXECUTIVE SUMMARY

- 1.1 To consider the appointment of an Acting Monitoring Officer following the appointment of the existing Monitoring Officer to the role of Deputy Chief Executive. This is a temporary appointment until the conclusion of the next phase of the senior management restructure.

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, with immediate effect, the Acting Corporate Legal Manager be designated as Acting Monitoring Officer until the appointment of a permanent Monitoring Officer in due course.

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 following the promotion of the existing Monitoring Officer.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 The Standards Committee was advised of this report at its meeting on 10 October 2017.

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 appointed by the Monitoring Officer as Deputy Monitoring Officer.
- 7.2 Members will be aware that the previous Corporate Legal Manager and Monitoring Officer has been appointed as Deputy Chief Executive with effect from 1 November 2017. He has temporarily retained the title of Monitoring Officer pending this report to Full Council. The Senior Lawyer has been appointed as Acting Corporate Legal Manager from 1 November 2017 until such time as the completion of the senior management restructure and the appointment of a permanent Monitoring Officer by Full Council.

8. RELEVANT CONSIDERATIONS

- 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 considered that the responsibilities and demands on the Deputy Chief Executive role are incompatible with the responsibilities and demands on the Monitoring Officer function.
- 8.4 It is therefore recommended that the Acting Corporate Legal Manager is appointed as Acting Monitoring Officer with immediate effect, until the completion of the senior management restructure. The Acting Corporate Legal Manager has been Senior Lawyer and Deputy Monitoring Officer at this Council since January 2015 and was previously Monitoring Officer at East Cambridgeshire District Council from 2007 to 2014. She is therefore able to bring significant experience to the role.
- 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.
- 8.6 The Monitoring Officer will also appoint internal officers as Deputy Monitoring Officer(s).

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 IMPLICATIONS

10.1 There are no financial implications as this interim appointment is covered within existing budgets.

11. RISK IMPLICATIONS

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

12. EQUALITIES IMPLICATIONS

12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their 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 The Social Value Act and "go local" policy do not apply to this report.

14. 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.

15. APPENDICES

15.1 None.

16. CONTACT OFFICERS

16.1 David Scholes, Chief Executive
david.scholes@north-herts.gov.uk; ext 4300

17. BACKGROUND PAPERS

17.1 Section 12.3 of the Council's Constitution – Functions of the Monitoring Officer.