

APPOINTMENT OF MONITORING OFFICER

Governance Committee - 13 April 2016

Report of Chief Executive

Status: For Decision

Also considered by: Council - 26 April 2016

Key Decision: No

Portfolio Holder Cllr. Peter Fleming

Contact Officer Christine Nuttall Ext. 7245

Recommendation to Governance Committee: That it be recommended to Council that

- (a) in the absence of a Head of Legal & Democratic Services post holder, the Chief Officer Legal & Governance continue as Monitoring Officer until the end of May 2016 (or until such time as the Head of Legal & Democratic Services is in post, whichever is the sooner); and
- (b) in the absence of a Head of Legal & Democratic Services post holder after the end of May 2016, the Chief Officer Corporate Services be appointed interim Monitoring Officer, until such time the Head of Legal & Democratic Services is in post.

Recommendation to Council: That

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- (b) in the absence of a Head of Legal & Democratic Services post holder after the end of May 2016, the Chief Officer Corporate Services be appointed interim Monitoring Officer, until such time the Head of Legal & Democratic Services is in post.

Reason for recommendation: To ensure compliance with relevant legislation.

Introduction and Background

- 1 On 3 November 2015, Full Council agreed to a management restructure as part of the Council's efforts to balance its 10 year budget.

- 2 As part of that restructure, it was agreed that the post of Chief Officer Legal & Governance (the current Monitoring Officer) be deleted from the end of May 2016 and the post holder of the Head of Legal & Democratic Services role be appointed as Monitoring Officer, effective from 1 April 2016.
- 3 The new Head of Legal & Democratic Services is yet to be in post, therefore the role of Monitoring Officer continues to reside with the current Chief Officer Legal & Governance. However this post will no longer exist after May 2016 and there is a possibility that there may not be a Head of Legal & Democratic Services in post at that time.

Statutory Officer

- 4 The Monitoring Officer has the specific duty to ensure that the Council, its officers and its elected Members maintain the highest standard of conduct in all they do. The legal basis for the post is found in section 5 of the Local Government & Housing Act 1989, as amended by schedule 5, paragraph 24 of the Local Government Act 2000.
- 5 The monitoring officer has three main roles:
 - to report on matters he or she believes are, or are likely to be, illegal or amount to maladministration;
 - to be responsible for matters relating to the conduct of councillors and officers; and
 - to be responsible for the operation of the council's constitution.
- 6 Although most authorities do in practice appoint their most senior lawyer to the Monitoring Officer role, there is no legal requirement for this officer to be legally qualified.

Proposal going forward

- 7 The resolution to appoint the post holder of the Head of Legal & Democratic Services as Monitoring Officer, effective from 1 April 2016, cannot be complied with in the absence of a post holder. The role has therefore remained with the Chief Officer Legal and Governance. However, this position will be deleted at the end of May 2016, and if there is still no Head of Legal & Democratic Services in post at that time the Council will need to put in place an interim solution as the Council must have a Monitoring Officer, this being one of the Statutory Officers of the Council.
- 8 Members are therefore being asked to agree to appoint the Chief Officer Corporate Services as an interim Monitoring Officer after May 2016 and until the Head of Legal & Democratic Services is in post.

Key Implications

Financial

No financial implications as a direct result of this report.

Legal Implications and Risk Assessment Statement.

Under Section 5 of the Local Government & Housing Act 1989, as amended by schedule 5, paragraph 24 of the Local Government Act 2000, the Council has a duty to appoint a Monitoring Officer. Neither the Head of Paid Service nor the Chief Finance Officer can hold the position of Monitoring Officer.

A Monitoring Officer is there to ensure that the functions and activities of the authority are conducted properly, lawfully and in the public interest. If decisions are not taken lawfully, they risk being judicially set aside.

Although most authorities do in practice appoint their most senior lawyer to the Monitoring Officer role, there is no legal requirement for this officer be legally qualified.

Equality Assessment

The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

Conclusion

Members are asked to consider making arrangements to ensure that there is no Monitoring Officer vacancy.

Background Papers:

[Senior Manager Restructure Report \(Council 3 November & Cabinet 15 October 2015\)](#)

Dr Pav Ramewal
Chief Executive