



Purpose: For Decision

Committee report

Committee	FULL COUNCIL
Date	18 SEPTEMBER 2019
Title	APPOINTMENT OF MONITORING OFFICER
Report of	CABINET MEMBER FOR RESOURCES

EXECUTIVE SUMMARY

1. Full Council is requested to accept the recommendation of the Appointments Committee for the appointment of a monitoring officer with effect from 1 October 2019.
2. Full Council is requested to accept the recommendation to amend the constitution to reflect proposed minor changes to Article 17 - finance, contract and legal matters to transfer delegated authority from the current designated post of assistant director of corporate services to that of strategic manager for legal services.

BACKGROUND

3. The council's current appointed monitoring officer, Helen Miles, is moving from her employment with the Isle of Wight Council with effect from 30 September 2019. There must be arrangements put in place for a monitoring officer to be appointed with effect from 1 October 2019.
4. The role of monitoring officer is a statutory function and local government legislation dictates that any appointment must be agreed by Full Council. The monitoring officer has, (in addition to other duties), a specific duty to ensure the council, its officers and its elected members maintain the highest standards of conduct in all they do.
5. Currently the role of monitoring officer rests with the substantive role of assistant director of corporate services, however, it could sit with any other suitably qualified officer of the council. It is expected that work associated with the role equates to approximately 40 per cent of a full-time equivalent employee.

6. There is insufficient time to complete a recruitment campaign before the conclusion of the postholder's notice period. As such, it is deemed necessary to put in place an interim arrangement, pending a substantive appointment being made. This interim arrangement will seek to appoint an individual to undertake the monitoring officer functions within the current estimated time commitment of two days a week. It is also considered prudent to take stock and examine the council's future senior management structure requirements and at the point at which a decision is made, the substantive position of monitoring officer will be advertised and subject to the usual recruitment campaign.
7. Article 8 of the council's constitution requires the Appointments Committee to be responsible for the appointment of named officers (these are the statutory roles of head of paid service, section 151 officer and monitoring officer). Members of the appointments committee are considering applications for the position of interim monitoring officer and will make their recommendation known prior to the meeting of Full Council.
8. The council's constitution, Article 17 - finance, contracts and legal matters, makes provision for delegations to rest with the role of assistant director of corporate services. Namely, these are matters relating to the instigation of legal proceedings; authentication of documents pertaining to legal procedures and proceedings; authority to apply the common seal of the council and act in the capacity as custodian of the seal register. These are delegations that are not required to be undertaken by the monitoring officer and as these are specific legal functions, it is proposed that the constitution also be amended to re-assign these duties to the strategic manager for legal services. This will also afford flexibility in the considerations being given to the longer-term senior management structure and will allow for ease of day to day business operations as well as to avoid the interim monitoring officer being distracted by operational matters.

STRATEGIC CONTEXT

9. The appointment of the council's monitoring officer is a statutory requirement and requires Full Council to make such an appointment. Good governance arrangements are also essential to the delivery of the council's services and the decision-making processes that supports this.

CONSULTATION

10. Determination of the senior management structure rests with the chief executive and consideration of future requirements is being undertaken in consultation with the leader of the council and Cabinet member for resources. In accordance with the council's constitution, the Appointments Committee has been involved in the consideration of applications for the interim appointment of the monitoring officer function and will make its recommendation to Full Council.

FINANCIAL / BUDGET IMPLICATIONS

11. The costs associated with the engagement of an interim monitoring officer are to be contained within the existing budget limit for the post of assistant director of corporate services.

LEGAL IMPLICATIONS

12. Section 5 of Local Government and Housing Act 1918, as amended sets out the requirement for arrangements to designate an officer as the monitoring officer who has a personal duty to report on any proposal, decision or omission by the council which has led to or is likely to lead to a breach of the law or maladministration. In addition, the monitoring officer is responsible for operating and reviewing the council's constitution and ensuring there is a system in place for and dealing with complaints in relation to potential breaches by councillors of their code of conduct. Under the council's constitution, this appointment can only be made by Full Council.
13. The appointment of the monitoring officer is a non-executive function that rests with Full Council.
14. The monitoring officer cannot be the s151 officer or the head of paid service.
15. Article 8 of the council's constitution requires the Appointments Committee to recommend the appointment of named officers (these are the statutory roles of head of paid service, section 151 officer and monitoring officer).
16. The council's constitution, Article 17 - finance, contracts and legal matters, makes provision for delegations pertaining to section 3: legal proceedings; section 4: authentication of documents and section 5: common seal of the council to rest with the role of assistant director of corporate services. These are delegations that should rest with a qualified legal professional. The proposal to transfer such delegations to the strategic manager for legal services would ensure that there is appropriate custodianship afforded to these matters and continuity in operational service delivery.

EQUALITY AND DIVERSITY

17. The council, as a public body, is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
18. Under the Equality Act 2010 we are required to have due regard to our equality duties when making decisions, reviewing services, undertaking projects, developing and reviewing policies. The proposals contained within this report are not considered to have any adverse impact on any of the protected characteristics.

OPTIONS

19. **Option 1:** To approve the recommendation from the Appointments Committee for the appointment of an interim monitoring officer. (which will be circulated prior to the meeting).
20. **Option 2:** Refer the appointment of an interim monitoring officer back to the Appointments Committee for further consideration of alternative options.
21. **Option 3:** Agree the proposed constitution changes and move the delegations within Article 17 currently assigned to the assistant director of corporate services to the strategic manager for legal services.
22. **Option 4:** Agree the proposed constitution changes and move the delegations within Article 17 currently assigned to the assistant director of corporate services to the interim monitoring officer once appointed.

RISK MANAGEMENT

23. The council is required to have an appointed monitoring officer in place. The assistant director of corporate services and monitoring officer is due to leave the council's employment on 30 September 2019. It is therefore necessary to ensure that there is an appointed monitoring officer in place with effect from 1 October 2019. Only Full Council can make this appointment.
24. Following the resignation of the assistant director of corporate services and monitoring officer, the chief executive, with the agreement of the leader of the council and Cabinet member for resources, has determined that it would be prudent to take stock and consider the longer term needs of the senior management structure before entering into a recruitment campaign. The risk in not taking such an approach is that simply replacing like for like may not take account of the council's current needs and requirements and those of the near future. Option 1 therefore will afford the necessary flexibility to determine the council's future requirements while making sure that there are adequate arrangements in place during the intervening period to meet our statutory requirements.
25. However, there is a risk that no-one can be identified to undertake the interim appointment within the timescale or may not stay for the full duration of the interim assignment, or as set out in option 2, Full Council declines the recommendation. This could be mitigated by asking an existing member of staff to step up into this role, although this would be dependent on an agreement being reached and adequate backfill arrangements being put in place to create the required capacity to fulfil the monitoring officer workload.
26. There is an additional risk that the council cannot function effectively if the current delegations are not transferred as suggested to the Strategic Manager for Legal Services. The delegations are matters for consideration of a legal professional and will allow the postholder to play a much greater role in advising the council on all legal matters except those in relation to the

monitoring officer. Option 3 therefore is the recommended course of action.

EVALUATION

27. The council is required to have an appointed monitoring officer in place and only Full Council can make this appointment. The assistant director of corporate services and monitoring officer has tendered her resignation and will cease council employment with effect from 30 September 2019. That necessitates a new appointment to be made from 1 October 2019 for the council to meet its statutory duties. Any such appointment, in accordance with the terms of reference for the Appointments Committee is to be made by recommendation from this committee to Full Council.
28. With a notice period of two months, this has provided insufficient time to conduct a formal recruitment campaign for a replacement substantive appointment and it has also been considered prudent to take this as an opportunity to consider the longer term needs of the council's senior management structure. While doing so, an interim appointment to fulfil the role of the monitoring officer is considered the most advantageous option open to the council and to ensure that its statutory obligations are being met accordingly.

RECOMMENDATION

29. **Option 1:** To approve the recommendation from the Appointments Committee for the appointment of an interim monitoring officer.
30. **Option 3:** Agree the proposed constitution changes and move the delegations within Article 17 currently assigned to the assistant director of corporate services to the strategic manager for legal services.

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