

Council Report

Ward(s) affected: n/a

Report of the Head of Paid Service

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Designation of Monitoring Officer

Executive summary

Councillors will be aware that Sarah White, the Council's Monitoring Officer will be officially leaving the Council on 24 February 2021.

Consequently, it will be necessary to designate an officer as the Monitoring Officer. In accordance with Officer Employment Procedure Rule 4 (a), the formal designation of the Monitoring Officer is undertaken by full Council on the recommendation of the Employment Committee.

The Committee met on 1 February to consider this matter and endorsed the recommendation below.

Recommendation to Council:

That, in accordance with Section 5 of the Local Government and Housing Act 1989 (as amended), Diane Owens (Lead Specialist – Legal) be designated as the Monitoring Officer for the Council with effect from 25 February 2021.

Reason for Recommendation:

As a qualified solicitor with many years of local government experience carrying out both legal services and monitoring officer duties at a number of different councils, Diane Owens is currently the Senior Deputy Monitoring Officer and already holds the post of Lead Legal Specialist. Diane Owens is therefore considered to be the most suitable officer to be designated as Monitoring Officer.

Is this report (or part of it) exempt from publication? No

1. Purpose of Report

- 1.1 To ask the Council to designate an officer of the Council as the officer responsible for performing the duties imposed by Section 5 of the Local Government and Housing Act 1989 (as amended), that is, the Monitoring Officer.

2. Background

- 2.1 Under Section 5 of the Local Government and Housing Act 1989 (as amended) ("the 1989 Act"), the Council has a duty to designate one of its officers as Monitoring Officer.

2.2 The Monitoring Officer has a number of statutory duties and responsibilities relating to the Council's Constitution and our arrangements for effective governance. These duties include maintaining the Constitution, ensuring that no decision or omission of the Council is likely to give rise to unlawfulness or maladministration and promoting high standards of conduct. A full list of the Monitoring Officer's responsibilities and delegated powers is included within the Council's Constitution (see Part 2 (Article13)).

3. Designation of Monitoring Officer

3.1 A local authority has general flexibility to appoint whatever officers it thinks fit. Despite this general flexibility, there are a number of statutory exceptions.

3.2 The 1989 Act (Section 5) provides that the Council must designate one of its officers to be the Monitoring Officer to check on the correctness and propriety of the authority's decisions. The Monitoring officer may not also be the Head of Paid Service or the Council's Chief Finance Officer. The Monitoring Officer has power, under Section 5A of the 1989 Act, to nominate deputies.

3.3 Sarah White, the Council's Monitoring Officer will be leaving the Council on 24 February 2021. Sarah shared the post of Lead Legal Specialist with Diane Owens who is currently one of the Council's Deputy Monitoring Officers, as part of a job-sharing arrangement. Officers are currently consulting with legal services staff on restructuring the legal services team. The proposed structure predominantly reverts back to the structure proposed and consulted upon as part of Future Guildford Phase A. The Future Guildford Phase A structure of the legal services team can be found in Appendix 1, the current structure of the service can be found at Appendix 2 and the proposed structure currently being consulted on can be found in Appendix 3.

3.4 Under the Council's staffing structure, the post of Lead Legal Specialist is the post which Officer's deem most appropriate to be designated as the Council's Monitoring Officer as the role is the Council's most senior legal officer and solicitor. Whilst there is no specific requirement for the most senior solicitor or legal officer of any Council to be the Monitoring Officer it is common practice for the monitoring officer to be a fully qualified solicitor given that part of the role of the monitoring officer is to ensure the Council's compliance with laws and regulations. The monitoring officer has three main duties:

- 1) To report on matters he or she believes are, or are likely to be, illegal or amount to maladministration
- 2) To be responsible for matters relating to the conduct of councillors and officers; and
- 3) To be responsible for the operation of the Council's constitution

3.5 The role of Lead Legal Specialist requires the post holder to be a qualified solicitor with significant post qualification experience and experience of working in a public sector environment. The Lead Legal Specialist is the 'head of profession' for legal services at the Council. Whilst it is common for the Monitoring Officer to be a Council's most senior solicitor, it is not an absolute requirement. At Guildford Borough Council in the past, the role has normally been held by the Council's most senior legal officer with the exception of the period of time, between September 2011 and December 2014 when the then, Head of Corporate Development, Martyn Brake, held the role of Acting Monitoring Officer. Practice at other councils has found that other roles sometimes designated as Monitoring Officer can be roles such as Director of Corporate Services, Director of Governance & Democratic services (where the role is at Director Level then tends to sit with the Director responsible for Legal Services and often Democratic Services as well), or Head of Democratic & Elections Services. The Council

does not have a Director of Corporate Services or Director of Governance & Democratic Services. The Director currently responsible for legal services is the Director of Resources, who is the Council's Section 151 Officer and therefore cannot legally hold both statutory roles.

- 3.6 It is recommended that Diane Owens (Lead Specialist – Legal) be designated as the Monitoring Officer for the Council with effect from 25 February 2021 on the basis that she is currently the Senior Deputy Monitoring Officer and already holds the post of Lead Legal Specialist. Diane is a qualified solicitor with many years of local government experience at a number of different councils in relation to both legal services and monitoring officer duties. The other Deputy Monitoring Officers at the council have stated that they are not interested in taking on more responsibility and becoming the Monitoring Officer themselves and in at least one case, is likely to retire soon.
- 3.7 Under Section 5 (7) of the 1989 Act, the duties of the Monitoring Officer may, whenever he or she is unable to act owing to absence or illness, be performed by a nominated deputy or deputies. Joan Poole and Bridget Peplow will continue in their current Deputy Monitoring Officer roles.
- 3.8 In accordance with Officer Employment Procedure Rule 4 (a), the formal designation of the Monitoring Officer is undertaken by full Council on the recommendation of the Employment Committee. The Employment Committee met on 1 February and endorsed the recommendation to designate Diane Owens as the Council's Monitoring Officer.

4. Financial Implications

- 4.1 The Monitoring Officer and Deputy Monitoring Officer are paid honoraria of £5,300 and £1,500 per annum respectively, which are met from existing budgets.

5. Legal Implications

- 5.1 These are set out in the report.

6. Human Resource Implications

- 6.1 There are no further human resource implications.

7. Background Papers

None

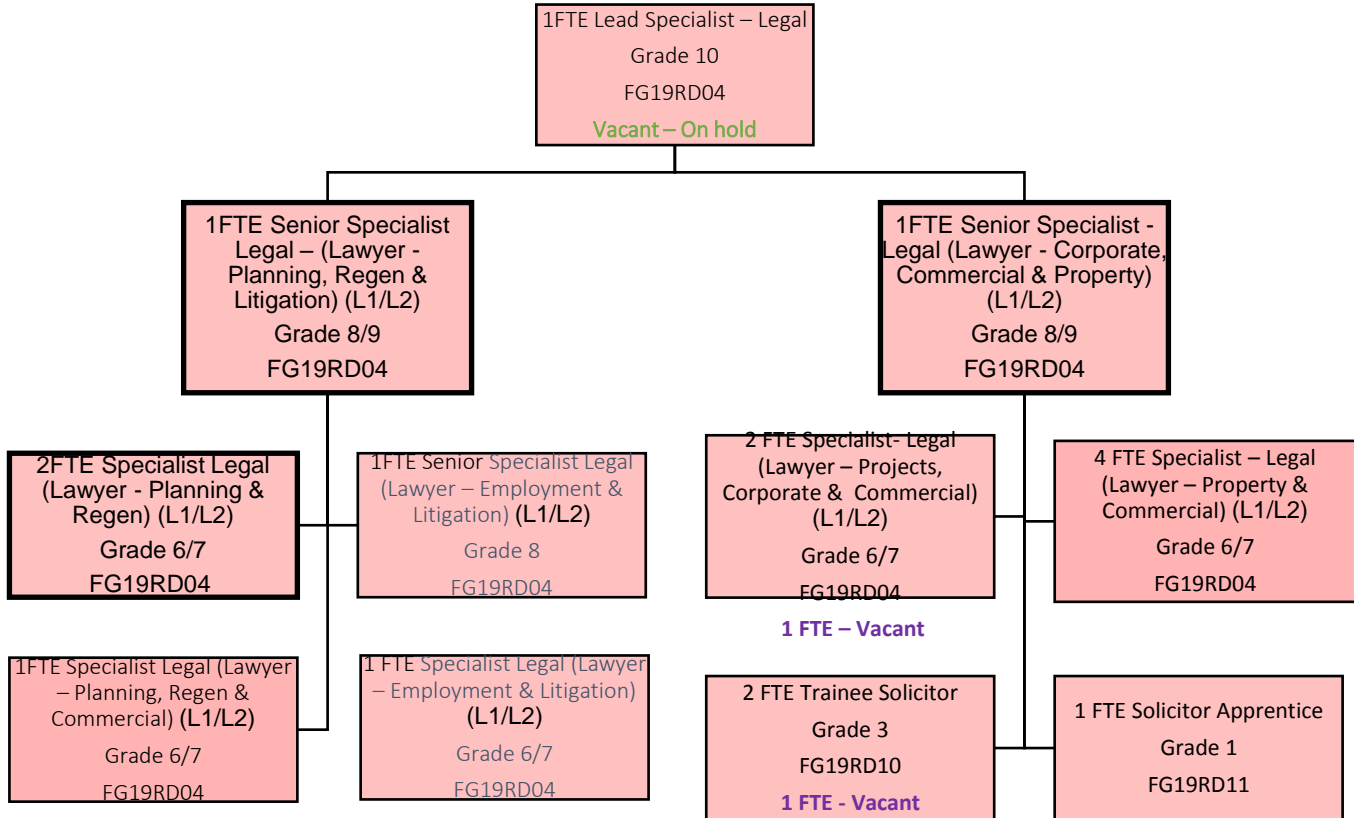
8. Appendices

Appendix 1: Future Guildford Phase A – Legal Services Structure

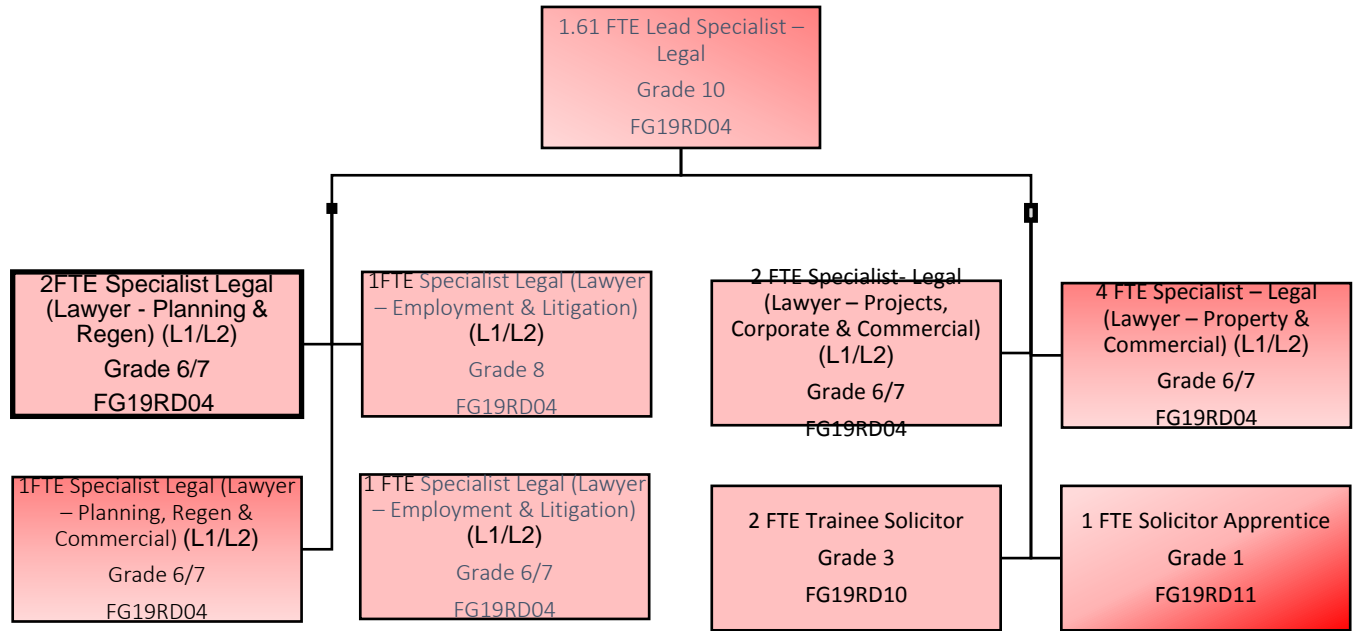
Appendix 2: Current legal services structure

Appendix 3: Proposed Legal Services structure – currently being consulted on with staff

Appendix 1 - Future Guildford Phase A – Legal Services Structure



Appendix 2 – Current legal services structure



Appendix 3 – Proposed Legal Services structure – currently being consulted on with staff

