

Employment Committee Report
Ward(s) affected: n/a
Report of the Director of Resources
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Designation of Monitoring Officer

Executive summary

Councillors will be aware that Diane Owens, the Council's Monitoring Officer will be leaving the Council on 28 February 2022.

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 is invited to consider this matter and endorse the recommendation below.

Recommendation (to Council: 9 February 2022)

That Stephen Rix (Interim Lead Specialist – Legal) be designated as the Monitoring Officer for the Council with effect from 1 March 2022.

Reason for Recommendation:

To comply with the requirements of the Local Government and Housing Act 1989 (as amended).

Is this report (or part of it) exempt from publication? Yes (Appendix 1)

- (a) The content of Appendix 1 contains personal information relating to an individual and is therefore exempt by virtue of paragraph 1 of Part 1 of the Schedule 12A to the Local Government Act 1972.
- (b) The content is restricted to all councillors.
- (c) The decision to maintain the exemption may be challenged by any person at the point at which the Committee is invited to pass a resolution to exclude the public from the meeting to consider the exempt information.

1. Purpose of Report

- 1.1 To ask the Committee to recommend to full Council that an officer of the Council be designated 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)).

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 Sections 5 and 5A of the 1989 Act, to nominate deputies.
- 3.3 Diane Owens, the Council’s Lead Specialist – Legal and Monitoring Officer has resigned from the Council to take up a new role and will be leaving the Council’s service on 28 February 2022.
- 3.4 Under the Council’s staffing structure, the post of Lead Legal Specialist is the post which Officers 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 Specialist - Legal 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 Specialist - Legal 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 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 this Committee.
- 3.7 Following Diane Owens' resignation, an external recruitment process has been undertaken with the help and support of an employment agency. In July 2021, the Council decided to share a senior management team, including statutory officers with Waverley Borough Council. Following the appointment of the Joint Chief Executive, a restructure to create a Joint Senior Management has begun; however, the work is at too early a stage to provide an immediate solution for the recruitment of a new Monitoring Officer for Guildford. As such it is not deemed an appropriate time to recruit a permanent Lead Specialist – Legal and Monitoring Officer. An external recruitment process for an interim officer for a period of 6 to 8 months has therefore been undertaken. The recruitment process included the employment agency undertaking an initial selection process of candidates against the role specification. This was followed by a small number of candidates being presented to the Director of Resources and Lead Specialist – Legal for selection for interview and an interview process taking place. Finally, a follow-up interview was undertaken by members of the Council's Employment Committee. This process has been completed and Stephen Rix has been appointed as the Interim Lead Specialist – Legal. Mr Rix is a qualified solicitor with many years' experience in local government at different councils as well as previous experience as a monitoring officer. Mr Rix's CV is shown in the "Not for Publication" Appendix 1.
- 3.8 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. Claire Beesley and Delwyn Jones have been nominated as Deputy Monitoring Officers by the Monitoring Officer and will continue in their roles.

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: CV: Stephen Rix (Confidential)