

TITLE OF REPORT To Designate the Interim Director of Legal as the Council's Monitoring Officer	
APPOINTMENTS SUB COMMITTEE 23 rd August 2017	CLASSIFICATION: Open
WARD(S) AFFECTED Not applicable	
Tim Shields, Chief Executive	

1. INTRODUCTION AND PURPOSE

To designate the interim Director of Legal as the Council's Monitoring Officer.

2. RECOMMENDATION(S)

The Appointments Sub Committee is recommended to:

- 2.1** Formally ratify the interim Director of Legal, Suki Binjal, as part of her role and duties, to be designated as the Council's Monitoring Officer effective from the 7th June 2017.

3. REASONS FOR DECISION

- 3.1** Section 5 of the Local Government and Housing Act 1989 (the 1989 Act), provides that it is the duty of every relevant authority to designate one of their officers to be known as the Monitoring Officer. The Council's Constitution designates the Director of Legal as its Monitoring officer.
- 3.2** The permanent role, Director of Legal became vacant on the 29th May 2017, which is currently being held on an interim basis pending the restructure of the Chief Executive's senior management team.

3.3 The Constitution and the Scheme of Management Delegation are silent in respect of the designation of interim statutory officers. Accordingly, this is a procedural report to designate the Council's Monitoring Officer.

4. BACKGROUND

4.1 The Council has agreed in its Constitution that it will establish an Appointments Sub-Committee to carry out the functions relating to the appointment of statutory Chief Officers.

4.2 The Sub-Committee shall carry out this function in accordance with the Officer Employment Procedure Rules (hereinafter referred to as the Rules) contained in part 4 of the Council's Constitution.

4.3 The definition of a statutory Chief Officer is set out in the Rules which includes the Director, Legal. Although not entirely clear from the Rules whether this includes the designation as the Council's Monitoring Officer, it can be assumed (also refer to paragraphs 4.6 and 4.7 below), as the functions and duties under s 5 the 1989 Act are assigned to the Director of Legal, it will also include the designation as the Council's Monitoring Officer.

4.4 The Council's Constitution (in Part 3 - the Proper Officer Functions), designates the functions of section 5 of the 1989 Act to the Director, Legal.

4.5 The Constitution provides power to appoint staff to the Chief Executive (and the Appointments Sub Committee for Chief Officer posts), however, it is silent whether it includes the designation of interim statutory officers.

4.6 The Constitution is also silent in respect of the process of recruiting interim statutory officers. It is also unclear from the Constitution whether the designation of the Council's Monitoring Officer has been specifically delegated to the Appointments Sub-Committee. However, it is clear that the designation of the Monitoring Officer is not a function reserved to Full Council (part 3 - terms of reference of Council).

4.7 On the basis of not reserving the power to Full Council (to designate the Council's Monitoring Officer) and that previous appointments of the Director, Legal and designation as the Council's Monitoring Officer have been carried out by an established Appointments Sub-Committee, it was intended by Full Council to delegate this function to the Appointments Sub-Committee. The drafting errors and misleading references will be resolved following a current review of the Constitution.

4.7 Accordingly, it is advisable for this Sub-Committee to designate the interim Director of Legal as the Council's Monitoring Officer (effective from the 7th June 2017).

4.8 The Chief Executive carried out a robust and transparent recruitment exercise before appointing Suki Binjal as the interim Director, Legal.

5. POLICY CONTEXT

- 5.1 The recommendations of this report are in accordance with the Part 4 the Officer Employment Procedure Rules contained within the Council's Constitution.

6 EQUALITY IMPACT ASSESSMENT

- 6.1 This report does not raise any equality issues that would affect those with protected characteristics.

7. SUSTAINABILITY

N/A

8. CONSULTATIONS

- 8.1 The Mayor and Deputy Mayor were consulted in respect of the temporary arrangements to be made following the resignation of the permanent Director, Legal and also during the recruitment exercise for the interim Director, Legal.

9. RISK ASSESSMENT

- 9.1 Failure to designate a Monitoring Officer leaves the Council open to potential risks of legal challenge of not having in place a Proper Officer to carry the duties and functions as required under section 5 of the 1989 Act.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no immediate financial implications arising directly from this report.

11. LEGAL IMPLICATIONS

- 11.1 Section 5 of the Local Government and Housing Act 1989 provides that it is the duty of every relevant authority to designate one of their officers to be known as the Monitoring Officer as the officer responsible for performing the duties imposed by this section and to provide that officer with such staff, accommodation and other resources as are, in his/her opinion, sufficient to allow those duties to be performed.

APPENDICES

None

BACKGROUND PAPERS

None

Report Author	Tim Shields
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