

# Gloucester City Council

Meeting:	Council	Date:	23 July 2015
Subject:	Designation of Monitoring Officer		
Report Of:	Head of Paid Service		
Wards Affected:	All		
Key Decision:	No	Budget/Policy Framework:	No
Contact Officer:	Jon McGinty, Managing Director		
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Appendices:	None		

## FOR GENERAL RELEASE

Note: The special circumstances for non-compliance with Access to Information Rule 5 and Section 100B (4) of the Local Government Act 1972 (as amended) (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that the newly arrived Head of Paid Service needed to undertake negotiations with One Legal which extended beyond the report production deadline.

### 1.0 Purpose of Report

1.1 To designate a Monitoring Officer.

### 2.0 Recommendations

2.1 Council is asked to **RESOLVE**

- (1) That Shirin Wotherspoon, Head of Law (Commercial) from Tewkesbury Borough Council (One Legal), be designated Monitoring Officer for the City Council in accordance with section 5 of the Local Government and Housing Act 1989 with immediate effect for an interim period of up to 12 months.
- (2) To enter into an agreement to second the above mentioned officer from Tewkesbury Borough Council (One Legal) to Gloucester City Council on terms to be agreed between Tewkesbury Borough Council, Gloucester City Council and the officer.
- (3) To delegate authority to the Managing Director to agree the terms of the secondment and to sign the secondment agreement on behalf of Gloucester City Council and to make any necessary consequential amendments to the Council's Constitution arising from the agreed terms and any re-assignment of the current Monitoring Officer functions.

### **3.0 Background and Key Issues**

- 3.1 The existing Monitoring Officer ceased working for the Council on 19 June 2015. The Local Government and Housing Act 1989, Section 5, requires all local authorities to designate one of their officers as the “Monitoring Officer”. The Act specifically excludes the Head of Paid Service and the Chief Finance Officer (Section 151 Officer) from being the Monitoring Officer, although any other officer of the Council can be appointed.
- 3.2 The Act imposes a duty on the Monitoring Officer, if at any time there appears to the Monitoring Officer that any proposal, decision or omission of the Council, or Committee etc. either has given rise to, or is likely to give rise to, a breach of any law, or any maladministration as would be dealt with by the Ombudsman, to prepare a report to the Council specifying the contravention.
- 3.3 The Monitoring Officer also has a number of responsibilities arising from the Localism Act 2011 relating to Councillor conduct (City and its Parish Council). These responsibilities include dealing with complaints on the Code of Conduct, as well as providing training for Members thereon. There is a close connection with the S151 Officer and Internal Audit and the Monitoring Officer is a member of the Corporate Governance Group.
- 3.4 The current functions of the Monitoring Officer are specified in the Constitution, including the Monitoring Officer’s Protocol although some of these may be assigned to other officers by the Managing Director. There is no statutory requirement for the Monitoring Officer to be a Solicitor, although the majority are given a Solicitor’s training and role within a Council.
- 3.5 One Legal already provide the Monitoring Officer function for Tewkesbury and Cheltenham Councils, and the City Council transferred its legal services function to One Legal earlier this year. Shirin Wotherspoon is a member of the One Legal Management Team and is already the designated lead manager from One Legal for the City Council. She has considerable local authority legal experience and also experience of the requirements of a Council Monitoring Officer.

### **4.0 Alternative Options Considered**

- 4.1 The option of designating an officer already within the Council was considered. However, given that the Monitoring Officer has a duty to report to the Council on any contraventions of statute, there is no existing Council officer (following the transfer of legal support to One Legal and the departure of the existing Monitoring Officer) with the required legal knowledge and expertise to discharge this function.
- 4.2 Given the need to act quickly following the cessation of employment of the previous Monitoring Officer, an interim locum appointment was considered (a permanent recruitment could not be conducted in time). However, the Head of Paid Service concluded that broadening the remit of One Legal’s support to the Council would provide a better solution to the Council’s requirements, and at no worse value for money, than other options.

## **5.0 Reasons for Recommendations**

- 5.1 It is a legal requirement that the Council designates one of their Officers as Monitoring Officer. The Head of Paid Service advises that designating Shirin Wotherspoon as Monitoring Officer in the terms detailed within this report will provide a better solution for the Council than other options, given the strong working relationships already in place between One Legal and the Council.

## **6.0 Future Work and Conclusions**

- 6.1 The recommended designation will be an interim one, subject to review within the next twelve months, for two reasons. First, One Legal would wish, from a commercial perspective, to ensure that the arrangement is working satisfactorily alongside the remainder of their planned support for a number of councils, and is not inhibiting delivery of other aspects of their business plan. Second, the Head of Paid Service intends to consider over this timescale the future shape of leadership arrangements at the City Council, and the Monitoring Officer function will be part of that review.

## **7.0 Financial Implications**

- 7.1 There will be additional financial implications arising from this report, as Monitoring Officer support was not part of the original City Council requirement from One Legal. It is estimated that the additional Monitoring Officer support required would average around 1 day per week (although the intention is that MO support would be available at any time during the working week as needed). This additional cost can be met through some of the savings identified in the previous proposal to merge the vacant Director of Corporate Resources role and the Head of Legal Services role.

(Financial Services have been consulted in the preparation this report.)

## **8.0 Legal Implications**

- 8.1 These are contained in the main body of the report.

(One Legal have been consulted in the preparation this report.)

## **9.0 Risk & Opportunity Management Implications**

- 9.1 If a Monitoring Officer is not in post, the Council would be in breach of Section 5 Local Government and Housing Act 1989.

## **10.0 People Impact Assessment (PIA):**

- 10.1 None.

## **11.0 Other Corporate Implications**

### Community Safety

- 11.1 None.

### Sustainability

11.2 None.

### Staffing & Trade Union

11.3 The Local Government and Housing Act 1989 effectively requires the person designated as Monitoring Officer to be employed by the Council. There will therefore be a need to second Shirin Wotherspoon to the City Council on terms to be agreed between the parties in order to undertake this aspect of her work for the Council.

**Background Documents:** None