

Meeting:	Employment panel
Decision date:	10 May 2016
Title of report:	Confirmation of designation of statutory officer (monitoring officer)
Report by:	Assistant director - communities

Classification

Open

Key decision

This is not an executive decision.

Wards affected

County-wide.

Purpose

To recommend to Council permanent arrangements for the designation of a post as monitoring officer.

Recommendations

THAT:

- (a) **it be recommended to Council that the post of solicitor to the council be designated as monitoring officer for Herefordshire Council.**

Alternative options

- 1 There are two alternative options identified in the course of the review to consider the council's requirement for monitoring officer:
 - a. that an external appointment process takes place to recruit from outside of the council.
 - b. that the function of monitoring officer is shared with another council.
- 2 Neither of these options are recommended as the majority of consultees favoured the option of making permanent the interim arrangements put in place in September 2015 and there is no outweighing benefit of not doing so.

Reasons for recommendations

- 3 The functions of the monitoring officer are a statutory requirement. Key stakeholders were interviewed on the basis of their preferred approach to the appointment of a

monitoring officer. The majority of consultees were in favour of making use of the in-house resource provided by the solicitor to the council (the post title having recently been altered from deputy solicitor to the council people and regulatory).

- 4 It is a matter for Council to designate a post as monitoring officer.

Key considerations

- 5 On the 11 September 2015 the employment panel recommended to Council that “the post of deputy solicitor to the council people and regulatory be designated monitoring officer for an interim period of up to nine months from the date of approval”. Full council agreed this recommendation on 25 September 2015.

- 6 This report considers options and makes recommendations for the permanent arrangements for the monitoring officer designation. Three options have been considered as outlined below.

- 7 Option 1: make the temporary arrangements permanent with the solicitor to the council (previously the deputy solicitor to the council people and regulatory) being designated monitoring officer. Though there is no requirement for the monitoring officer to be legally qualified, given the legal context in practice the tendency is to appoint a senior lawyer in the council. As part of this option the solicitor to the council would continue with the mentoring over the next year.

Advantages

- Relationships already formed with key stakeholders
- Key skills and requirements of the monitoring officer within the authority
- Career development opportunity
- Reasonable cost, including no cost for recruitment

Disadvantages

- Element of “learn on the job”
- Could create a pressure within the legal services
- Does not test the market of potential of other applicants

- 8 Option 2: To share a monitoring officer with another council providing expert knowledge. Expertise can be shared, though dedicated support would need to be assigned to Herefordshire Council.

Advantages

- High level of experience and track record
- Potential to share costs
- Sharing of best practice
- May strengthen cross county relationships (e.g. existing cross county working LEP, broadband, waste)

Disadvantages

- May be difficult to secure an appointment with the right skills, ability to commit, travel and availability
- Potential of conflicting demands (e.g. key meetings on the same date)
- May take longer to develop effective member relationships
- Timescale and resource for procurement process
- Risk of conflict of interest and one authority seen to be taking priority over another may cause reputational issues with members
- There have been eight monitoring officers since 2005 so further change may be de-stabilising

- 9 Option 3: recruiting a lawyer which has existing monitoring officer skills. This would mean they have the skills and experience already in place and would not need additional mentoring support, there might also be an opportunity in the longer term to “sell-on” expertise to other authorities. To cover the costs within budget this would mean displacement of existing staff.

Advantage

- Appoint someone with experience and track record
- Could bring experience/innovation/best practice
- Depending on other skills, may strengthen under resourced other areas (e.g. elections/legal)

Disadvantages

- Cost including redundancy
- Potential struggle to recruit
- Does not foster local skills development
- Time taken to develop relationships
- Further change may be de-stabilising.

- 10 As regards feedback from the consultation undertaken out of the 13 people interviewed 11 people preferred option 1. One preferred an open recruitment and another did not declare a preference and considered all three options could be viable. Additional points made:

- There are existing strong skills already within the council, proven since the temporary arrangements were made
- A good relationship has been established with key stakeholders, specifically council members
- It would be difficult to recruit better than the current member of staff who has the right attitude and skills set
- Balanced with having a strong internal candidate, internal appointment is the cheapest route
- There is limited evidence from the survey conducted with other councils that there is an appetite to share a monitoring officer role
- That there is knowledge development needed, therefore continue with the mentor for another year and make links with monitoring officers in other unitary councils.

- 11 Also as part of the process a survey was sent to other local authorities via the County Council Network to assess views of sharing the post of monitoring officer. There were three replies (that indicates the level of interest). Of those replies none operate or intend to operate a shared monitoring officer though did not rule out the opportunity of sharing resources in the future. A key concern was that a joint post could have the strong risk of creating conflict of interest.

Community impact

- 12 The functions of the monitoring officer support the maintenance and enhancement of robust governance across the council. This creates community benefit in creating a sound and correct authority. The monitoring officer has the specific duty to ensure that the council, its officers and its elected members maintain the highest standards of conduct in all they do.

Equality and human rights

- 13 The functions of the monitoring officer need to be mindful of the authority's requirement to meet the laws governing local government. This includes the Equality Act 2010 established a positive obligation on local authorities to promote equality and to reduce discrimination in relation to any of the nine 'protected characteristics' (age; disability; gender reassignment; pregnancy and maternity; marriage and civil partnership; race; religion or belief; sex; and sexual orientation). In particular, the council must have 'due regard' to the public sector equality duty when taking any decisions on service changes.

Financial implications

- 14 The post of solicitor to the council has been job evaluated as grade HC13 in accordance with council pay policies (HC13: £51,824 to £56,165) with line management reporting to the head of law and governance. For the functions of monitoring officer, 40% of the role, the reporting line will be to the assistant director for communities and has been evaluated using the current Herefordshire Council pay scale at HoS2 (£70,682 to £74,550).
- 15 The cost of this post is included within existing law and governance budgets.

Legal implications

- 16 Section 5 of the Local Government and Housing Act 1989 imposes a duty on the council to designate one of its officers as monitoring officer; this may not be the head of paid service or the director of resources (section 151 officer).

Risk management

- 17 Challenge of recruitment – that complaint is made that proper recruitment has not taken place giving other external candidates the opportunity to apply. Mitigation – the monitoring officer is not a post but a set of functions that can be attributed to existing role, usually a senior lawyer within the authority.
- 18 Pressure of resources in the legal team – pressure on conducting legal duties. Mitigation – the recent redesign of legal and governance service identified new resource for legal team to address key initiatives and programme that need legal support.
- 19 Skills knowledge – that the lawyer to the council needs to build up skills and knowledge to be able to fully incorporate the role. Mitigation – that mentoring support continues for another year.

Consultees

- 20 In the course of preparing the options consultation was carried out with representatives from the senior management team, group leaders, scrutiny chairs and cabinet. An external mentor's views were also sought and the outcome of that consultation has informed the recommendation.

Appendices

None.

Background papers

None.