

APPOINTMENT OF INTERIM MONITORING OFFICER

Head of Service: Kathryn Beldon, Chief Executive and Jackie King, Director of Corporate Services

Wards affected: (All Wards);

Urgent Decision?(yes/no) No

If yes, reason urgent decision required:

Appendices (attached):

Summary

This report seeks authority for the appointment of a Monitoring Officer for twelve months.

Recommendation (s)

The Council is asked to:

- (1) Approve the appointment of Olwen Brown of Anthony Collins Solicitors on an interim basis, as the Council's Monitoring Officer with effect from 1 October 2021.**
- (2) Authorise the Director of Corporate Services in consultation with the Chair and Vice Chair of Strategy and Resources to agree terms of contract and/ or Service Level Agreement governing the appointment.**

1 Reason for Recommendation

- 1.1 There is a legal requirement of the Council to designate three "Statutory Officers". These are the Head of Paid Service (Chief Executive), Section 151 Officer / Chief Finance Officer and the Monitoring Officer.
- 1.2 The current Monitoring Officer role is undertaken by the Chief Legal Officer, who leaves her employment with Epsom & Ewell Borough Council on 30 September 2021.

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- 1.3 The Monitoring Officer has a number of statutory duties and responsibilities relating to the Council's constitution and the arrangements for effective governance. These duties are contained in Article 11 of the Council's constitution. Approval is sought for the appointment of an interim Monitoring Officer to ensure that the statutory duties and functions associated with the role continue to operate effectively.

2 Background

- 2.1 The current Monitoring Officer, Amardip Healy, Chief Legal Officer, leaves the employment of Epsom & Ewell Borough Council on 30 September 2021. Accordingly, it is necessary for another officer to be appointed and designated as Monitoring Officer.
- 2.2 The legal framework for the appointment of a Monitoring Officer is set out in Section 5 of the Local Government and Housing Act 1989, as amended by Schedule 5 paragraph 24 of the Local Government Act 2000, which requires the Council to designate one of its officers as the Monitoring Officer. The Monitoring Officer cannot be the Council's Head of Paid Service or its Chief Finance (Section 151) Officer.
- 2.3 The role fulfils several statutory duties and responsibilities relating to the Council's constitution and the arrangements for effective governance. These duties are clearly defined within Article 11 of the Council's constitution and include:

Maintaining an up-to-date Constitution. The Monitoring Officer will ensure that an up-to-date version of the Constitution is maintained and will ensure that it is available to Members, staff and the public.

Ensuring lawfulness and fairness of decision making. After consulting the Chief Executive and Chief Finance Officer, the Monitoring Officer has a duty, by virtue of Section 5 of the Local Government and Housing Act 1989, to report to the Council if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered by the Council.

Supporting the Standards Committee. The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.

Conducting Investigations. The Monitoring Officer will conduct investigations into allegations against Members made to the Council and arrange, if necessary, for the Standards Committee to receive reports or recommendations in respect of them.

Proper Officer for Access to Information. The Monitoring Officer will ensure that decisions, together with the reasons for those decisions and relevant officer reports and background papers, are made publicly available as soon as possible.

Providing Advice. The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all Members and will support and advise Member and officers in their respective roles.

2.4 It is not a requirement to provide this service in-house or appoint the most senior legal officer as the Monitoring Officer.

2.5 Whomever is appointed must however have the essential skills and experience to ensure that the council receives correct and appropriate advice on the lawfulness of its decision making. The Council must in turn, ensure that the Monitoring Officer is provided with such officers, accommodation and other resources as are in their opinion, sufficient to allow their duties to be performed.

2.6 Selection Process

2.7 Anthony Collins Solicitors have provided a number of services to Epsom & Ewell Borough Council. They also feature on the Crown Commercial Services procurement framework, meaning that the Council is able to procure services directly.

2.8 An interview was held with one of the company's consultant solicitors, Olwen Brown on August 27th, 2021. The member selection panel was comprised of: Councillor Colin Keane (Chair of Strategy and Resources Committee), Councillor Hannah Dalton (Vice Chair of Strategy and Resources Committee), Councillor Liz Frost (Chair of Standards Committee), Councillor Kate Chinn (Leader of Main Opposition Party) and Councillor Alex Coley (Chair of Community and Wellbeing Committee and Vice Chair of Standards Committee).

2.9 Olwen is a qualified solicitor of some thirty years' experience, specialising in local government law, governance and constitutional affairs. Having worked in the public sector for most of her working life, Olwen has performed the role of Monitoring Officer, and has also previously undertaken legal work for the Council.

2.10 The Panel supported that Olwen be appointed on an interim basis as Monitoring Officer while the future delivery of the in-house legal service is considered. It is anticipated that the proposed interim arrangement would continue for approximately one year.

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2.11 Legal Services

2.12 The role of Chief Legal Officer and Monitoring Officer has been split. The interim Principal Lawyer, Patrick Lyons has been designated as Deputy Monitoring Officer. The council is currently reviewing the provision of its legal services and this work is ongoing. With the imminent departure of the Chief Legal Officer, the responsibility for the management of Legal and Democratic services has been temporarily placed with the Head of Corporate Assurance, pending an outcome of the review of future service delivery. The outcome of the review of legal services will be reported to Strategy & Resources Committee.

2.13 A hybrid service is currently being operated with some work being undertaken by external lawyers to ensure that all legal matters are dealt with effectively.

2.14 Financial Implications and Governance

2.15 A Service Level Agreement will be entered into for the purchase of the hours necessary to undertake the Monitoring Officer role effectively in accordance with the duties set out in the council's constitution. Olwen Brown will remain employed with Anthony Collins Solicitors, and will fulfil the Monitoring Officer role with Epsom & Ewell Borough Council.

2.16 A monthly work programme has been prepared and a set monthly fee will be paid for the arrangement. The work programme will involve working with the Deputy Monitoring Officer to respond to enquiries from members and residents, attending statutory officer meetings, providing advice and guidance to senior officers and members, keeping abreast of decisions made, supporting Standards Committee and provision of training to both members and officers.

2.17 The monthly fee is expected to be in the region of £1,900 excluding any complex investigations or additional agreed works that might arise in the course of undertaking the role.

2.18 The hourly rate for any work undertaken in excess of the agreed monthly work programme will be charged at £190 per hour. The fees associated with the provision of the Monitoring Officer role are within budget.

2.19 As is currently the case, any complex investigations or additional agreed works may require a separate fee discussion to carefully manage the scope and costs associated.

2.20 Monthly contract monitoring meetings will be held to ensure effective management and performance of the Service Level Agreement governing the arrangement. This process will be led and overseen by the Head of Corporate Assurance.

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- 2.21 All work undertaken will be commissioned through the Head of Corporate Assurance, in discussion with the Director of Corporate Services to ensure that best value is achieved from the interim arrangement.
- 2.22 Once appointed, Members will be advised of how to direct enquiries so that they can be addressed by the Monitoring Officer; it is envisaged that matters will be referred to the Deputy Monitoring Officer, in the first instance.

3 Risk Assessment

Legal or other duties

3.1 Impact Assessment

3.1.1 The statutory role that is carried out by the Monitoring Officer is essential to safeguard the council by carrying out effective due diligence, providing advice and guidance, attendance at meetings as well as managing Code of Conduct issues. Without this key role being undertaken, the council is vulnerable to service complaints as well as legal challenges, placing the council at increased risk.

3.2 Crime & Disorder

3.2.1 There are no specific Crime and Disorder considerations associated with this report.

3.3 Safeguarding

3.3.1 There are no safeguarding risks considerations associated with this report.

3.4 Dependencies

3.4.1 The Council's ability to fulfil the legal requirement to designate three "Statutory Officers", is dependent on the appointment of a Monitoring Officer.

3.5 Other

3.5.1 All staff must have the necessary skills to fulfil the roles to which they are appointed.

4 Financial Implications

4.1 The proposal to appoint Olwen Brown as an Interim Monitoring Officer is within existing budgets. The monthly fee of £1,900 will equate to an annual cost of £22,800 which can be met from the existing salary budget. Member investigations and approved additional work will be charged at a cost of £190. As no additional funding is sought there are therefore no financial implications arising from this report.

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- 4.2 **Section 151 Officer's comments:** None arising from the contents of this report.

5 Legal Implications

- 5.1 These are set out in the body of the report. It is necessary for Full Council to approve the appointment of a Monitoring Officer.
- 5.2 Under the Council's Contract Standing Orders the procurement of legal advice is exempt from tendering.
- 5.3 **Legal Officer's comments:** None arising from the content of this report.
- 5.4 Policies, Plans & Partnerships
- 5.5 **Council's Key Priorities:** The Council's Four Year Plan sets five overall themes, reflecting the priorities for the Borough until 2040. It recognises the challenges, and sets out a road map of how the Council will continue to drive forward the work required as efficiently and effectively as possible. The following Key Priorities are engaged: Effective Council.
- 5.6 **Service Plans:** The matter is not included within the current Service Delivery Plan.
- 5.7 **Climate & Environmental Impact of recommendations:** There are no specific climate and environmental recommendations associated with this report.
- 5.8 **Sustainability Policy & Community Safety Implications:** There are no specific sustainability and community safety implications associated with this report.
- 5.9 **Partnerships:** There are no specific partnership implications associated with this report.

6 Background papers

- 6.1 The documents referred to in compiling this report are as follows:

Previous reports:

- None that are applicable.

Other papers:

- [Constitution of Epsom and Ewell Borough Council, Thursday, 10th June, 2021](#)