

REPORT TO:	Council 5 July 2021
SUBJECT:	URGENT BUSINESS – APPOINTMENT OF INTERIM MONITORING OFFICER AND COUNCIL SOLICITOR
LEAD OFFICER:	Katherine Kerswell Interim Chief Executive
WARDS:	ALL

1. RECOMMENDATIONS

Council is recommended to:

- 1.1 Appoint Asmat Hussain as the Council's Interim Monitoring Officer and Council Solicitor from the date of this meeting pending recruitment to the role(s) on a permanent basis.

Reasons for urgency: This item is being brought before Council as urgent business following the departure of the previous Monitoring Officer and to enable members to appoint an Interim Monitoring Officer in advance of the next Council meeting, scheduled for 11 October 2021.

2. EXECUTIVE SUMMARY

- 2.1 This urgent business report asks Councillors to agree to appoint Asmat Hussain as Interim Monitoring Officer (Council Solicitor) following the resignation of the Council's previous Monitoring Officer and Council Solicitor.

3. BACKGROUND

- 3.1 Under Section 5 of the Local Government & Housing Act 1989 (as amended), the Council has a duty to appoint a Monitoring Officer. Neither the Head of Paid Service nor the Chief Finance Officer (section 151 officer) can hold the position of Monitoring Officer. Whilst there is no statutory requirement for the position to be held by a legally qualified officer it is general practice within local government that the Council's Senior Legal Officer be appointed Monitoring Officer reflecting the advisory, regulatory and occasionally investigatory nature of the role. Whoever is appointed must though ensure that the Council receives correct and appropriate advice on the lawfulness of its decision making. The Council's Executive Director of Resources is also currently designated as the Council Solicitor.
- 3.2 The Monitoring Officer has a number of statutory duties and responsibilities relating to the Council's Constitution and its arrangements for effective governance. Those duties include maintaining the Constitution, ensuring the

lawfulness and fairness of decision making and promoting high standards of conduct. The Monitoring Officer's responsibilities are listed in full in Article 12 and Part 5C of the Council's Constitution.

4. APPOINTMENT OF INTERIM MONITORING OFFICER

- 4.1 The Council's previous Executive Director of Resources Monitoring Officer and Council Solicitor, Jacqueline Harris Baker, left the Council's employment on Wednesday 30 June 2021.
- 4.2 Asmat Hussain has been the Council's Executive Director of Resources and Deputy Monitoring Officer (Interim) since 1 March 2021 following a recruitment process. This report asks that Council appoints Asmat Hussain to fulfil the role of Monitoring Officer and Council Solicitor on an interim basis until such time as a permanent appointment is made.
- 4.3 Members will be aware that such a permanent appointment will flow from recommendations regarding the organisational redesign of the Council, including the structure and job roles for the three most senior tiers of management, that are listed elsewhere on this agenda.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 5.1 There are no new financial implications arising from the recommendations in the report.

Approved by Matthew Davies, Deputy S151 Officer.

6. LEGAL CONSIDERATIONS

- 6.1 The Head of Litigation and Corporate Law comments on behalf of the Director of Law and Governance that the Council may generally appoint such staff as it considers necessary for the proper discharge of its functions, as the Council thinks fit. However, there are certain statutory appointments which must be made.
- 6.2 The Local Government and Housing Act 1989 (the 1989 Act') section 5 (as amended by the Local Government Act 2000) places a duty upon the Council to designate one of their officers to be known as the Monitoring Officer. The duties of the Monitoring Officer include the requirement in section 5A to prepare a report to the Council if at any time it appears to him/her that any proposal, decision or omission by the Council or any of the Council's committees, sub-committees or officers or any joint committee on which the Council is represented has given rise to or is likely to give rise to a contravention by the Council of any enactment or rule of law or any such maladministration. The Monitoring Officer also has additional statutory responsibilities set out in the Localism Act 2011 regarding maintenance of the ethical framework for Members.

- 6.3 The Council is separately required to provide the Monitoring Officer with such staff, accommodation and other resources as are, in his/her opinion, sufficient to allow those duties to be performed.
- 6.4 The officer so designated by the Council may not be the head of the authority's paid service or its chief finance officer.
- 6.5 Section 5(7) of the 1989 Act goes on to provide that the Monitoring Officer has the power to appoint deputies.
- 6.6 Separately the Council's Constitution provides in the Staff Employment Procedure Rules at part 4J the procedures to be followed for the appointment of Chief Officers (which includes the Monitoring Officer), the declaration which must be made by candidates and a notification process to ensure that the Leader and any other Cabinet Members have no objections to the offer of appointment.
- 6.7 This report is designed to ensure compliance with the statutory responsibilities placed upon the Council regarding such an appointment.

Approved by Sandra Herbert, Head of Litigation and Corporate Law on behalf of the Director of Law and Governance & Deputy Monitoring Officer

7. HUMAN RESOURCES IMPACT

- 7.1 There are no Human Resources implications beyond those detailed in the body of the report.

Approved by: Sue Moorman, Director of Human Resources

8. EQUALITIES IMPACT

- 8.1 There are no specific equalities implications arising from the content of this report.

CONTACT OFFICER: Katherine Kerswell, Interim Chief Executive

BACKGROUND DOCUMENTS: There are no unpublished documents which have been relied on in the production of this report.