

COUNCIL:

26 OCTOBER 2023

**REPORT OF THE CORPORATE DIRECTOR, PEOPLE &
COMMUNITIES**

**APPOINTMENT OF INTERIM MONITORING OFFICER; INTERIM DEPUTY
RETURNING OFFICER; and INTERIM DEPUTY ELECTORAL
REGISTRATION OFFICER**

Reason for this Report

1. For Council to:
 - (i) designate an Interim Monitoring Officer and Interim Deputy Returning Officer to discharge the statutory responsibilities of these posts after the current post-holder, the Director of Governance and Legal Services, leaves the employment of the Council;
 - (ii) designate, as Accountable Body for the Cardiff Capital Region City Deal (CCRCD) Joint Committee, an Interim Monitoring Officer for the CCRCD Joint Committee after the current post-holder, the Operational Manager, Litigation and Deputy Monitoring Officer, leaves the Council; and
 - (iii) appoint an Interim Deputy Electoral Registration Officer to cover the statutory responsibilities of this post during the temporary absence of the Chief Executive, who is the Council's appointed Electoral Registration Officer.

Background

2. The Director of Governance and Legal Services, who is the Council's Monitoring Officer and Deputy Returning Officer, has tendered her resignation and will be leaving the Council with effect from 27th October 2023.
3. The September Council meeting considered a report on this matter and approved a recruitment and selection exercise to appoint a new Director of Governance and Legal Services, to be the Council's designated Monitoring Officer, with no changes to the statement of duties, terms and conditions, including remuneration, for the post, as previously determined by the Employment Conditions Committee and Council.

4. Council delegated authority to the Corporate Director, Resources, to put in place appropriate arrangements for public advertisement of the post; noted that an Appointments Committee would be convened to make a suitable appointment under its approved terms of reference; and a further report would be brought back to Council to note the appointment and for Council to designate the new appointee as the Council's Monitoring Officer (pursuant to section 5 of the Local Government and Housing Act 1989). Please note the permanent post has now been advertised.
5. The September Council report also noted that, as the current Monitoring Officer will be leaving the Council before the new appointee is in post, the Council will need to designate an Interim Monitoring Officer to discharge this statutory role during the intervening period (for approximately 6 months). Members were informed of the various options under consideration for the interim arrangements. Council agreed to receive a further report to agree the interim arrangements and designate an Interim Monitoring Officer to discharge the statutory functions of this role until such time as the new Director of Governance and Legal Services and Monitoring Officer takes up their position.
6. Under the Joint Working Agreement which established the Cardiff Capital Region City Deal Joint Committee (CCRCD), Cardiff Council, as Accountable Body, is to provide for its Monitoring Officer or their nominated deputy to act as Monitoring Officer to the CCRCD. The Deputy Monitoring Officer of Cardiff Council, who was nominated as Interim Monitoring Officer for the CCRCD, has also resigned and will be leaving Cardiff Council at the end of October. The Council therefore also needs to appoint a new Interim Monitoring Officer for the CCRCD.
7. As the Director of Governance and Legal Services is also the appointed Deputy Returning Officer for local and national elections, in view of the current absence of the Returning Officer (the Chief Executive), the report to September Council also addressed the need to ensure there is appropriate cover for the statutory duties of the Returning Officer after the Deputy Returning Officer leaves the employment of the Council.
8. The Chief Executive is also the Council's appointed Electoral Registration Officer for Cardiff, with statutory responsibility for the creation and maintenance of the register of electors and the absent voters list. This report recommends an Interim Deputy Electoral Registration Officer be appointed to cover the statutory responsibilities of this role pending the return of the Chief Executive.

Issues

Interim Monitoring Officer - Cardiff Council

9. The current Monitoring Officer will be leaving the Council with effect from 27th October 2023. Council therefore needs to designate an Interim Monitoring Officer to discharge this statutory role until the conclusion of the appointments process which is currently underway, and the new Director of Governance and Legal Services and Monitoring Officer is in post (approximately 6 months).
10. Various options have been considered to ensure that the interim arrangements continue to prioritise the need for the designated officer to have the relevant skills, knowledge and experience for the Council to be able to continue to discharge its statutory duties effectively. The options considered included possible internal arrangements, the commissioning of an external resource or potentially entering into an agreement (a Service Level Agreement or SLA) with another Welsh local authority.
11. Having carefully considered all options and following informal discussions with relevant parties, the recommended option is for Cardiff to enter into an SLA with the Vale of Glamorgan for its Monitoring Officer (Debbie Marles) to also act as Interim Monitoring Officer for Cardiff Council. It is believed this will provide assurance that the Interim Monitoring Officer has all the required skills, knowledge and experience to discharge the statutory role effectively from the outset.
12. It is proposed that the SLA will provide for the Interim Monitoring Officer service to be offered on a part-time basis to combine Ms Marles' current responsibilities as Monitoring Officer for the Vale of Glamorgan Council; and that the Vale of Glamorgan Council will put in place arrangements for some of her current duties and responsibilities to be undertaken in part by another Vale of Glamorgan Council officer ('back-filling arrangements'). The work for Cardiff is to be spread across the working week so as to ensure best use of resources and best value for both Councils. The appointment is to be for up to six months or the appointment of Cardiff's new Director of Governance and Legal Services, whichever is the earliest. The cost of the service is approximately £9,700 per month, which is to cover the salary costs of Ms Marles, as well as the costs of the back-filling arrangements.
13. The service offered will not extend to the provision of Monitoring Officer duties for the Cardiff Capital Region City Deal Joint Committee (CCRCD) – this role is addressed below in paragraphs 16-21 of the report.
14. The Interim Monitoring Officer service will cover only the statutory and constitutional roles of the Monitoring Officer, as set out in Article 11.3 of the Constitution, specifically:

- (a) **Maintaining the Constitution**
The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by Councillors, staff and the public. For this purpose the Monitoring Officer has been delegated the power to amend the Constitution to give effect to any decisions of the Council or the Cabinet, and to take account of any changes of fact or law.
- (b) **Ensuring lawfulness and fairness of decision making**
After consulting with the Chief Executive and S.151 Officer, the Monitoring Officer will report to the Council or to the Cabinet in relation to an Executive Function – 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. Provided that the decision has not already been implemented such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Standards & Ethics Committee**
The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards & Ethics Committee.
- (d) **Receiving reports**
The Monitoring Officer is responsible for receiving and where necessary co-ordinating action on reports made by the Public Services Ombudsman for Wales and decisions of the case tribunals. Any other Council Member or Officer to whom such reports may be addressed must forward them to the Monitoring Officer.
- (e) **Conducting investigations**
The Monitoring Officer will conduct investigations into matters referred by the Ombudsman and make reports or recommendations in respect of them to the Standards & Ethics Committee. The Monitoring Officer shall also conduct an investigation into any allegation of misconduct by a Councillor where he/she has reason to believe that it may be appropriate for the Council to exercise its powers of self regulation, and report to the Standards and Ethics Committee as appropriate.
- (f) **Proper officer for access to information**
The Monitoring Officer will ensure that Executive Decisions and decisions of designated senior officers, together with the reasons for those decisions and relevant employee reports and background papers are made publicly available as soon as possible.
- (g) **Advising whether executive decisions are within the budget and policy framework**
The Monitoring Officer, in conjunction with the Section 151 Officer as appropriate, will advise whether decisions of the Cabinet or Cabinet Members are in accordance with the budget and policy framework.
- (h) **Providing advice**
The Monitoring Officer, in conjunction with the Section 151 Officer as appropriate, will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.
- (i) **Corporate management**
The Monitoring Officer will contribute to the corporate management of the authority, particularly by providing advice on constitutional issues, lawfulness and propriety.'

15. Pending the appointment of the new Director of Governance and Legal Services, it is recommended that Council puts in place cover arrangements for other responsibilities of the post (aside from the Monitoring Officer functions which are to be discharged under the Interim MO arrangements set out above), including exercise of the delegations set out in the Scheme of Delegations, Section 4E, and any delegations granted by Council, Cabinet or any of its Committees, by authorising the appropriate Operational Manager/s within Governance and Legal Services to exercise those delegations on a temporary basis.

Interim Monitoring Officer - Cardiff Capital Region City Deal Joint Committee

16. As the current Interim Monitoring Officer for the CCRCD (and also for the South East Wales Corporate Joint Committee, 'the SEWCJC') will be leaving the Council at the end of October, Cardiff Council (as Accountable Body for the CCRCD, with responsibility for the provision of the Monitoring Officer under the terms of the CCRCD Joint Working Agreement – as explained in paragraph 6 above), has sourced a suitably qualified new Interim Monitoring Officer for CCRCD functions, namely Jayne La Grua. Ms La Grua is a barrister, who has specialised in criminal prosecutions, but has latterly focused her career on local government. Having suitable experience at a number of local authorities, she has demonstrated that she has the knowledge and expertise to act as Interim Monitoring Officer for CCRCD. (The SEWCJC, as a separate legal entity, which is required to designate its own Monitoring Officer, has also designated Ms La Grua as Monitoring Officer for the SEWCJC, subject to the terms of a separate Service Level Agreement with Cardiff Council.)
17. The CCRCD considered a report on this matter at its meeting on 9th October 2023, noted the proposed appointment of Ms La Grua by Cardiff Council, on its behalf, and authorised the CCR Director to conclude any necessary agreements with Cardiff Council for this purpose.
18. In order to allow a handover period (of approximately 3 weeks), Ms La Grua has been appointed as a locum and nominated by the Monitoring Officer as Interim Deputy Monitoring Officer for the CCRCD with effect from 11th October 2023.
19. As the Monitoring Officer will be leaving the Council on 27th October 2023; and the Deputy Monitoring Officer (the current Interim Monitoring Officer for the CCRCD) will be leaving the Council on 1st November 2023, a Council decision is required to designate Ms La Grua as:
 - (i) Interim Deputy Monitoring Officer for the CCRCD with effect from 27th October 2023 (after Cardiff's Monitoring Officer has left the Council and her power to nominate a deputy would potentially cease); and
 - (ii) Interim Monitoring Officer for the CCRCD with effect from 1st November 2023, after the current post-holder has left the Council.

20. The costs incurred by Cardiff Council, as Accountable Body for the CCRCD, in appointing the new Interim Deputy / Monitoring Officer for the CCRCD are Joint Committee Costs, to be allocated amongst the partner authorities in accordance with the provisions of the CCRCD Joint Working Agreement.
21. The current Service Level Agreement for Legal Services for the CCRCD will need to be amended to reflect the new arrangements, if approved.

Interim Deputy Returning Officer

22. As noted in the report to the September Council meeting, the Director of Governance and Legal Services is also the appointed Deputy Returning Officer for local and national elections. In view of the current absence of the Returning Officer (the Chief Executive), the Council needs to ensure there is appropriate cover for the statutory duties of the Returning Officer after the current Deputy Returning Officer leaves the employment of the Council.
23. At the September Council meeting, the Council exercised its statutory power (under section 28(5) of the Representation of the People Act 1983) to assign the Corporate Director Resources to assist in carrying out the Returning Officer's duties during his absence and after the Director of Governance and Legal Services (as Deputy Returning Officer) leaves the employment of the Council.
24. It is recommended that, for the avoidance of any doubt, the Corporate Director Resources be formally appointed as Interim Deputy Returning Officer (under section 35(1A) of the Representation of the People Act 1983) with effect from the date on which the Director of Governance and Legal Services leaves the Council and until such time as the Chief Executive, as the Council's appointed Returning Officer, reviews the position and appoints any alternative deputy (under the Returning Officer's powers, as set out in section 35(4) of the Representation of the People Act 1983).

Interim Deputy Electoral Registration Officer

25. The Chief Executive is also the Council's appointed Electoral Registration Officer for Cardiff, with statutory responsibility for the creation and maintenance of the register of electors and the absent voters list.
26. In view of the current absence of the Chief Executive, the Council is recommended to take this opportunity to appoint the Corporate Director Resources as Interim Deputy Electoral Registration Officer (under section 8(2A) of the Representation of the People Act 1983) to ensure there is effective cover for the statutory responsibilities of this post until the Chief Executive's return.

Legal Implications

Monitoring Officer

27. The Council has a statutory duty to designate one of its officers as the Monitoring Officer (pursuant to section 5 of the Local Government and Housing Act 1989, 'the 1989 Act') and must provide its Monitoring Officer with sufficient staff, accommodation and other resources to allow the duties of this role to be performed. The Monitoring Officer has a number of prescribed statutory roles, primarily, to ensure the lawfulness and fairness of the Council's decision making. The requirement to designate a Monitoring Officer and the statutory functions of the post are set out in Article 11.1(b) and 11.3 of the Constitution.
28. In relation to the proposed interim arrangements for discharging the statutory functions of the Monitoring Officer, Members should note that there is caselaw which confirms that an 'officer' of a local authority is not restricted to its employees (Pinfold North Ltd v. Humberside Fire Authority, 2010) and this is reflected in the definition of 'officer' within the Council's Scheme of Delegations (Constitution Part 3, Section 4A, paragraph 1.2), which makes clear that the term 'officer' may include a locum, agency worker, specialist consultant, joint manager appointed with another organisation or similar. There is also statutory provision (under section 113 of the Local Government Act 1972) for a local authority to enter an agreement with another local authority to secure the services of any officer employed by one of the authorities on the terms set out in the agreement (commonly referred to as 'a secondment'). Section 113(2) provides that any 'seconded' is to be regarded as an officer of the seconding authority for the purposes of any enactment relating to the discharge of the local authority's functions, meaning that it is legally permissible for a seconded to be designated as the Council's Monitoring Officer.
29. The Monitoring Officer's duties must be performed by them personally or by their nominated deputy (pursuant to section 5(7) of the 1989 Act).
30. The Council's Scheme of Delegations (in Part 3 of the Constitution) includes officer delegations in Section 4 and specific delegations for statutory officers in [Section 4E.pdf \(modern.gov.co.uk\)](#), within which there are a number of delegations to the Director of Governance and Legal Services and Monitoring Officer (delegations reference LD1 -LD28). The recommendations of this report seek to ensure that responsibility for these matters is allocated appropriately, so that during the transition period until the new Director of Governance and Legal Services takes up the post, the Council can continue to effectively discharge its functions.

Returning Officer

31. The appointment of a Returning Officer for the election of County Councillors and Community Councillors within the administrative area of Cardiff is required by Section 35(1A) of the Representation of the People Act 1983, as amended.
32. For parliamentary elections, the substantive duties of the Returning Officer are required by law to be discharged, as Acting Returning Officer, by the Electoral Registration Officer appointed by the Council (pursuant to section 28 of the Representation of the People Act 1983).

Registration Officer

33. The appointment of Electoral Registration Officer is required by Section 8 of the Representation of the People Act 1983, as amended.
34. Other relevant legal provisions are set out in the body of the report.

Financial Implications

35. Within the Directorate budget there is an amount allocated which is commensurate with the cost of the post titled Director of Legal and Governance Services. Therefore, there is sufficient funding available for both the permanent and the interim filling of this post. In the event of any overlap between interim and permanent arrangements, consideration needs to be given to ensure costs are covered within the funds available. All associated costs with the recruitment will need to be found from within the budgetary allocation of the directorate.
36. The costs associated with the proposed arrangements with regard to the Interim Monitoring Officer for the CCRC can be met from within the Joint Committee's 2023/24 revenue budget as approved by Regional Cabinet at its meeting on 9th October 2023.
37. There is a budget in place to meet remuneration costs associated with Returning Officer duties, as assigned.

RECOMMENDATIONS

That the Council

1. Designates Debbie Marles, the Monitoring Officer of the Vale of Glamorgan Council, as Interim Monitoring Officer for Cardiff Council with effect from 27th October 2023 until such time as the new Director of Governance and Legal Services and Monitoring Officer takes up their position, subject to conclusion of a Service Level Agreement (SLA) with the Vale of Glamorgan Council (to be concluded under recommendation 2 below);

2. Subject to approval of recommendation 1, delegates authority to the Corporate Director Resources, with advice from the Director of Governance and Legal Services (or her authorised representative), to conclude an SLA with the Vale of Glamorgan Council for the provision of Interim Monitoring Officer services (as referred to in recommendation 1 above) upon appropriate terms, including those set out in paragraph 12 of the report;
3. Notes that, as part of the previously agreed recruitment and selection process, an Appointments Committee will be convened to appoint a new Director of Governance and Legal Services under its approved terms of reference, and that a further report will be brought back to a future meeting of Council to note the appointment and for Council to designate the new appointee as the Council's Monitoring Officer pursuant to section 5 of the Local Government and Housing Act 1989;
4. Agrees that, until a new Director of Governance and Legal Services is in post, other responsibilities of the post (aside from the Monitoring Officer functions which are to be discharged under the Interim MO arrangements set out above), including exercise of delegated powers under the Scheme of Delegations (including, without limitation to, those set out in Section 4E of the Scheme) and or delegations from Council, Cabinet or any of its Committees, are to be discharged temporarily by the appropriate Operational Manager/s within Governance and Legal Services with responsibility for the relevant matters, or, in their absence, by any of the Operational Managers within Governance and Legal Services.
5. Designates Jayne La Grua as:
 - (i) Interim Deputy Monitoring Officer for the CCRCD with effect from 27th October 2023; and
 - (ii) Interim Monitoring Officer for the CCRCD with effect from 1st November 2023,

Subject to the terms of the Service Level Agreement for Legal Services being amended (pursuant to recommendation 6 below) to reflect the new arrangements for Cardiff's provision of an Interim Monitoring Officer for the CCRCD, as set out in the report (paragraphs 16-21 inclusive);

6. Subject to approval of recommendation 5, delegates authority to the Director of Governance and Legal Services (or her authorised representative), to amend the terms of the SLA for Legal Services for the CCRCD (as referred to in recommendation 5 above) to reflect the new Interim Monitoring Officer appointment; and
7. Appoints the Corporate Director Resources as:
 - (i) the Interim Deputy Returning Officer for the election of County Councillors and Community Councillors within the administrative area of Cardiff (under section 35(1A) of the Representation of the People

Act 1983) with effect from 27th October 2023 (being the date on which the Director of Governance and Legal Services leaves the Council) and until such time as the Chief Executive, as the Council's appointed Returning Officer, reviews the position and appoints any alternative deputy; and

- (ii) Interim Deputy Electoral Registration Officer (under section 8(2A) of the Representation of the People Act 1983) to ensure there is effective cover for the statutory responsibilities of this post until the Chief Executive's return.

Sarah McGill
Corporate Director, Housing & Communities
20 October 2023

Background Papers:

Report to Council, 'Appointment of Director of Governance and Legal Services and Monitoring Officer', 21 September 2023: [CARDIFF COUNTY COUNCIL \(moderngov.co.uk\)](https://www.moderngov.co.uk)

Report to Council, 'Appointment of Electoral Registration Officer and Returning Officer', 31 January 2019: [CITY AND COUNTY OF CARDIFF \(moderngov.co.uk\)](https://www.moderngov.co.uk) – Deferred due to cancellation of meeting to 28 February 2019

CCRCD report, 'Appointment of Interim Deputy Monitoring Officer', 9th October 2023: [item-9-interim-monitoring-officer.pdf \(cardiffcapitalregion.wales\)](https://www.cardiffcapitalregion.wales)

CCRCD Joint Working Agreement, 2017

CCRCD Service Level Agreement for Legal Services 2023/24

SEWCJC report, 'Appointment of Interim Monitoring Officer', 9th October 2023: [item-10-interim-monitoring-officer.pdf \(cardiffcapitalregion.wales\)](https://www.cardiffcapitalregion.wales)