

COUNCIL:

21 SEPTEMBER 2023

REPORT OF THE CORPORATE DIRECTOR, RESOURCES

APPOINTMENT OF DIRECTOR OF GOVERNANCE AND LEGAL SERVICES & MONITORING OFFICER

Reason for this Report

1. To report a vacancy in the post of Director of Governance and Legal Services, the Council's designated Monitoring Officer, subsequent to the resignation of the current post-holder; and to put in place arrangements to ensure the Council has adequate senior management resources to discharge its functions effectively.

Background

2. The Director of Governance and Legal Services, who is also the Council's Monitoring Officer, has tendered her resignation and the Council therefore needs to consider its arrangements for discharging the various responsibilities of this post.

Issues

3. Under the Council's Employment Procedure Rules (Rule 2), a vacancy in a 'Chief Officer' post must be reported to Council to consider whether the post should be filled. The Director of Governance and Legal Services falls within the definition of a 'Chief Officer' for these purposes.
4. If a Chief Officer post is to be filled, the Council (or a body with delegated authority to do so), must determine the terms and conditions of employment and method of appointment; and if the proposed remuneration for a post is £100,000 per annum or more, the Council is legally obliged to arrange for:
 - i. A statement of duties and required qualifications or qualities to be prepared and sent to any applicant upon request;
 - ii. Public advertisement of the post (unless the appointment is for 12 months or less); and
 - iii. Interview (with or without shortlisting) of suitably qualified candidates.

5. By law, full Council must determine the level of remuneration to be paid to a Chief Officer (pursuant to the Local Authorities (Standing Orders)(Wales) Regulations 2006, Regulation 7(2)(b), as reflected in the Employment Procedure Rules, Rule 2A).
6. Under its approved terms of reference, the Employment Conditions Committee (ECC) has previously, during the Senior Management Review undertaken in 2014/15, considered and agreed the statement of duties and terms and conditions for the post of Director of Governance and Legal Services. Full Council subsequently approved a spot salary for Directors, including this post, of £120,000 per annum, based on the advice of the Hay Group and the ECC recommendation (at the Council meeting in February 2015). The salary has since increased to £139,463 from 1st April 2023 due to nationally agreed annual pay awards.
7. The appointment of Chief Officers, in accordance with the agreed terms and conditions applicable to the post, is within the approved terms of reference of the Appointments Committee (Constitution, Part 3, Annex 2).
8. 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) 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.
9. The Council is recommended to agree a recruitment and selection exercise to appoint a new Director of Governance and Legal Services, to be the Council's designated Monitoring Officer and fulfil all statutory responsibilities of that role, as well as the other managerial responsibilities of the post under the Senior Management Structure approved by Cabinet in February 2015; and to agree no changes to the statement of duties, terms and conditions and remuneration level for the post determined by ECC and Council in February 2015, save for the increases to salary that have been determined by nationally agreed pay awards as set out in paragraph 6.
10. The appointment of a new Director of Governance and Legal Services is to be made by the Appointments Committee, within its approved terms of reference (as noted in paragraph 7 above). A further report will be brought to Council for approval to designate the new appointee as the Council's Monitoring Officer (pursuant to section 5 of the Local Government and Housing Act 1989).

Interim Monitoring Officer

11. 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).
12. Options are currently being considered to ensure that any 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. This consideration includes 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. Each of these options is ultimately seeking to provide the Monitoring Officer services for Cardiff Council on an interim basis, until the appointment process is concluded and the new substantive appointee is in post.
13. The final proposal in this regard will be reported to Council as soon as it is finalised, either within the Amendment Sheet for this Council meeting or a further report to Council.

Returning Officer Duties

14. 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 is recommended to exercise its powers (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, with effect from the date on which the Director of Governance and Legal Services (as Deputy Returning Officer) leaves the employment of the Council.

Legal Implications

15. Relevant legal provisions in relation to filling the vacancy for the Director of Governance and Legal Services (under the Local Authorities (Standing Orders)(Wales) Regulations 2006 and the Employment Procedure Rules in Part 4 of the Constitution); and the requirement to designate a Monitoring Officer (pursuant to section 5 of the Local Government and Housing Act 1989 and Article 11.1(b) of the Constitution) are set out in the body of the report.
16. 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.

17. There is, however, an inconsistency within the Constitution, in that Article 11.1(b) refers to the designation of a Council 'employee' for the post of Monitoring Officer (and other statutory officer posts), rather than one of its 'officers', as required under section 5 of the Local Government and Housing Act 1989. This appears to be inconsistent with the wide definition of 'officer' within the Council's approved Scheme of Delegations, and undermines the flexibility given to local authorities by the statutory provisions set out in paragraph 16 above and confirmed by caselaw. Council is recommended to remove this anomaly by amending the word 'employee' within Article 11 to 'officer', for consistency with the relevant legislation and other constitutional provisions.

Financial Implications

18. 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.
19. There is a budget in place to meet remuneration costs associated with Returning Officer duties, as assigned.

RECOMMENDATIONS

That the Council

1. notes the forthcoming vacancy of the post of Director of Governance and Legal Services, and approves a recruitment and selection exercise to fill the post;
2. agrees no changes to the statement of duties, terms and conditions, including remuneration for the post, as previously determined by ECC and Council and referenced in paragraphs 6 and 9 of this report;

3. delegates authority to the Corporate Director, Resources, to put in place appropriate arrangements for public advertisement of the post;
4. notes that an Appointments Committee will be convened to make a suitable appointment under its approved terms of reference;
5. receives a further report/s to:
 - (a) note the Appointments Committee's appointment of a new Director of Governance and Legal Services 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; and
 - (b) Agree the arrangements to be made for, and the designation of, 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. authorises the Monitoring Officer to amend the Constitution Article 11 references to the term 'employee' to read instead as 'officer', in order to remove the inconsistency within the Constitution, as explained in paragraph 17 of the report; and
7. assigns the Corporate Director Resources to assist in carrying out the Returning Officer's duties during his absence, with effect from the date on which the Director of Governance and Legal Services (as Deputy Returning Officer) leaves the employment of the Council.

Christopher Lee
Corporate Director Resources
15 September 2023

Background Papers:

[Report to Council, 'Senior Management Review', 26 February 2015](#)

[Report to Employment Conditions Committee, 'Senior Management Review', 25 February 2015](#)

[Report to Cabinet, 'Senior Management Review', 19 February 2015](#)

[Report to Council, 'Pay Policy 2023-2024', 30 March 2023: CARDIFF COUNCIL \(moderngov.co.uk\)](#)