

GOVERNANCE COMMITTEE

27 JUNE 2012

REPORT OF THE CHIEF EXECUTIVE

THE ROLE OF THE MONITORING OFFICER

1.0 PURPOSE OF REPORT

- 1.1 The purpose of this report is to review the allocation of the role of the Monitoring Officer to the Council.

2.0 RECOMMENDATIONS

2.1 It is recommended that:-

Members determine which of the options set out in Section 3 of the report should be pursued.

3.0 KEY ISSUES

- 3.1 It has been a duty of Principal Councils since the Local Government and Housing Act 1989 to appoint a Monitoring Officer (MO). The role in the original legislation sets out that the Monitoring Officer should oversee the Council's compliance with legislation or the rule of law, commonly taken to mean case law and/or established legal principles and to avoid maladministration, although the latter was clarified to ensuring the Council dealt properly with Ombudsman findings.
- 3.2 Later legislation extended the MO role to deal with the Council's Constitution developing Corporate Governance principles/activities and following this, the new and latterly expanded Standard Regime. The MO, if he or she considers the authority in danger of breaching the law has the power to make a report to the Council which it is obliged to consider. This duty is held "personally" by the MO and he or she may appoint a deputy to assist in fulfilling the duties as set out.
- 3.3 At no stage has there been a requirement that the MO is legally qualified and a range of skilled officers in Councils have held this post. The Head of Paid Services (usually the Chief Executive) or the Chief Finance Officer (S151 Officer) cannot hold the MO Post.
- 3.4 In July 2007 the Council reorganised its legal services and agreed to appoint a Joint Head of Legal Services with Harborough District Council. As part of these arrangements the then, Corporate Director (CAM) was appointed MO for this Council. These arrangements have continued in place since that time, with the legal service with Harborough moving to a full shared service led by that Authority.
- 3.5 It is timely five years from that decision, for the Council to review its option for this role. These options are:

3.5.1 Option One: Remain with Current Arrangements

These arrangements have worked well since their establishment. The original purpose was to ensure within the shared arrangements the MO duties were properly accommodated. The legislation (Section 5 of the above mentioned 1989 Act) states that the Council should “designate one of their officers” although coupled with other legislation it is generally accepted that the duties can be delegated to and accepted by another Authority who will make an officer available to fulfil these.

The current MO takes and presents legal advice to the Council through its Committees and other relevant meetings, as well as ensuring as required Committees are well served through the representation at meetings. The administration of systems which fall within the purview of the MO is excellent and relationship with Parish Councils good.

However, as the Council only has a small officer base some Members have expressed the concern that the MO at this Council has Project and Programme leadership duties which they consider may cause a “conflict” in terms of MO advice and the pressures of delivery. To date there have been no specific issues, however members have this residual concern. To deal with this, arrangements have been made that the Deputy MO be the Solicitor to the Council (the Shared Head of Service with Harborough District Council) and she deals with any matters where advice is needed on “process” concerning projects and where there have been specific Standards complaints relating to these matters. This process also appears to have worked well in practice.

Should the Council decide to accept this option there is no financial impact on the Council as this is currently the budgeted position. The current Monitoring Officer receives no salary or additional payment for the role.

Option Two: Request Harborough District Council that the Solicitor to the Council be this Council's MO

The current arrangement with colleagues at Harborough District Council is that the Council receives two days each week (operated on a flexible basis for the exigencies of the Service) of senior legal officer time. This provides the Council with its Solicitor to the Council role. This does not allow sufficient time to fulfil the full duties of the MO. Should members wish this option to be pursued additional time to support legal duties would be needed. Officers estimate this would be between one and two days per week.

The Solicitor to the Council provides complex legal advice, capacity, oversight and management of this Council's legal service. Allocating time to the MO duties will have an impact on this service. It is believed by many that the changes to the Standard's regime may reduce the call on the MO's time, but this is not yet fully in place and therefore cannot be relied upon or tested.

It is suggested that should members select this option and the duties of the Solicitor to the Council be extended to include those of the MO, that a further two days of admitted advice be requested from Harborough District Council. That Council has advised that it is appointing a further Solicitor and would be willing to consider adding this additional post to the Shared Service. An estimate for this additional cost would be £24,000. There would also be an additional recharge for training costs and associated professional practising fees on a pro rata basis. Also, it may be prudent to allow a small sum to cover additional 'higher' level

external advice that the Solicitor to the Council would have provided, which would not be available.

This sum is difficult to quantify, however at this stage it is suggested a figure of £5,000 should be budgeted for. This could be reviewed at annual intervals to see it's usage and whether it remained necessary. This course of action was adopted when the Service was set up initially.

It is estimated that this option could have a full year cost of £29,000 which would be kept under review.

Option Three: The Council to appoint its own part time MO

This option entails the Council appointing a part time Officer to fulfil the role of MO. This would be a flexible contract as there would be no certainty as to when advice would be needed and it is unlikely that the Council would have "exclusivity" in the time of the appointed officer.

In order to gain value for money, other duties would need to be allocated to the post and as the current MO duties are a statutory post these would need to be at a high level of expertise. They could not be of a "project" nature as this would be in danger of repeating the concerns within the current arrangements. This may prove difficult to adequately achieve but officers would with this option be requested to prepare a Job Description to meet members' requirements, before finally proceeding. It is suggested that this Job Description would need to be agreed by this Committee and Public Finance and Administration Committee.

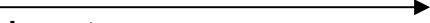
This option would have an additional cost of £28,000 as it would entail a fully costed part time post of two days per week, operated on a flexible basis. The post and costs would be subject to job evaluation.

Option Four: Buy in MO Advice through the Solicitor of the Council

This option is in part a hybrid of Options Two and Three in that it would still involve the purchase by agreement of additional "admitted professional" time from Harborough District Council, but it reduces that requirement by "outsourcing" to an appropriately qualified and knowledgeable person the detail of the advice. This provides capacity, expertise and removes to a degree the "conflict" concerns. However, it may be difficult to be timely in the provision of advice and the advice given would still need to be "owned" by the Solicitor to the Council as the MO duty is personal to that Officer as set down in the 1989 Act.

This arrangement would also have administrative costs and loses the benefits of the first three options in that an "understanding" of the Council, its Members and arrangements would not be present from the advice received, although when this is simply procedural or investigative that should not present an issue. Budgets would also be difficult to administer due to the ad hoc but potentially necessary nature of the external advice. There is also the risk that there may be a challenge that the advice or guidance is not that of the MO, although seeking specialist professional advice from others in the legal profession is often done, this would be "stated" arrangement.

It is difficult to cost this option, but it is suggested that a budget of £28,000 be set with annual reviews of spend. A proportion of that budget would need to be agreed with Harborough as it would necessitate requesting more hours from the Solicitor to the Council and a 50/50 split of hours may be more appropriate in her

Almost Impossible				
F	IV Negligible	III Marginal	II Critical	I Catastrophic
				
	Impact			

5.0 Consultation

The Officers affected by this report have been consulted. Preliminary discussions as set out in the report have been held with Harborough District Council.

6.0 Wards

The role of the MO can affect any and/or all Wards depending upon the issue.

Contact Officer: Lynn Aisbett
Date: 20 June 2012

Appendices: None

Background Papers: None