

**Committee Name and Date of Committee Meeting**

Council – 22 May 2019

**Report Title**

Designation of Monitoring Officer

**Is this a Key Decision and has it been included on the Forward Plan?**

No

**Strategic Director Approving Submission of the Report**

Judith Badger, Strategic Director of Finance and Customer Services

**Report Author(s)**

Judith Badger, Strategic Director of Finance and Customer Services  
01709 822046 or [judith.badger@rotherham.gov.uk](mailto:judith.badger@rotherham.gov.uk)

**Ward(s) Affected**

Borough-Wide

**Report Summary**

The Council has received the resignation of the Assistant Director of Legal Services, who is also appointed as the Monitoring Officer under Section 5 of the Local Government and Housing Act 1989. This report recommends that the Council designate the Head of Legal Services, Bal Nahal, as the Monitoring Officer to ensure compliance with the requirements of the Local Government and Housing Act 1989 until such a time as a permanent appointment is made to the post of Assistant Director of Legal Services.

**Recommendations**

1. That in accordance with Section 5 of the Local Government and Housing Act 1989 that Council be recommended to designate the Head of Legal Services as the Council's Interim Monitoring Officer until such time a permanent appointment has been made.
2. That the functions of the Assistant Director of Legal Services detailed within the Articles of the Constitution be undertaken by the Head of Legal Services, as Interim Monitoring Officer, until such time as a permanent appointment has been made.
3. That the Mayor be recommended to convey the thanks and very best wishes of the Council to the former Assistant Director of Legal Services and Monitoring Officer.

**List of Appendices Included**

Appendix 1 – Article 15 of the Constitution – The Monitoring Officer’s Role

**Background Papers**

None

**Consideration by any other Council Committee, Scrutiny or Advisory Panel**

No

**Council Approval Required**

Yes

**Exempt from the Press and Public**

No

## **Designation of Monitoring Officer**

### **1. Background**

- 1.1 The Council received the resignation of the Assistant Director of Legal Services in April 2019. Dermot Pearson held the position of Assistant Director of Legal Services from March 2016 and, as part of the Council's Strategic Leadership Team, made a significant contribution to the restoration of powers to local democratic control and the improvements made at the authority.
- 1.2 The position of Assistant Director of Legal Services is also designated as the Council's Monitoring Officer within the authority's Constitution.
- 1.3 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 (Chief Executive) nor the Chief Finance Officer (Strategic Director of Finance and Customer Services) can hold the position of Monitoring Officer.
- 1.4 The Monitoring Officer has a number of statutory duties and responsibilities relating to the Council's Constitution and our arrangements for effective governance. These duties include maintaining the Constitution, ensuring that no decision or omission of the Council is likely to give rise to illegality or maladministration and promoting high standards of conduct. A full list of the Monitoring Officer's responsibilities and delegated powers detailed in Article 15 of the Constitution, which is attached at Appendix 1.

### **2. Key Issues**

- 2.1 Following receipt of the resignation of the Assistant Director of Legal Services, the Council is required to designate an officer as its Monitoring Officer to comply with the requirements of Section 5 of the Local Government and Housing Act 1989, as detailed in paragraph 1.3 above.
- 2.2 The Constitution currently requires the Monitoring Officer to be the Assistant Director of Legal Services. The Articles of the Constitution are not permitted to be suspended under Article 19.1, therefore the Council will need to determine how the functions allocated to the Assistant Director of Legal Services will be undertaken and to ensure that these accord with the arrangements to designate a Monitoring Officer for the authority.
- 2.3 Whilst the former Assistant Director of Legal Services had appointed Deputy Monitoring Officers, these appointments are no longer valid following the departure of the Monitoring Officer from the authority. It is therefore necessary for Council to consider the designation of the Monitoring Officer role.

### **3. Options considered and recommended proposal**

- 3.1 Whilst a further decision will be taken in respect of the appointment to the Assistant Director role, it is proposed that the Head of Legal Services be designated as the Monitoring Officer on an interim basis until a permanent appointment is made to the role of Assistant Director of Legal Services.

3.2 In view of Article 19.1 which prohibits the suspension of the Articles of the Constitution, it is also recommended that all of the functions of the Assistant Director of Legal Services which are detailed within the Articles be undertaken by the Head of Legal Services, as Interim Monitoring Officer, until such a time as a permanent appointment is made.

3.3 As the authority is required to designate an officer as the Monitoring Officer under Section 5 of the Local Government and Housing Act 1989, there is no option to leave the position unfilled. Although many councils appoint their most senior legal officer as their Monitoring Officer this is not a specific requirement. Whoever is designated must though ensure that the Council receives correct and appropriate advice on the lawfulness of its decision making. On this basis, it is recommended that the Head of Legal Services be designated as Interim Monitoring Officer.

#### **4. Consultation on proposal**

4.1 Consultation has taken place with the Leader of the Council and the Cabinet Member for Corporate Services and Finance prior to preparing this report. They have indicated their support for the recommended approach.

4.2 The Head of Legal Services has also indicated that, subject to the approval of the Council, they would be willing to be designated as Monitoring Officer until a permanent appointment is made to the post of Assistant Director of Legal Services.

#### **5. Timetable and Accountability for Implementing this Decision**

5.1 The proposal submitted for consideration by Council will take immediate effect following any resolution agreed at the meeting on 22 May 2019.

#### **6. Financial and Procurement Advice and Implications**

6.1 There are no financial implications arising from the report.

#### **7. Legal Advice and Implications**

7.1 There are no additional legal implications other than those set out elsewhere in the report.

#### **8. Human Resources Advice and Implications**

8.1 There are no additional human resources implications other than those set out elsewhere in the report.

#### **9. Implications for Children and Young People and Vulnerable Adults**

9.1 There are no implications for children and young people or vulnerable adults arising from this report.

## **10. Equalities and Human Rights Advice and Implications**

10.1 There are no equalities implications arising from this report as it relates to the designation of an officer of the Council to the role of Monitoring Officer.

## **11. Implications for Partners**

11.1 There are no implications for partners arising from this report.

## **12. Risks and Mitigation**

12.1 The proposals within this report are submitted to reduce the risks associated with the Council not having designated an employee as the Monitoring Officer. There are no risks arising from this report or its recommendations.

## **13. Accountable Officer(s)**

Judith Badger, Strategic Director of Finance and Customer Services

*Report Author: Judith Badger, Strategic Director of Finance and  
Customer Services  
01709 822046 or [judith.badger@rotherham.gov.uk](mailto:judith.badger@rotherham.gov.uk)*

This report is published on the Council's [website](#).

**15. The Monitoring Officer's role**

*Maintaining the Constitution*

- 15.1 The Assistant Director of Legal Services will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.

*Unlawful decisions or maladministration*

- 15.2 After consulting with the Chief Executive and the Strategic Director of Finance and Customer Services, the Assistant Director of Legal Services will report to the full 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.
- 15.3 A report submitted to the full Council or to the Cabinet by the Assistant Director of Legal Services under article 15 (2) will have the effect of stopping the proposal or decision being implemented until the report has been considered.

*Supporting the Council's Standards and Ethics Committee*

- 15.4 The Assistant Director of Legal Services will contribute to the promotion and maintenance of high standards of conduct by providing support to the Council's Standards and Ethics Committee.

*Conducting investigations or taking other action*

- 15.5 The Assistant Director of Legal Services will conduct investigations into matters referred by the Standards and Ethics Committee or take other action as may be directed by the Committee following allegations that members are in breach of the Council's Code of Conduct and make reports or recommendations in respect of them to the Standards and Ethics Committee.

*Register of Members' Interests*

- 15.6 The Assistant Director of Legal Services will maintain the *Register of Members' Interests* which members and co-opted members are required to complete under the terms of the Council's *Code of Conduct for Members and Co-opted Members*. The register is available for public inspection at the Council's offices at Riverside House, Main Street, Rotherham S60 1AE and on the Council's website.

*Proper officer for access to information*

- 15.7 The Assistant Director of Legal Services will ensure that executive decisions, together with the reasons for those decisions and relevant officer reports and background papers, are made publicly available as soon as possible.

*Contributing to corporate management*

- 15.8 The Assistant Director of Legal Services will contribute to the corporate management of the Council, in particular through the provision of professional, legal and constitutional advice and advising whether decisions of the executive are in accordance with the budget and policy framework.

*Providing advice*

- 15.9 The Assistant Director of Legal Services will provide advice to all Councillors on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and the budget and policy framework, and will support and advise councillors and officers in their respective roles.

*Legal proceedings*

- 15.10 The Assistant Director of Legal Services is authorised to institute and defend matters on behalf of the Council in respect of legal proceedings in any court or tribunal.

*Restrictions on posts*

- 15.11 The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.