

## Central Bedfordshire Council

### GENERAL PURPOSES COMMITTEE

30 October 2018

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### Proposed changes to the Constitution - Monitoring Officer

Report of: Cllr. Richard Wenham. Deputy Leader and Executive Member for Corporate Resources (richard.wenham@centralbedfordshire.gov.uk)

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#### Purpose of this report

1. This report invites the Committee to consider proposed changes to the Constitution in relation to the Monitoring Officer.

#### RECOMMENDATIONS

The Committee is asked to:

1. Consider the proposed amendments to the Constitution in relation to the Monitoring Officer as set out at Appendix A - D.
2. Recommend to Council that it approves the proposed amendments.

#### Background

2. The Council's current constitution assumes that the Monitoring Officer (MO) is a Council employee and not as at present an officer appointed by the Council on the basis of their contractual relationship with LGSS Law Limited. This exposes a gap between the MOs position as an officer of the Council (which is legally distinct) and the MOs position as an employee or contractor of LGSS Law Limited.
3. The proposed amendments were drafted by an independent external firm of solicitors (External Legal Advisers) instructed by the Council (not by LGSS Law Ltd). In drafting the constitutional amendments it must be noted that the dismissal of a MO must be done in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001 (the Standing Order Regulations) – particularly as amended in 2015 which require Independent Persons to be involved in the dismissal of a MO. The regulations do not contain mandatory requirements in relation to the suspension of a MO.

4. This means that for dismissal there is a gap because if LGSS Law Ltd successfully dismissed its employee/contractor who was also the Council's MO (and that individual refused to resign as the Council's MO) the Council would be required to undertake the process set out in paragraph 3 of Part 4K (Officer Employment Procedure Rules). Further this may also leave a scenario where LGSS Law Ltd had valid grounds to dismiss its employee/contractor but those grounds (at least in theory) might not be appropriate grounds to dismiss that LGSS employee as the Council's MO.

### **Proposed Specific Changes to the Council's constitution**

5. Part 4k – Officer Employment Procedure rules. The amended section is paragraph 5. The External Legal Advisers have suggested amendments which:
  - Automatically suspend the MO if that person is suspended by their third party employer (e.g. LGSS Law Ltd or any other entity supplying legal services to the Council);
  - Permits a suspension in these circumstances to continue beyond 2 months ending when that persons employment suspension is resolved (meaning that they cease to be suspended as an employee or they are dismissed/resign from their employment); and
  - In these circumstances that person is (during their suspension) relieved of all of their responsibilities under the Constitution except they still have the obligation to appoint a deputy.
6. Part 5E Monitoring Officer Protocol. Paragraph 2.2.16 has been amended and a new paragraph 2.2.17 has been added. What these amendments do is:
  - To strengthen the obligation to appoint a deputy by obliging the MO to ensure that at all times a deputy is appointed;
  - To stipulate that the MO's responsibility to appoint a deputy (if the Council would otherwise have none) continues during any period the MO is suspended under Part 4K (see above).
7. Part 2 Article 11. A new paragraph 4.3 has been added and paragraph 4.2 tweaked. This is to deal with a situation where a suspended MO refuses to appoint a deputy (despite the constitutional requirement that they must). An individual might do this for a number of reasons as the Council would legally only be able to dismiss them using the procedure in paragraph 3.2 of Part 4K (which might take time). Specifically what these amendments do is:

- If the MO is unable to act (or suspended) and refuses to appoint a deputy then if no deputy is in place (meaning that the Council is without a person to discharge monitoring officer responsibilities) then the Chief Executive may appoint an 'Acting Monitoring Officer';
  - As to the appointment of an Acting Monitoring Officer (AMO) – the term of the AMO lasts until any of the following occur – the original MO resumes their duties; or the General Purpose Committee arranges for the appointment of an AMO or (if there is a vacancy) a new MO.
8. Part 3B Delegations to Regulatory and Other Committees. An amendment to the General Purposes committee remit to include arrangements to appoint an Acting Monitoring Officer – in paragraph 5.1.1.

### **Risk Management**

9. If the proposed amendments are not made then the risks highlighted in this report will remain.

### **Legal Implications**

10. The Local Government and Housing Act 1989, section 5 requires that the MO must be appointed as an officer of the authority and designated as MO. An external MO may be appointed as an officer but without a contract of employment.
11. The proposed amendments will remove the risks highlighted in this report and have been recommended and drafted by the Council's External Legal Advisers. The Council's interim Monitoring Officer agrees that the proposed amendments are necessary and appropriate in order to protect the Council.

### **Financial Implications**

12. None.

### **Equalities Implications**

13. The Council has a statutory duty to promote equality of opportunity, eliminate unlawful discrimination, harassment and victimisation and foster good relations in respect of nine protected characteristics; age disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

14. There are no direct equalities implications that have been identified as relevant to this report.

### **Conclusion**

15. The proposed amendments once considered by General Purposes committee will be submitted to full Council for approval.

### **Appendices:**

Appendix A – D: Proposed amended versions of the Constitution.

### **Background Papers:**

**Location of Background Papers:** N/A