

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

26 JUNE 2017

1. REVIEW OF STATUTORY MONITORING OFFICER PROVISION

Report of the Chief Fire Officer.

RECOMMENDED

THAT the Authority approves the preferred option, of a Monitoring Officer provided through a constituent member of the West Midlands Combined Authority – Wolverhampton City Council, for the year June 2017 to June 2018. This provision will be reviewed prior to the June 2018 AGM.

THAT the Clerk to the Authority be provided with the approval to make the changes required to the constitution and Monitoring Officer Memorandum of Understanding (MOU), following approval of the Authority's preferred option.

2. PURPOSE OF REPORT

This report is submitted for the Authority, in considering all relevant options for the delivery of the Monitoring Officer role, to determine the most appropriate option for provision to be implemented prior to September 2017.

3. BACKGROUND

- 3.1 As set out in the Local Government and Housing Act 1989 (Section 5) and the Local Government Act 2000 (Schedule 5), a Monitoring Officer is a statutory role and has the specific duty to ensure an Authority, its officers and its elected members, maintain the highest standards in all that they do.
- 3.2 The purpose of the Monitoring Officer role is to enable the safeguarding, as far as possible, of members and officers whilst acting in their official capacities, from legal difficulties and/or criminal sanctions.

- 3.3 Since the formation of the Authority in 1985, the role of Statutory Officers and Democratic Services for the Authority have been provided through Sandwell Metropolitan Borough Council (MBC). This approach changed in April 2014, when the role of Section 151 Officer, Clerk and Democratic Services were bought in house. This change resulted in an approximate saving at the time of £60,000 per annum. The role of Monitoring Officer for the Authority continued to be provided by Sandwell MBC through the then Assistant Chief Executive.
- 3.4 During 2016/2017 the then Monitoring Officer for the Authority left the employment of Sandwell MBC and the role of Monitoring Officer was temporarily assumed by the Deputy Monitoring Officer. This role continued to be maintained through Sandwell MBC. This temporary arrangement was put in place mid Authority year with the intention for review at the June 2017 AGM.
- 3.5 The Authority's constitution Article 13 and part 3, Scheme of Delegations sets out the roles and delegations of the Monitoring Officer.
- 3.6 A Memorandum of Understanding (MOU) developed following the change in provision in 2014, enables a more integrated and effective approach to dealing with and engaging in Authority business.

4. **FUTURE GOVERNANCE**

- 4.1 There are several options to consider in the review of the Monitoring Officer role. These options are listed paragraph 6.1. A key consideration when evaluating each of the options is the direction of governance for the Authority in the future.
- 4.2 Amidst the changes instigated by the Policing and Crime Act 2017 and the government's direction around reform for the Fire Sector, the Authority at its meeting on 20 February 2017 agreed its future governance route towards Mayoral WMCA governance. This route was further supported by the WMCA at its board meeting on the 3 March 2017.

- 4.3 This has set a path for change for the Authority and West Midlands Fire Service (the Service), which will not only impact upon the future governance of the Service, but also the provision of its services to local communities in its widest sense.
- 4.4 The reform of the Fire Authority was a key element in the route to Mayoral WMCA governance and following unanimous agreement at a full Authority meeting on 11 April 2017, the process to enable this has already begun through engagement with each of the seven local authority leaders, invites to proposed co-opted members and the Police and Crime Commissioner. As an outcome of this report, a formal request has been sent to the Secretary of State to enable an amendment to the Local Government Act 1985 which currently dictates the size of the Authority.
- 4.5 Following the election for the West Midlands Mayor on 4 May 2017 and the appointment of Andy Street as the West Midlands Mayor, engagement has already begun to enable early understanding of the direction of the Authority in its route to future Mayoral governance.
- 4.6 **Current Provision**
- 4.6.1 The provision of Monitoring Officer Services has been provided through Sandwell MBC to date. The MOU provides a basis on which to guide, monitor and evaluate Monitoring Officer services on a regular basis. The MOU is detailed in Appendix 2. Whilst the MOU sets out the legislative and process requirements of this role, aligned to the Constitution and Local Government Act, it also highlights the necessary behavioural and relationships requirements of the role.
1. The relationship of Officers with both the Monitoring Officer and Deputy Monitoring Officer should enable:
 - a. a proactive and trusted approach to supporting and advising the Service
 - b. a focus on promoting corporate health, it is vital that the Monitoring Officer, Deputy Monitoring Officer, Members and Officers have excellent

working relations, to enable the effective discharge of duties.

- c. a speedy flow of information and access to discussion, particularly in the early stages of decision making, will assist in this.

4.6.2 The current Monitoring Officer provision has developed positively since 2014 in supporting Authority business. The development of positive working relationships between members, officers and the Monitoring Officer has contributed significantly to this progress. Whilst the background of the current Monitoring Officer is not one of local authority governance, performance in role has demonstrated alignment to the Authority's strategy and approach, as well as commitment to our direction and a trusted provider.

4.6.3 On implementation of the temporary Monitoring Officer arrangement in 2016/17, additional requirements were agreed to increase clarity in the 'amount' of provision required from the Monitoring Officer role. Currently the Monitoring Officer role is expected to provide two days' dedicated resource to the Authority over a four week period outside of 'normal' Authority business.

4.6.4 As progress continues to enable the Authority's route to future governance to be achieved, the Monitoring Officer role will require additional time and capacity to support a dedicated resource in discussing, understanding and enabling progress across some of the more technical areas of work.

5. **KEY REQUIREMENTS OF THE MONITORING OFFICER ROLE**

5.1 There are several factors to consider when reviewing each of the options for future provision, in addition to the changing direction of governance. It is difficult to rate these in order of importance, but the preferred option should provide a sufficient blend of skills, knowledge and understanding which will proactively support the Authority in its route to future governance. Key requirements are:

1. Skills and experience in the role of Monitoring Officer and ability to deliver the statutory requirements of a Monitoring Officer, as well as further expectations required by the Authority and CFO as set out in the MOU.
2. An engagement with and understanding of the changes taking place across public services within the West Midlands and particularly aligned to the WMCA.
3. Capacity to support not only 'usual' Authority activity, but also work required as part of the Authority's route to future governance.
4. Consistency and development of effective relationships with officers, members and external stakeholders.
5. A sound understanding of the future governance route and arrangements - therefore supporting future transition.
6. Knowledge of the Fire Sector and particularly of the Service. This would need to be well developed to enable governance support that enables the effective delivery of services.
7. A good understanding of the challenges faced by the Authority and Service, in the delivery of its Service Delivery Model across the wider public service arena.
8. The appointment of a deputy Monitoring Officer (essential).

These requirements ensure that the Monitoring Officer is well placed to advise on and support Authority decisions from an informed perspective.

6. **OPTIONS FOR FUTURE PROVISION**

- 6.1 Whilst each of the options below would provide the Authority with a Monitoring Officer resource which meets the statutory requirements of the role, each option should be considered in the context of the key requirements, risks and opportunities.

Option 1: Maintaining current Monitoring Officer provision through Sandwell MBC

Option 2: Monitoring Officer provided through a constituent member of the West Midlands Combined Authority – Wolverhampton City Council

Option 3: Independently sourced Monitoring Officer provision

To explore these options further a set of broad question areas were posed to each provider (where possible) aligned to the key considerations for this role. These broad areas sought to determine how each option would provide:

6.2 **Skills and experience:**

Understanding and experience operating within a Local Authority governance structure and of a Monitoring Officer role.

6.3 **Capacity:**

The provision of focused capacity and support to the Fire Authority to enable it to navigate process and legal steps required for not only the operation of the Fire Authority, but also its route to future governance.

Specific capacity, but more flexibility in time and support to enable the development of key relationships which will support progress, i.e. Fire Authority, Officers, local and central government officers.

The appointment of a deputy to support the role of Monitoring Officer.

6.4 **Knowledge – Organisational and Legislative:**

Support a developed understanding and knowledge of how key organisational factors will impact on future governance change.

Provide a developed knowledge of the critical legislation and statutory processes which support governance of the Fire Authority, as well as the legislation which enables governance change.

Developed understanding of how the public service landscape in the West Midlands will impact upon the Fire Authority's governance change.

6.5 **Relationships** are a critical element to the current MOU and would be central to the key considerations of each option.

6.6 **Finance** also forms part of each option appraisal and is set out in more detail in section 10.

Where possible these areas were discussed with potential providers to provide an evidence base around the assessment suitability.

7. **SUMMARY AND PROPOSED PREFERRED OPTION**

Each of the options highlighted in section 6 and detailed in Appendix 1, have been considered against the key requirements of the role, aligned to the strategy of the Authority and its changing environment. Option 2 is recommended to the Authority for the provision of future Monitoring Officer services.

A Monitoring Officer provision through Wolverhampton City Council meets all the key requirements set out in section 5 and will provide added value in wider public service awareness, alignment to the combined authority, experience of governance change and ongoing direct involvement in managing the process and legal steps for devolution. This option will not only support the Authority in the 'usual' requirement of a Monitoring Officer role, it will enable the Authority to progress effectively through its timeline to transferring governance to the Mayor.

It is recommended that this option is implemented in sufficient time to enable the new provider to come into post for the September Authority meeting. This will allow the Clerk to close off current arrangements and establish a MOU for new arrangements in agreement with the new provider.

A report will be tabled for the September Authority to inform members of the new arrangements.

8. **EQUALITY IMPACT ASSESSMENT**

In preparing this report an initial Equality Impact Assessment is not required.

9. **LEGAL IMPLICATIONS**

The recommendations in this report supports the Authority in maintaining the statutory role of Monitoring Officer as set out in the Local Government and Housing Act 1989 (Section 5) and the Local Government Act 2000 (Schedule 5). As highlighted earlier in the report this role has the specific duty to ensure an Authority, its officers and its elected members, maintain the highest standards in all that they do.

This change in arrangements continues to support the Authority in delivering the 'Principles of Good Governance'.

10. **FINANCIAL IMPLICATIONS**

- 10.1 The provision of a Monitoring Officer and Deputy Monitoring Officer through Sandwell MBC (option 1) incurs a cost of approximately £10k per annum. Currently the Deputy role is not being provided for.
- 10.2 The provision of a Monitoring Officer and Deputy Monitoring Officer through Wolverhampton City Council (option 2) would cost approximately £10k per annum. This option would also provide the skills and capacity to support the route to and transfer of future governance to Mayoral arrangements. Any costs incurred for this additional work would be met from existing budget provisions established to support work associated with the Combined Authority arrangements.
- 10.3 An independently sourced Monitoring Officer and Deputy Monitoring Officer provision (Option 3) is anticipated to cost approximately £40k per annum.

11. **ENVIRONMENTAL IMPLICATIONS**

There are no environmental implications as a result of this paper.

BACKGROUND PAPERS

20 February 2017, Route Map to a West Midlands Combined Authority Mayoral (WMCA) Governance Report

10 April 2017, Route Map to Mayoral WMCA Governance – A reformed Fire Authority

KAREN GOWREESUNKER 0121 380 6678

PHIL LOACH
CHIEF FIRE OFFICER

APPENDIX 1

Appraisal of relevant options for Monitoring Officer provision

Option 1 seeks to maintain the current provision of Monitoring Officer through Sandwell MBC, provided by a member of the Legal department. This individual also provides employment law services to both Sandwell MBC and the Service.

The Monitoring Officer has a depth of knowledge of the Service and of the strategic direction the Authority has set. The involvement of the current Monitoring Officer in key governance work streams is providing a valuable resource in supporting the work required to progress the future governance route. Exposure and wider understanding of the Mayoral and WMCA is currently limited.

The Monitoring Officer has and continues to build effective working relationships across the Service and Authority and as such can advise on Authority business, as necessary, from a wider informed perspective.

Outside of supporting usual Authority business, the capacity of the current Monitoring Officer has been limited. The Authority currently receives 2 additional days' support per month as per revised arrangements. Whilst attentive to the needs of Authority business, the Monitoring Officer does not have dedicated working day(s) to support Authority work outside of 'usual' business. This impacts on the ability of the Monitoring Officer to develop the right relationships outside of the Service and has the potential to delay progress of work.

The added value in this current provision exists in the understanding and knowledge the Monitoring Officer has with, and of, the organisation, the Authority and its strategic direction. The Monitoring Officer is a trusted provider which is a critical basis for positive working relationships and is forming a developing knowledge of governance and emerging changes.

If this option is continued capacity will increase to 1 day per week on site, outside of normal Authority meetings. This will be designed to support the governance work required as part of current and future changes.

This will also support progression of work as conversations and joint work can be scheduled resulting in less repetition. However, as we move further into the timeline for governance change, requirements around capacity are likely to increase and will require more flexibility and agility. If this cannot be achieved this has the potential to impact on how effectively the Authority will progress through its timeline to Mayoral governance.

The continuation of this option would require the appointment of a suitable Deputy Monitoring Officer. This role would be guided by the MOU and would need to establish an effective working relationship with the Monitoring Officer. It is not envisaged the Deputy Monitoring Officer would be provided from within SMBC and as such would require another approach to ensure appointment. This may require considering option 2 or 3 to implement this arrangement which will incur additional time and costs.

If this option is implemented the current MOU will require review and amendment to reflect the future requirements of the role. This will focus on the requirements of the role in supporting future governance change.

Option 2 provides a different approach to provision which will be aligned to a constituent member of the WMCA, through Wolverhampton City Council (Wolverhampton CC), Managing Director.

This option will provide an experienced Monitoring Officer with a substantial resource supporting the legal skills, knowledge and experience requirements of this role for the Service. The critical role Wolverhampton CC has played in setting up and progressing the Mayoral WMCA will provide an invaluable wealth of knowledge and experience of not only governance change, but also devolution. This would provide significant support for the Authority's route to future governance.

This option will provide a Monitoring Officer who has a sound understanding of the Service, its strategy, its governance journey and background, but perhaps limited understanding of the Fire Sector. However, as previous providers of the Monitoring Officer role have begun from the same position, this should not be considered a barrier in considering this option.

The Managing Director of Wolverhampton CC already has established working relationships with officers and some members of the Fire Authority. This will enable a sound base to work from against the expectations set out in the current MOU.

The working relationships established outside of the Service across the WMCA, its 7 constituent councils and wider, will again provide significant value to supporting the background work required to enable future changes in governance of the Service. As such there will be greater access to wider capability and capacity, to progressively support this change.

If this option is implemented the current MOU will require amendment to reflect changes in requirements of the role, as well as the change in arrangements. This will focus on the requirements of the role in supporting future governance change, as well as providing an agreement in arrangements enabling prioritised access to focused legal governance advice and support.

This option will as with all other options require the appointment of a Deputy Monitoring Officer aligned to the requirements set out in an amended MOU. An effective working relationship with the Monitoring Officer will be essential. This resource can be provided from within Wolverhampton CC, providing the right level of alignment and support to the Monitoring Officer.

Option 3 seeks an Independent Monitoring Officer resource which is recruited for and service provided on a contractual basis.

This option will require a full recruitment process and will be managed through a contract of employment. This will require an upfront investment in time and financial resource. This approach can be enabled using a tailored and targeted approach to gain the most value from the recruitment process.

A targeted approach if successful should provide a Monitoring Officer which will fit most of the 'usual' Monitoring Officer roles requirements, as well as a sound local authority governance background.

Gaps however may exist at the outset in the individual's understanding of the Service, its strategy and future governance journey.

There may also be gaps in established working relationships, which will need upfront investment in time and commitment to develop. This presents a risk to how quickly this option can 'hit the ground running' which could impact on the pace and ability of the Authority to deliver change. The full suitability of a candidate cannot be truly tested until in role.

Terms and conditions of the Monitoring Officer role aligned to this option would need to be attractive enough to target the 'right' candidate for the role. Accountability, areas of responsibility aligned to contracted hours and salary would be prime considerations. As such this option is likely to require an increased financial investment when compared to options 1 or 2.

If this option were to be implemented the MOU would be strengthened to form part of a contract of employment. This and a strong role description would support the approach to managing performance in this role.

This option would (as with other options) require a Deputy Monitoring Officer to also be appointed. Depending on the route take to fill this position this could also incur additional costs.

APPENDIX 2

Memorandum of Understanding for the Provision of the Monitoring Officer function to West Midlands Fire and Rescue Authority

18 September 2015

1. Introduction

- 1.1 This Memorandum of Understanding sets out the broad intentions and specific functions that the Monitoring Officer to West Midlands Fire and Rescue Authority (WMFRA) will provide. The Monitoring Officer role is provided by the Assistant Chief Executive, Sandwell Metropolitan borough Council.
- 1.2 As set out in the Local Government and Housing Act 1989 (Section 5) and the Local Government Act 2000 (schedule 5), the Monitoring Officer has the specific duty to ensure West Midlands Fire and Rescue Authority (WMFRA), its officers and its elected members maintain the highest standards in all that they do. The WMFRA Constitution sets out the specific roles and responsibilities of elected members and officers in the governance of WMFRA.

2. Purpose and Role

- 2.1 The purpose of the Monitoring Officer Role is to enable the safeguarding, as far as possible, of members and officers whilst acting in their official capacities from legal difficulties and/or criminal sanctions.
- 2.2 The Monitoring Officer, Deputy Monitoring Officer (section 3), Members and Officers will work proactively together to ensure that this Memorandum of Understanding (MOU) and the commitments set out within, are followed to support and enhance the decisions taken on behalf of WMFRA.
- 2.3 The Monitoring Officer's broad statutory responsibilities are:
- i. Reporting on matters believed to be, or likely to be, illegal or amount to maladministration
 - ii. To be responsible for matters relating to the conduct of Councillors or Officers in line with the relevant standing orders and code of conduct.
 - iii. To be responsible for the operation and review of the WMFRA's constitution.

A full list of functional roles and responsibilities of the Monitoring Officer is set out in Appendix 1 of this MOU.

2.4 It is expected the Monitoring Officer will:

- i. Provide the first point of contact in all matters relating to the discharge of the role and will use the full range of existing legal resources to provide the Authority with high quality support and advice, to ensure that the Authority remains legally compliant.
- ii. Remain impartial, upholding fairness and transparency at all times.
- iii. Provide both members and officers (who seek it) with advice on matters which affect the Authority and/or individual members. Whilst the Authority/member/officer will ultimately take his/her own decision, effective engagement on an informal basis, can support the decisions made which will have a significant impact on the values and behaviours of the Service.
- iv. In other cases where proposals, actions or omissions would cause the Authority to act unlawfully and/or contravene the constitution, the Monitoring Officer may take a decision which could suspend the implementation of the proposal, or action via a statutory report to the Authority. This would occur when there is any illegality on the part of the Authority and/or any member or officer.
- v. Undertake his/her duties in line with the duties and responsibilities set out in Appendix 1
- vi. Consult on all matters directly with the Chief Fire Officer

3. Appointment of a Deputy Monitoring Officer

3.1 The Local Government and Housing Act 1989 allows that the Monitoring Officer appoints a deputy with the power to act as Monitoring Officer, where he/she is unable to act as a result of absence or illness, or where the Monitoring Officer is unable to act due to a conflict of interest. The Deputy Monitoring Officer for WMFRA is the current Client Services Officer (Legal Services), Sandwell Metropolitan Borough Council.

Working in Partnership

3.2 To support the partnership between WMFRA and Sandwell Metropolitan Borough Council, which focuses on promoting corporate health, it is vital that the Monitoring Officer, Deputy Monitoring Officer, Members and Officers have excellent working relations, to enable the effective discharge of duties. A speedy flow of information and access to discussion, particularly in the early stages of decision making, will assist in this.

3.3 The relationship of Officers with both the Monitoring Officer and Deputy Monitoring Officer should enable a proactive and trusted approach to supporting and advising the Service.

A critical part to this will require both the Monitoring Officer and Deputy to be aware of and (where necessary and appropriate) advise and recommend action in connection with potential governance issues, matters of concern regarding any legal issues and/or constitutional issues that are likely to arise through decisions being taken by Officers.

3.4 This will be primarily facilitated through regular and open discussions (whether formally set or informal) between the Monitoring Officer and/or Deputy Monitoring Officer, with the Chief Fire Officer, Treasurer and the Clerk to the Authority, as well as early sight and consideration of Authority reports. Meeting frequency may vary however will be:

- i. At least monthly meetings and/or discussions between the Clerk and Monitoring Officer
- ii. A meeting between the Monitoring Officer, CFO, Treasurer and Clerk will take place prior to every Authority meeting to ensure preparedness
- iii. A meeting prior to any Executive Committee meeting where matters of urgency are scheduled and prior to any significant changes, which may emerge in decisions being taken by Officers in line with 4.2 above.

3.5 In support of the role of the Monitoring Officer the Clerk to the Authority will ensure that the Treasurer, Monitoring Officer and Deputy, have advance notice of all Authority Meetings, agendas and reports and are able to attend all meetings.

4. Awareness, Engagement and Advice

4.1 The Monitoring Officer or Deputy will be available for Members and Officers to consult and will advise (where appropriate) on any issues of the Fire Authority's governance, any illegality or general advice on the constitutional arrangements (e.g. Standing Orders, policy framework, terms of reference, scheme of delegation etc.). Engaging at this early stage will enable for early identification and awareness of any possible decisions and where needed, enable effective engagement to reach alternative solutions. This is in keeping with the values and behaviours of WMFRA and will engender trust in the Monitoring Officer role.

5. Matters requiring formal intervention

5.1 To ensure the effective and efficient discharge of the arrangements set out in the paragraphs above, Members and Officers will report any possible and/or actual breaches of statutory duty, illegality, misconduct or constitutional concerns to the Monitoring Officer Deputy Monitoring Officer and CFO, as soon as practicable. The Monitoring Officer or Deputy will ensure that (in partnership with Officers and Members) where necessary, preventative and/or remedial action is taken through either investigation or an alternative and lawful course of action.

5.2 Where an actual breach has occurred the Monitoring Officer and/or deputy will consult with the Chief Fire Officer and Treasurer to inform them. Where necessary a report will be written, under section 5 of the local Government and Housing Act, for consideration of the Standards Committee and Fire Authority.

5.3 Where an actual and disciplinary breach has occurred and involves an officer the scheme of conditions of service (Gold, Grey or Green book) sets out the necessary grievance and disciplinary procedures to be followed and will be adopted in line with the relevant standing orders.

5.4 The writing of a report is a personal responsibility and decision of the Monitoring Officer, based on whether they have determined a breach has or is likely to occur.

6. Monitor and Review of the Memorandum of Understanding

6.1 This Memorandum of Understanding will be kept under review by the Monitoring Officer, CFO, Chair to the Authority and Clerk to the Authority to ensure appropriateness in the levels of service provision and remuneration.

In any case an annual review will be undertaken by the Monitoring Officer and Authority.

Appendix 1

SUMMARY OF MONITORING OFFICER FUNCTIONS		
	Description	Source
1	Report on contraventions or likely contraventions of any enactment or rule of law	Section 5 Local Government and Housing Act 1989
2	Report on any maladministration or injustice where Ombudsman has carried out investigation	Section 5 Local Government and Housing Act 1989
3	Appointment of Deputy	Section 5 Local Government and Housing Act 1989
4	Report on resources	Section 5 Local Government and Housing Act 1989
	To administer complaints of member conduct in accordance with the arrangements adopted by the Authority	Localism Act 2011
5	Receive copies of whistleblowing allegations of misconduct	Confidential Reporting Code and Standing Order 02/20
6	Investigate and report on any misconduct in compliance with Regulations and directions of Ethical Standards Officers	LGA 2000 Section 66(1) and 66(6)
7	With the Clerk establish and maintain registers of members interests and gifts and hospitality	Section 81 LGA 2000 and Code of Conduct for Members and Employees
8	Advice to members on interpretation of Code of Conduct and Standing Orders in their actions on behalf of the Authority	Code of Conduct for Members
9	Key role in promoting and maintaining high standards of conduct through support to the Standards Committee	Statutory Guidance
10	Liaison with Standards Board and Ethical Standards Officers and Adjudication Panel for England	New Ethical Framework
11	Compensation for maladministration	Section 92 LGA 2000
12	Advice on conduct issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members	CLG guidance
13	Refer relevant matters to Standards Committee for initial assessment, review and hearing	Regulations under LGA 2000
16	Assist the authority in meeting its obligations under the Freedom of information and Data Protection legislation as required.	Section 38 Freedom of Information Act 2000
17	To monitor and uphold the Authority's Constitution	WMFRA Constitution
18	To advise on politically restricted posts	Local Government and Housing Act 1989
14	Operate within the behavioural framework and core values of the WMFRA.	