

Report Title:	Statutory Officer Appointments
Contains Confidential or Exempt Information	No - Part I
Cabinet Member:	Councillor Johnson, Leader of the Council and Cabinet Member for Growth & Opportunity Councillor Raynor, Cabinet Member for Business, Corporate & Residents Services, Culture & Heritage, & Windsor Councillor Hilton: Cabinet Member for Asset Management & Commercialisation, Finance, & Ascot
Meeting and Date:	Council – 21 February 2023
Responsible Officer(s):	Tony Reeves, Interim Chief Executive
Wards affected:	All

REPORT SUMMARY

This report requests approval for the statutory appointments of Section 151 Officer and Monitoring Officer on an interim basis.

1. DETAILS OF RECOMMENDATIONS

RECOMMENDATION: That Council notes the report and appoints:

- i) **Andrew Vallance, Head of Finance and Deputy Section 151 Officer, as the Council's Section 151 Officer effective 20 March 2023 on an interim basis until such time as permanent arrangements have been determined.**
- ii) **Elaine Browne, Head of Law and Governance and Deputy Monitoring Officer, as the Council's Monitoring Officer effective 27 March 2023 on an interim basis until such time as permanent arrangements have been determined.**

2. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

Options

Table 1: Options arising from this report

Option	Comments
Appoint Andrew Vallance, Head of Finance and Deputy Section 151 Officer as the Council's Section 151 Officer effective 20 March 2023 on an interim basis until such	The officers proposed for appointment are suitably qualified and experienced and deputise for the statutory postholders.

Option	Comments
<p>time as permanent arrangements have been determined.</p> <p>Appoint Elaine Browne, Head of Law and Governance as the Council's Monitoring Officer effective 27 March 2023 on an interim basis until such time as permanent arrangements have been determined.</p> <p>This is the recommended option</p>	
<p>Appoint external interim professionals to the statutory posts.</p>	<p>Significant additional costs would be incurred if the services of external professionals were required.</p>
<p>Do Nothing</p>	<p>The Council would not be statutorily compliant and therefore in breach of its duties.</p>

Section 151 (s151) Officer

- 2.1 The Council's current Executive Director of Resources and Section (s151) Officer has resigned and will be leaving the authority on 19 March 2023. Council is required under s151 of the Local Government Act 1972 to appoint a suitably qualified officer responsible for the proper administration of its affairs to the statutory position of s151 Officer. Interim arrangements are therefore required whilst a review of how the vacant Executive Director functions and consequently s151 Officer duties are most appropriately carried out going forward.
- 2.2 The s151 Officer, which is also referred to in the Council's Constitution as the Chief Finance Officer works closely with the Council's Chief Executive and Monitoring Officer to lead the promotion and delivery of good financial management so that public money is safeguarded at all times and used appropriately, economically, efficiently and effectively.
- 2.3 There are five functions of the Chief Finance Officer:

1. Ensuring lawfulness and financial prudence of decision making: After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the full Council, (s114 of the Local Government Finance Act 1988) or to the Cabinet in relation to an executive function, and the Council's external auditor if he/she considers that the authority:

- a. has made or is about to make a decision which involves or would involve the authority incurring expenditure which is unlawful,
- b. has taken or is about to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency on the part of the authority, or
- c. is about to enter an item of account the entry of which is unlawful.

Under the same act the Chief Finance Officer shall make a report under this section if it appears to him/her that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure.

2. Administration of financial affairs: The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council (section 151 of Local Government Act 1972) and will certify the robustness of the council's estimates of expenditure and the adequacy of the level of reserves in the proposed budget as required by Section 25 of the Local Government Act 2003.

3. Contributing to corporate management: The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.

4. Providing advice: The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors and will support and advise Councillors and Officers in their respective roles.

5. Give financial information: The Chief Finance Officer will provide financial information to the media, members of the public and the community.

2.4 Andrew Vallance is the Council's Head of Finance and Deputy s151 Officer. Andrew has been a qualified accountant and member of CIPFA (Chartered Institute of Public Finance and Accountancy) for 30 years. Collectively, he has 16 years experience as s151 Officer for two authorities in previous employments. If appointed Andrew will take up the interim duties on 20 March 2023 and continue until such time as permanent arrangements have been determined.

Monitoring Officer (MO)

2.5 The Council's current Director of Law, Strategy & Public Health and Monitoring Officer has resigned and will be leaving the authority on 26 March 2023. Council is required under the Local Government and Housing Act 1989 to appoint one of its officers to the statutory position of MO. Interim arrangements are therefore required whilst a review of how the vacant Director functions and consequently MO Officer duties are most appropriately carried out going forward.

2.6 The role of MO is a statutory appointment and serves as the guardian of the Council's Constitution and the decision-making process. The MO is responsible for advising the Council on the legality of its decisions and providing guidance to councillors and officers on the Council's Constitution and its powers. The role has a responsibility to report breaches of the law or maladministration to the Council.

2.7 The MO works closely with the Council's Chief Executive to assist in the role of promoting and maintaining high standards of conduct and probity within the Council.

2.8 There are six functions of the Monitoring Officer as set out in the constitution:

1. Maintaining the Constitution: The Monitoring Officer 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.

2. Ensuring lawfulness and fairness of decision making: After consulting with the Head of Paid Service and Director of Resources, the Monitoring

Officer will report to the Council or to 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. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.

3. Proper Officer for access to information: The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.

4. Advising whether Cabinet decisions are within the budget and policy framework in accordance with the requirement under the Budget and Framework Rules: The Director of Resources in consultation with the Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.

5. Providing advice: The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all councillors and will support and advise councillors and officers in their respective roles.
Royal Borough of Windsor and Maidenhead Constitution Part 5

6. Contributing to corporate management: The Monitoring Officer will contribute to the corporate management of the Council, in particular through the provision of professional advice on the lawfulness or probity of any matter.

- 2.9 Elaine Browne is the Council’s Head of Law and Governance and Deputy MO. Elaine has been a qualified solicitor and member of the Law Society for over 18 years and has worked within local government legal services throughout that time. If appointed Elaine will take up the interim duties on 27 March 2023 and continue until such time as permanent arrangements have been determined.

3. KEY IMPLICATIONS

It is essential that the Council remains compliant with its legal obligations by ensuring statutory posts are filled and the associated duties being undertaken at all times. The table below sets out the key implications.

Table 2: Key Implications

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
Interim Statutory Officers appointed					21 February 2023

4. FINANCIAL DETAILS / VALUE FOR MONEY

- 4.1 There are no additional financial implications with regard to the interim s151 and MO appointments as any temporary additional duties allowances will be contained within existing revenue budgets.

5. LEGAL IMPLICATIONS

- 5.1 Section 151 of the Local Government Act 1972 requires every local authority to appoint a suitably qualified officer responsible for the proper administration of its affairs. The Council must provide that officer with such staff and resources which, in that person's opinion, is necessary to allow them to carry out their duties.
- 5.2 Section 113 of the Local Government Finance Act 1998 requires the responsible officer under Section 151 of the 1972 Act to be a member of a specified accountancy body.
- 5.3 Section 5 (1) of the Local Government and Housing Act 1989 places a duty on the Council to appoint one of its officers to the statutory position of Monitoring Officer and provide that officer with such staff and resources which, in that person's opinion, is necessary to allow them to carry out their duties.
- 5.4 Under Part 2A of the Constitution, Council must confirm the appointment of the Monitoring Officer.

6. RISK MANAGEMENT

- 6.1 Table 3 shows the impact of risk and mitigation.

Table 3: Impact of risk and mitigation

Threat or risk	Impact with no mitigations in place or if all mitigations fail	Likelihood of risk occurring with no mitigations in place.	Mitigations currently in place	Mitigations proposed	Impact of risk once all mitigations in place and working	Likelihood of risk occurring with all mitigations in place.
There is a risk of significant additional costs being incurred because Council do not approve the appointment of the named officers resulting in external interim professionals being engaged to ensure the Council is statutorily compliant.	Moderate 2	Medium	Appropriately qualified and experienced officers proposed for appointment who are the current deputies.	Nothing further required.	Minor 1	Low

7. POTENTIAL IMPACTS

7.1 Equalities. An Equality Impact Assessment is available as Appendix A.

7.2 Climate change/sustainability. No impact.

7.3 Data Protection/GDPR. No impact.

8. CONSULTATION

8.1 Interim arrangements with regard to statutory officer appointments have been discussed with the appropriate lead members.

9. TIMETABLE FOR IMPLEMENTATION

9.1 Implementation date if not called in: Immediately.

9.2 The full implementation stages are set out in table 4.

Table 4: Implementation timetable

Date	Details
21/02/2023	Council decision
20/03/2023	Interim s151 Officer commences duties
27/03/2023	Interim Monitoring Officer commences duties

10. APPENDICES

10.1 None.

BACKGROUND DOCUMENTS

10.2 None.

11. CONSULTATION

Name of consultee	Post held	Date sent	Date returned
<i>Mandatory:</i> Statutory Officer (or deputy)			
Adele Taylor	Executive Director of Resources/S151 Officer	07/02/23	08/07/23
Emma Duncan	Director of Law, Strategy & Public Health/ Monitoring Officer	07/02/23	08/07/23
<i>Directors</i>			
Tony Reeves	Interim Chief Executive	07/02/23	07/02/23

Confirmation relevant Cabinet Member(s) consulted	Councillor Johnson, Leader of the Council and Cabinet Member for Growth & Opportunity	Yes
	Councillor Raynor, Cabinet Member for Business, Corporate & Residents Services, Culture & Heritage, & Windsor	Yes
	Councillor Hilton: Cabinet Member for Asset Management & Commercialisation, Finance, & Ascot	Yes

REPORT HISTORY

Decision type:	Urgency item?	To follow item?
Council decision	No	No

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Equality Impact Assessment

For support in completing this EQIA, please consult the EQIA Guidance Document or contact equality@rbwm.gov.uk

1. Background Information

Title of policy/strategy/plan:	<u>Appointment of Statutory Officers</u>
Service area:	<u>Not applicable</u>
Directorate:	<u>Not applicable</u>

Provide a brief explanation of the proposal:

- What are its intended outcomes?
- Who will deliver it?
- Is it a new proposal or a change to an existing one?

Following the resignations of the Executive Director of Resources and s151 Officer and the Director of Law, Strategy and Public Health and Monitoring Officer there is a need to make interim appointments to the statutory roles of s151 Officer and Monitoring Officer. These interim appointments will continue until such time as permanent arrangements are determined.

2. Relevance Check

Is this proposal likely to directly impact people, communities or RBWM employees?

- If No, please explain why not, including how you've considered equality issues.
- Will this proposal need a EQIA at a later stage? (for example, for a forthcoming action plan)

No. Two RBWM staff members will be appointed to statutory posts on an interim basis, both of whom currently deputise in the respective positions. There is no wider direct impact on RBWM staff.

If 'No', proceed to 'Sign off'. If unsure, please contact equality@rbwm.gov.uk

3. Evidence Gathering and Stakeholder Engagement

Who will be affected by this proposal?

For example, users of a particular service, residents of a geographical area, staff

Among those affected by the proposal, are protected characteristics (age, sex, disability, race, religion, sexual orientation, gender reassignment, pregnancy/maternity, marriage/civil partnership) disproportionately represented?

For example, compared to the general population do a higher proportion have disabilities?

What engagement/consultation has been undertaken or planned?

- How has/will equality considerations be taken into account?
- Where known, what were the outcomes of this engagement?

What sources of data and evidence have been used in this assessment?

Please consult the Equalities Evidence Grid for relevant data. Examples of other possible sources of information are in the Guidance document.

4. Equality Analysis

Please detail, **using supporting evidence**:

- How the protected characteristics below might influence the needs and experiences of individuals, in relation to this proposal.
- How these characteristics might affect the impact of this proposal.

Tick positive/negative impact as appropriate. If there is no impact, or a neutral impact, state 'Not Applicable'

More information on each protected characteristic is provided in the Guidance document.

	Details and supporting evidence	Potential positive impact	Potential negative impact
Age			
Disability			
Sex			
Race, ethnicity and religion			
Sexual orientation and gender reassignment			
Pregnancy and maternity			
Marriage and civil partnership			
Armed forces community			
Socio-economic considerations e.g. low income, poverty			
Children in care/Care leavers			

5. Impact Assessment and Monitoring

If you have not identified any disproportionate impacts and the questions below are not applicable, leave them blank and proceed to Sign Off.

What measures have been taken to ensure that groups with protected characteristics are able to benefit from this change, or are not disadvantaged by it? For example, adjustments needed to accommodate the needs of a particular group
Where a potential negative impact cannot be avoided, what measures have been put in place to mitigate or minimise this? <ul style="list-style-type: none">For planned future actions, provide the name of the responsible individual and the target date for implementation.
How will the equality impacts identified here be monitored and reviewed in the future? See guidance document for examples of appropriate stages to review an EQIA.

6. Sign Off

Completed by: Kathy Hook	Date: 06.02.2023
Approved by: Adele Taylor	Date: 08.02.2023

If this version of the EQIA has been reviewed and/or updated:

Reviewed by:	Date:
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