

## REPORT OF CHIEF EXECUTIVE

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### **SUBJECT: APPOINTMENT OF MONITORING OFFICER**

#### Purpose of Report

To agree the process for replacing the current Monitoring Officer, Mr John Parsons, when he retires in November 2017.

#### Introduction/Background

The Authority is required by law to appoint a Monitoring Officer to carry out the statutory functions set out in Section 5 of the Local Government and Housing Act 1989, i.e. to report to the Authority if (s)he considers that any proposal, decision or omission by the Authority gives rise to unlawfulness or maladministration.

In addition, The Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 provide that a Local Commissioner in Wales may refer matters which are the subject of investigation by that office to the Monitoring Officer to investigate.

The current terms of employment also require the Monitoring Officer to, amongst other matters, provide advice to Members and the Standards Committee, and undertake a role in the Authority's complaints procedure and the Sustainable Development Fund's appeal process. A copy of the current job description is appended to this report for information.

The Authority's current Monitoring Officer, Mr John Parsons, has indicated that he wishes to retire at the end of November 2017. Traditionally, the Authority has always favoured appointing an independent, 'arm's-length' Monitoring Officer; an appointment made directly to the Authority itself and not part of the staff accountable to the Chief Executive. Members have previously considered that this assures the public of the independence of the role.

#### Comparisons

Whilst all local authorities are legally required under the Act "... to designate one of their officers..." as a Monitoring Officer, a quick trawl indicates that, of the 18 who replied, 16 have appointed their Head of Legal Services (or similar) as Monitoring Officer, while two have appointed a stand-alone post.

Within the National Park family, of those who have replied to my query, three utilise the services of other local authorities, while four have appointed in-house Monitoring Officers. The Brecon Beacons National Park Authority has an 'arm's-length' Monitoring Officer, while Snowdonia National Park Authority's Monitoring Officer is an internal appointment.

## Options

1. Not appointing a Monitoring Officer: this is not an option as all local authorities are legally required to appoint one under Section 5 of the Local Government and Housing Act 1989.
2. Appointing an independent 'arm's-length' Monitoring Officer, who is accountable to Members and not the Chief Executive: since 1996, all four of the Authority's Monitoring Officers have been appointed in this way, and all four have been qualified Solicitors who are independent of any other local authority.
3. Appointing an in-house Monitoring Officer: Experience has shown that it is beneficial for the Monitoring Officer to be a legally qualified person. The Authority does not have an in-house Solicitor anymore and utilises the services of Geldards Solicitors for most of its legal work.

## General Data Protection Regulation

In accordance with the General Data Protection Regulation, which comes into force on the 25th May 2018, the Authority is also required to appoint a Data Protection Officer whose duties include, amongst other things:

- Advising on, and monitoring compliance with, the Regulation;
- Advising on Data Protection Impact Assessments;
- Being advised on any breaches in Data Protection.

A suitably qualified and experienced Monitoring Officer could undertake the role. In view of this, it is recommended to include "The ability to act as Data Protection Officer to the Authority" as a 'Desirable' criteria on the Job Description.

## Appointment process

Standing Order 24 states:

### **"24. APPOINTMENT OF CHIEF OFFICERS AND DIRECTORS**

- 24.1 *Every appointment of a Chief Officer shall be made by the Authority. For the purposes of this Standing Order the "Chief Officer" refers to the Chief Executive, Head of Paid Service, Section 151 Officer and Monitoring Officer.*
- 24.2 *Where the Authority proposes to appoint a Chief Officer as defined above and it is not proposed that the appointment be made exclusively from among its existing officers, it shall direct the Personnel Committee to:*
- a) Draw up a job description and person specification for the post;*
  - b) Make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it;*
  - c) Make arrangements for a copy of the job pack referred to in Standing Order 24.2 a) to be sent to any person on request, and*
  - d) Draw up a shortlist of qualified applicants for interview and appointment by the Authority.*
- 24.3 *Where no qualified person has applied, the Authority shall make further arrangements for advertisement in accordance with Standing Order 24.2 b)."*

However, Members may consider delegating the whole process to the Personnel Committee, who would then present a recommendation for the agreement of the National Park Authority.

Financial considerations

There is a budget allocation available for this post.

Risk considerations

As stated previously, all local authorities are required by law to appoint a Monitoring Officer.

Compliance

The Authority has to comply with legislation with regard to the appointment of a Monitoring Officer.

Human Rights/Equality impact considerations

Any person wishing to complain about alleged acts of unlawfulness or maladministration by the Authority, its Members or officers has a right to be heard. The Monitoring Officer enables that person to have a voice and a fair hearing.

Welsh language impact considerations

In compliance with the Welsh Language Standards, the Authority undertakes a Welsh language skills assessment of every new, or vacant, post within the Authority:

- (a) *Will this post holder work in a Service area that requires the service to be delivered through the medium of Welsh?* Yes / ~~No~~
- (b) *Is the Authority currently able to deliver this Service in Welsh?* ~~Yes~~ / No

*If you answer Yes to question (b), please explain how: N/A*

*If the answer to (a) is Yes and (b) is No, the post must be advertised as Welsh Language skills are essential. Please indicate what language skill level.*

<b>Welsh language skills</b>	<input checked="" type="checkbox"/>	<b>level</b>
<i>a. Are essential</i>	<input checked="" type="checkbox"/>	3
<i>b. Need to be learnt when appointed to the post</i>	<input type="checkbox"/>	
<i>c. Are desirable</i>	<input type="checkbox"/>	
<i>d. Are not necessary</i>	<input type="checkbox"/>	

In accordance with the above assessment, it is considered that Welsh language skills are essential for this post; the appointment of a Welsh-speaking Monitoring Officer will ensure that all complainants are treated the same, and the Welsh language is not treated less favourably than the English language.

Biodiversity implications/Sustainability appraisal

None.

### Conclusion

The Authority is required to appoint a Monitoring Officer, which disregards Option 1. The Authority does not have an in-house Solicitor, therefore Option 3 may be disregarded. Option 2, with the appointment of an independent 'arm's-length' Monitoring Officer, is the only way forward.

### **RECOMMENDATIONS:**

- 1. That Members agree to commence the recruitment process for the post of an independent, 'arm's-length' Monitoring Officer, with a view to an appropriately qualified person being in post on the 1<sup>st</sup> December 2017;**
- 2. That the Personnel Committee be recommended to amend the person specification for the post to include:**
  - (a) the duties of Data Protection Officer under the forthcoming General Data Protection Regulation, and**
  - (b) that Welsh language skills are considered essential for the post, and**
- 3. That the interview(s) for the post of Monitoring Officer be delegated to the Personnel Committee, and that a recommendation for appointment be subsequently presented to the National Park Authority for ratification.**

### Background Documents

Local Government and Housing Act 1989

The Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001

*(For further information, please contact Janet Evans, Administration & Democratic Services Manager on 01646 624834 or by emailing [janete@pembrokeshirecoast.org.uk](mailto:janete@pembrokeshirecoast.org.uk))*

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**JOB TITLE:                    MONITORING OFFICER**

**GRADE:                    Director Grade Pro-Rata  
Up to £13,379 pa for 65 days per year**

**PRINCIPAL JOB  
RESPONSIBILITIES:**

1. To carry out the statutory Monitoring Officer functions set out in Section 5 of the Local Government and Housing Act 1989 (as amended) i.e., in short, to Report to the Authority if the Monitoring Officer considers that any proposal, decision, or omission by the Authority may give rise to unlawfulness or maladministration.
2. Acting as adviser to the Authority's Standards Committee (for which the Monitoring Officer has statutory responsibility), every meeting of which should be attended by the Monitoring Officer
3. To ensure that all Members are made aware of the requirements of the Authority's Code of Conduct for Members and are provided with appropriate Training on the operation of the Code of Conduct and Declaration of Interests issues.
4. Responsibility for supporting the promotion and maintenance of high standards of conduct within the Authority.
5. Responsibility for the statutory Register of the Interests of Members, and also the Registers of Members' Declarations of Interest and receipt of hospitality or gifts.
6. Providing specific advice as and when required in respect of the Code of Conduct, Members' interests and their declaration, and as to dispensation issues.
7. Responsibility for keeping up to date the Code of Conduct for Employees, and the Registers of Officers' Interests, Declarations of Interest and Receipt of Hospitality or Gifts, and arranging appropriate training in relation thereto.
8. The Monitoring Officer will conduct investigations into matters referred by the Ombudsman, or in respect of complaints lodged by the public (in accordance with the Authority's Complaints Procedure), and make reports and recommendations in respect of these to the Authority.
9. To receive and act upon Reports made by the Ombudsman and the decisions of Tribunals.
10. To maintain an up-to-date version of the Authority's Standing Orders, Terms of Reference of Committees and other working groups, Member/Officer & other Protocols, and a Scheme of Delegation to Officers.
11. To act as the Authority's adviser in circumstances where the Chief Executive is not able so to act (e.g. because he is the subject-matter of the issue under consideration).

## APPENDIX

12. To exercise, in conjunction with the Chief Finance Officer, a general overseeing role in terms of propriety and probity, and the establishment of good procedures throughout the Authority.
13. To attend such meetings of the Authority and of its Committees as circumstances require.
14. Advising the Chief Executive and Senior Management Team on matters of probity and the proper exercise of their duties and responsibilities to the Authority.
15. Any other duties as reasonably required.

This is a politically restricted post as defined by the Local Government and Housing Act 1989

September 2008

### MONITORING OFFICER: PERSON SPECIFICATION:

The Monitoring Officer will be able to demonstrate:

1. A track record of substantial achievement at a senior level within the public sector.
2. First class interpersonal skills.
3. Excellent oral and written communication skills.
4. A thorough knowledge of current local government and public sector issues, allied to political sensitivity.
5. Experience in or aptitude for advising on propriety, Members' interests and governance issues.
6. Knowledge of the family of National Parks and the Protected Areas of the UK.
7. The ability to give effective advice on complex issues with authority, but also with clarity.

A Monitoring Officer needs to be impartial, discreet, respected, approachable, constructive, and influential.

A legal background, and the ability to speak Welsh, would be added advantages.