

REPORT TO THE: FIRE & RESCUE AUTHORITYDATE: 14th December 2009

REFERENCE:

SUBJECT: The retirement of the existing Clerk / Monitoring Officer**SUMMARY:**

The current Clerk / Monitoring Officer to the Authority, who has been in post since April 2002, has informed myself that he does not wish to renew his contract when the current service level agreement expires on the 31st March 2010.

The attached report therefore sets out proposals for the continuance of such a role, taking cognisance of the statutory requirements.

OBJECTIVES		IMPLICATIONS	
Trusted & Respect	√	Operational Risk Management	√
More than Emergencies	√	Community Risk Reduction	√
Saving Lives, Protecting Communities	√	Training & Development	√
Managing within Budget	√	Civil Contingencies	√
Improving Efficiency	√	Finance & Procurement	√
Resources to Priorities	√	H.R.	√
Alternative Resources	√	ICT	√
Managing People	√	CCMS	√
Integrated Management Planning	√	Transport	√
Partnership Working	√	Health & Safety	√
Effective & Empowered People	√	Premises	√
		Sustainability & Environment	√
		Welsh Language	√
		Legal	√
		Governance	√
		Equality & Diversity	√

COMMENTS/OBSERVATIONS ON THE ABOVE OBJECTIVES/IMPLICATIONS:

The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989.

RECOMMENDATIONS:

That the Authority approves the recommendations contained within the report.

BACKGROUND PAPERS USED IN PREPARATION OF THIS REPORT:

The Local Government and Housing Act 1989

Report Author(s) and Designation	Richard Smith Chief Fire Officer
Telephone number/Extensions	0370 60 60 699

Report to the Fire and Rescue Authority on 14th December 2009

On

The retirement of the existing Clerk / Monitoring Officer

1. Introduction

The current Clerk / Monitoring Officer, Mr Arwyn Howells, has indicated that he intends retiring from this role on 31st March 2010 when his current service level agreement with the Authority expires. Mr Howells has been in this role since April 2002.

2. Background

The role of the Clerk / Monitoring Officer is split into 3 distinct elements:

- Statutory role of Monitoring Officer under section 5 of the Local Government and Housing Act 1989 (as amended). Duty to ensure that the Authority carries out its functions lawfully, ensuring lawfulness and fairness of decision making, supporting the Standards Committee, dealing with Code of Conduct issues including any training for Members thereon and on ethical issues.
- Clerk to the Authority - to ensure that meetings are administered in accordance with relevant statutes, regulations and the Constitution and to deal with legal and procedural matters for the Authority. Keep the Constitution up to date and relevant. Undertaking the matters that are reserved to the Clerk that are provided for in the Constitution.
- Overall Governance and Democratic arrangements including:
 - o Code of Corporate Governance
 - o Member Engagement and Members' Charter
 - o Scheme of Members' Allowance
 - o Principal Officers' Pay and CFO appraisal process
 - o One off roles e.g. business risk management group, scrutiny, performance related pay for Principal Officers etc.

3. Way Forward / Recommendations

The Clerk / Monitoring Officer provides a time commitment on average of some 1.5 days per week to the Authority. Given the ongoing review in the provision of corporate support services to the Authority, the following recommendations in relation to the role of Clerk / Monitoring Officer are put forward for consideration by the Authority

- 3.1 Advertise for the post of Clerk / Monitoring Officer to the Authority, as detailed in the attached protocol, with a time commitment of, on average, 1 day per week.
- 3.2 Provide additional support to the role, on an internal basis (with the approval of the Monitoring Officer in accordance with Section 5 (7) of Local Government and Housing Act 1989 as amended), by the appointment of the current Head of Corporate Communication & Member Support as Deputy Monitoring Officer and who would also take the lead, on a day to day basis, of the Clerkship to the Authority and the overall governance and democratic arrangements of the Authority.

MID AND WEST WALES FIRE AND RESCUE AUTHORITY

MONITORING OFFICER PROTOCOL

A GENERAL INTRODUCTION TO STATUTORY RESPONSIBILITIES

- 1 The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989 (the Act). This Protocol provides some general information on how those statutory requirements will be discharged for the Mid & West Wales Fire & Rescue Authority.
- 2 The current responsibilities of the Monitoring Officer role rest with, and in his absence,, who undertake to discharge the statutory responsibilities with a positive determination and in a manner that enhances the overall reputation of the Fire & Rescue Authority. In doing so, the Monitoring Officer and the Deputy Monitoring Officer will provide appropriate and, if necessary, strong advice to Members so as to protect and safeguard, so far as is possible, Members and Officers, in the course of their official duties, from legal difficulties or criminal sanctions.
- 3 A summary list of the statutory responsibilities appears in the table annexed to this document. In general terms, the Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:-
 - a) complying with the law (including any relevant Codes of Conduct);
 - b) complying with any General Guidance issued, from time to time, by the Standards Committee and the advice of the Monitoring Officer;
 - c) making lawful and proportionate decisions; and
 - d) generally, not taking action that would bring the Fire & Rescue Authority into disrepute.

B WORKING ARRANGEMENTS

- 4 Having excellent working relations with Members and Officers will assist in the discharge of the statutory responsibilities of the Monitoring Officer and will ensure the Fire & Rescue Authority acts lawfully. Equally, a speedy flow of relevant information and access to debate (particularly at the **early stages** of any decision-making by the Fire & Rescue Authority) will assist in fulfilling those responsibilities. Members and Officers must, therefore, cooperate with the Monitoring Officer (and his staff) to discharge the Fire & Rescue Authority's statutory and discretionary responsibilities and ensure that the Monitoring Officer (and his staff) are involved from the appropriate stage in the decision making process.
5. The following arrangements and understandings between the Monitoring Officer, Members and the Chief Fire Officer, and other officers of the Fire & Rescue Authority, are designed to ensure the effective discharge of the Fire Authority's business and functions. The Monitoring Officer will:-
 - (i) be alerted by Members and Officers to any issue that may become of concern to the Fire & Rescue Authority, including, in particular issues concerning legal powers to do

- something or not, ethical standards, probity, procedural or other constitutional issues that are likely to (or do) arise
- (ii) have advance notice (including receiving Agendas, Minutes, Reports and related papers) of all relevant meetings of the Fire & Rescue Authority at which a binding decision of Fire & Rescue Authority may be made (including a failure to take a decision where one should have been taken) at or before the Fire & Rescue Authority, Committee and Sub-Committee meetings;
 - (iii) have the right to attend any meeting of the Fire & Rescue Authority (including the right to be heard) before any binding decision is taken by the Fire Authority (including a failure to take a decision where one should have been taken) at or before the Fire & Rescue Authority, Committee or Sub-Committee meetings;
 - (iv) in carrying out any investigation have unqualified access to any information held by the Fire Authority and to any Officer who can assist in the discharge of his functions;
 - (v) ensure that other statutory officers (Head of Paid Service and the Treasurer) are kept up to date with relevant information regarding any legal, ethical standards, probity, propriety, procedural or other constitutional issues that are likely to arise;
 - (vi) meet regularly with the Head of Paid Service and the Treasurer to consider and recommend action in connection with Corporate Governance issues other matters of concern regarding any legal, ethical standard, probity, propriety, procedural or other constitutional issues that are likely to arise;
 - (vii) report to the Authority, from time to time, Corporate Governance and any necessary or desirable changes following consultation, in particular, with the Head of Paid Service and the Treasurer;
 - (viii) maintain and keep up to date relevant statutory registers for the declaration of members' interests, gifts and hospitality;
 - (ix) give informal and, if necessary, strong advice to Members and Officers – but not so as to issue any formal warning notices – and undertake relevant enquiries into allegations of misconduct (in the absence of a written complaint being received) and, if appropriate, make a written report to the Standards Committee (unless the Chair of Standards Committee agrees a report is not necessary) if, in the opinion of the Monitoring Officer, after consultation with the Chair of the Standards Committee, there is a serious breach of Mid & West Wales Fire & Rescue Authority's Code of Conduct for Members;
 - (x) have sufficient resources to enable any matters concerning the Monitoring Officer function to be addressed;
 - (xi) subject to the approval of the Standards Committee, be responsible for preparing any training programme for members on ethical standards and Code of Conduct issues;
 - (xii) in accordance with Section 5(7) of the Act, nominate a Deputy to act in the absence of the Monitoring Officer, or where the Monitoring Officer is unable to act due to a conflict of interest, and keep him or her briefed on any relevant issues that may be required to be dealt with;
 - (xiii) deal with any complaints against Members through the processes of assessment, investigation and determination in accordance with the policy and practices of the Standards Committee;
 - (xiv) agree arrangements with the Deputy Monitoring Officer for the handling of any specific complaint against a member so as to avoid any conflict of interest or pre-determination.
6. To ensure the effective and efficient discharge of the arrangements set out in paragraph 5 above, Members and Officers will report any breaches of statutory duty or Fire Authority policies or procedures and any other vices or constitutional concerns to the Monitoring Officer, as soon as practicable.
7. The Monitoring Officer is also available for Members and Officer to consult on any issues of the Fire & Rescue Authority's legal powers, possible maladministration, impropriety and

probity issues, or general advice on the constitutional arrangements (e.g. Standing Orders, policy framework, terms of reference, scheme of delegation etc.)

8. To ensure the effective and efficient discharge of this Protocol there will be adequate insurance and indemnity arrangements in place to protect and safeguard the interests of the Fire & Rescue Authority and individual Members and Officers, when appropriate.