
NORTH AYRSHIRE COUNCIL

23 June 2021

North Ayrshire Council

Title: Appointment of Monitoring Officer and Proper Officer

Purpose: To appoint the incoming Head of Democratic Services as the Council's Monitoring Officer in terms of the Local Government and Housing Act 1989 and to note their appointment as Proper Officer of the Council in terms of the Local Government (Scotland) Act 1973.

Recommendation: It is recommended that with effect from 19 July 2021, Council (a) agree to the appointment of Aileen Craig, incoming Head of Democratic Services as the Council's Monitoring Officer in terms of Section 5 of the Local Government and Housing Act 1989 and (b) to note that Aileen Craig is appointed as Proper Officer for the authentication and execution of documents on behalf of the Council in terms of Section 193 and 194 of the Local Government (Scotland) Act 1973

1. Executive Summary

- 1.1 This report seeks the appointment of Aileen Craig, the newly appointed Head of Democratic Services as the Council's Monitoring Officer.
- 1.2 It also notes Aileen's appointment, in terms of the existing Scheme of Delegation to Officers, as one of the Council's Proper Officers for the execution of documents, with power to appoint further Proper Officers as required.

2. Background

- 2.1 Under section 5 of the Local Government and Housing Act 1989 the Council requires to appoint a Monitoring Officer. The functions of the Monitoring Officer, as set out in section 13B of the Council's Scheme of Delegation to Officers are detailed in Appendix 1. In broad terms, the role of this statutory post is to spot potential contraventions by the Council of the law, to try to remedy these, and if required, to report to Council.

- 2.2 In terms of the Council's Scheme of Delegation to Officers the Head of Democratic Services is designated as the Council's Monitoring Officer. As the current postholder is to retire, on 17 June 2021 the Staffing and Recruitment Committee appointed Aileen Craig to the post.
- 2.3 Aileen will formally take up post on 19th July to allow a short handover with the current postholder who leaves the Council's service on 23 July 2021. It is recommended that Aileen is appointed as Monitoring Officer from 19 July 2021.
- 2.4 The Scheme of Delegation to Officers already provides that the Head of Democratic Services, along with the Chief Executive, is appointed as a Proper Officer for the authentication and execution of documents on behalf of the Council in terms of Section 193 and 194 of the Local Government (Scotland) Act 1973. The Head of Democratic Services also has authority to appoint other officers as Proper Officers. Generally, this has been used to temporarily appoint other senior Legal Officers to enable them to physically sign deeds during periods of absence.
- 2.3 Notwithstanding the Scheme of Delegation to Officers already details that the Head of Democratic Services is a Proper Officer, occasionally the Council is asked to evidence that a signatory is appointed as a Proper Officer. In these circumstances, Council is asked to note the appointment of Aileen Craig as Proper Officer with authority to appoint and designate other officers as Proper Officers.

3. Proposals

- 3.1 It is recommended that with effect from 19 July 2021, Council (a) agree to the appointment of Aileen Craig, incoming Head of Democratic Services as the Council's Monitoring Officer in terms of Section 5 of the Local Government and Housing Act 1989 and (b) to note that Aileen Craig is appointed as Proper Officer for the authentication and execution of documents on behalf of the Council in terms of Section 193 and 194 of the Local Government (Scotland) Act 1973

4. Implications/Socio-economic Duty

Financial

- 4.1 The appointment has no financial implications. However, the role of the Monitoring Officer is to protect the Council from illegality, which in turn lowers the financial risk to the Council.

Human Resources

- 4.2 No implications

Legal

- 4.3 The appointment of the Monitoring Officer is a statutory requirement. It also forms one of the key components of the Council's governance arrangements. Ultimately, like the Section 95 Finance Officer, the Monitoring Officer has power to report potential illegality to the Council. Nevertheless, it should be recognised that the key to the role is in spotting potential issues before they arise and finding solutions. In turn that requires the Monitoring Officer to be aware of what is happening across the Council. For that reason, the recommendation of Audit Scotland is that the post holder should be in a position of sufficient seniority within the Council to enable them to carry out their statutory responsibilities effectively.

Equality/Socio-economic

- 4.4 There are no significant implications, although part of the Monitoring Officer's role is to ensure that legal duties relating to equalities are complied with.

Environmental and Sustainability

- 4.5 No significant implications

Key Priorities

- 4.6 Compliance with legal duties supports effective governance and decision making which in turn supports all the key priorities

Community Wealth Building

- 4.7 There are no implications.

5. Consultation

- 5.1 The appointment of the Head of Democratic Services to these roles is in accordance with the Scheme of Delegation to Officers approved by Council in December 2020.

Craig Hatton
Chief Executive

For further information please contact Andrew Fraser, Head of Democratic Services, on 01294 324125.

Background Papers

N/A

MONITORING OFFICER

The Monitoring Officer is a statutory appointment by the Council by virtue of Section 5 of the Local Government and Housing Act. The Council has resolved that the Monitoring Officer is the Head of Democratic Services. North Ayrshire Integration Joint Board has also resolved that the Head of Democratic Services will have a similar role as its Standards Officer under the Ethical Standards in Public Life etc. (Scotland) Act 2000.

By virtue of Section 5(7) of the 1989 Act, the duties of the Monitoring Officer must be carried out personally by them or, where they are unable to act owing to absence or illness, personally by such member of their staff nominated by them as their deputy.

By virtue of Section 2(1)(e) of the 1989 Act, the post of Monitoring Officer is designated as a politically restricted post, and accordingly is included in the list of such posts required to be maintained by the Council.

Although a statutory appointment, the law does not require the Monitoring Officer to hold any specific qualification, and in particular, they do not require to be a solicitor or advocate. However, the recommendation of Audit Scotland is that the post holder should be in a position of sufficient seniority within the Council to enable them to carry out their statutory responsibilities effectively.

This means that, irrespective of the substantive post which the Monitoring Officer holds in the Council, they will either be a member of the Council's Executive Leadership Team, or have direct access to the Council's Chief Executive, Executive Directors, Heads of Service and Legal Services Manager as they see fit.

Delegated to the Post

The overall powers of the post are: -

- a) To ensure that the Council complies with the requirements of the law and any statutory Codes of Practice relevant to the carrying out of the Council's duties and the delivery of the Council's services.
- b) To ensure that, where any contravention of the law, Code of Practice or corporate governance system has arisen, or is likely to, appropriate advice is given to the Chief Executive and relevant senior officers of the Council regarding the mitigation, rectification or prevention of such contraventions.
- c) To draw to the attention of the Provost or any Convener, any motion or amendment which may contravene any law or code of procedure in order that the Provost or Convener can determine whether the motion or amendment will be considered by Council, committee etc.
- d) To make a statutory report to the full Council regarding any breach or potential breach of the law or statutory code of practice by the Council where it proves impossible to rectify or prevent such breach.

- e) To act as the Council's point of contact by the Public Standards Commissioner for Scotland and the Standards Commission for Scotland regarding complaints concerning alleged breaches of the Councillors' Code of Conduct.
- f) To carry out such investigations as the Chief Executive may determine as relevant to the Monitoring Officer's role.
- g) To obtain, at their discretion, the opinion of Counsel or external solicitors on any matter relevant to the Monitoring Officer's role.
- h) To provide appropriate advice to Elected Members and Council officers regarding the promotion of high standards of conduct and ensure that suitable training is given regarding compliance with the Code of Conduct for Councillors.
- i) To carry out such other duties compatible with the role of the Monitoring Officer as the Council may delegate, or as the Chief Executive may request, such as the investigation of a complaint to the Council alleging breach of the Councillors' Code of Conduct.

Corporate Rights

The Monitoring Officer has the following rights in respect of the carrying out of their statutory role: -

- To have unqualified access to any information held by the Council and to any Officer of the Council who can assist in the discharge of their statutory role.
- To have access to all reports to the Council, its Committees, Sub-Committee, Joint Boards, Joint Committees and Working Groups, as he or she sees fit.