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**Subject:** FLEXIBLE RETIREMENT OF THE SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

**Meeting and Date:** COUNCIL – 27 JANUARY 2021

**Report of:** NADEEM AZIZ, HEAD OF PAID SERVICE

**Classification:** UNRESTRICTED

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**Purpose of the report:** This report seeks approval of the flexible retirement of the Monitoring Officer

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**Recommendation:** That the Council approves the flexible retirement request of the Solicitor to the Council & Monitoring Officer with effect from 1 April 2021, pursuant to the Local Government Pension Scheme Regulations 2013, Reg. 30(6) and in accordance with the Council's Pension Discretion Policy Statement

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## 1. Summary

- 1.1 Following a request for flexible retirement from the Solicitor to the Council & Monitoring Officer, this report seeks approval of that request. This is pursuant to the Local Government Pension Scheme (LGPS) Regulations 2013, reg. 30(6) and in accordance with the Council's Pension Discretion Policy Statement. This request will result in no detrimental effect on the overall service delivery and will achieve a small budget saving.
- 1.2 The Monitoring Officer is designated as a statutory role with functions as described in Article 12.03 of the Council's Constitution and section 5 Local Government and Housing Act 1989. Although the current postholder is not a "chief officer", the role is designated by the Council in accordance with Section 5 and therefore it is appropriate to seek approval from the Council for a reduction in hours of that post holder.
- 1.3 In addition, the Solicitor to the Council is appointed as the Council's Data Protection Officer (DPO) under Article 37 of the General Data Protection Regulation (GDPR). He was designated as the DPO by full Council on 7 March 2018.

## 2. Introduction and Background

### The Concept of Flexible Retirement

- 2.1 The concept of flexible retirement was introduced into the LGPS 2006. The intention was to facilitate employers in retaining the skills of an existing employee (albeit that might be on a reduced hours basis) whilst upskilling other employees to build greater resilience. The LGPS rules permit flexible retirement where the scheme member, (with their employer's consent) reduce their hours of employment of the job they continue to hold, and/or move to a lower graded post.

## 3. Flexible Retirement Request of the Monitoring Officer

- 3.1 As outlined above, the Council is asked to approve the flexible retirement of the Monitoring Officer, pursuant to the Local Government Pension Scheme Regulations 2013, reg. 30(6). This request is in accordance with the Council's Pension Discretion

Policy Statement, which sets out criteria to be taken into account when considering the request. The Policy Statement requires that the Council will only approve requests where:

- It is in their interests to do so
- There will be no detrimental effect on the service
- The costs are affordable or where there are likely to be costs savings achieved as a result of the proposal (see resources section below).

- 3.2 The Pension Discretion Statement also states that the request should typically involve a reduction of at least 20% in salary (either through reduced hours or responsibility). Employees can choose to draw all of their pension benefits or defer payment of all or part of the part of their fund which has accrued since 1 April 2008.
- 3.3 In this case the Monitoring Officer wishes to work 29.6 hours per week, split over 4 days. This will result in a 20% reduction in salary. He has requested only to draw his pre-2008 benefits and defer all of the benefits accrued since 1 April 2008. The cost to the Council associated with this are detailed below at paragraph 6.
- 3.4 Owing to a number of changes to team structures within the Governance directorate over the last few years, it is considered that the grant of the request for flexible retirement will not have any detrimental effect on service delivery. In 2019, a management restructure saw the introduction of a Head of Governance role. Although this role and the role undertaken by the Solicitor to the Council/Monitoring Officer differ quite significantly, there is some overlap in experience and expertise. It is therefore the case that there should not be a detrimental effect on the service.

#### Monitoring Officer Role

- 3.5 As stated above, the Solicitor to the Council is designated as the Council's Monitoring Officer. The Council is legally required to designate an officer as the monitoring officer by section 5 of the Local Government & Housing Act 1989. There is no legal requirement for the Monitoring Officer to be employed on a full time basis.
- 3.6 The law allows the Monitoring Officer to nominate a deputy. The nominated deputy monitoring officer is the Head of Governance, herself a solicitor, who has held that nomination since 2019 when the current Monitoring Officer assumed his role. The Head of Governance is a strong deputy, has regular involvement in Monitoring Officer matters and as such, Council can have confidence that any matters to be dealt with during times when the Solicitor to the Council is not available will be dealt with properly and promptly.

#### Data Protection Officer Role

- 3.7 The Solicitor to the Council was designated as the Council's Data Protection Officer by the full Council on 7 March 2018. This is a role which is required by Article 37 of the GDPR. Whilst this role is not required (nor able in law) to nominate a statutory deputy, in practice, both the Council's Head of Governance and Governance Officer (who holds a recognised GDPR qualification) are qualified to deal with issues arising in the absence of the Data Protection Officer and indeed, regularly do so.

### **4. Identification of Options**

- 4.1 The proposed flexible retirement of the Solicitor to the Council can be seen as beneficial, allowing the Council to retain the skills of a highly skilled and valued

employee (albeit on a reduced hours basis) whilst building up the skills and experience of others within the Council. It is also recognised that a benefit for the postholder is a work/life balance which is better suited to his personal circumstances.

4.2 As Head of Paid Service I am recommending approval of the request for flexible retirement. Council is requested to approve the request in line with the Council's Pension Discretion Statement.

4.3 Therefore the options for the Council are:

(a) To approve the flexible retirement request made by the Solicitor to the Council & Monitoring Officer. This is the preferred option.

(b) To refuse the request for flexible retirement made by the Solicitor to the Council & Monitoring Officer. This is not the preferred option.

## 5. Evaluation of Options

5.1 As detailed above, the proposed flexible retirement of the Solicitor to the Council will not result in any detrimental effect on service delivery. Over a three year period the proposal will result in a saving of c.£65k. Furthermore, the flexible retirement of the Solicitor to the Council allows the Council to retain the skills of the postholder whilst upskilling other Council staff and therefore making provision for succession planning for the future.

5.2 It is my view as Head of Paid Service that the flexible retirement request is therefore in accordance with the Council Pension Discretion Statement and should be granted. Council would need to provide full reasons for any departure from the policy statement.

## 6. Resource Implications

6.1 The pension provider has advised that there is no actuarial strain cost in respect of this request. The reduction in hours will result in an annual saving (including on-costs, car allowances, etc.) of c.£21k. The proposal will therefore result in a saving to the Council from the 2021/22 financial year.

## 7. Corporate Implications

7.1 Comment from the Strategic Director (Corporate Resources): The Head of Finance and Investment has been consulted on this report and has no further comments to add.

7.2 Comment from the Solicitor to the Council: The Head of Governance is the author of this report and has no further comment to make.

7.3 Comment from the Equalities Officer: This report does not specifically highlight any equality implications, however in discharging their duties members are required to comply with the public sector equality duty as set out in Section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15/section/149>

## 8. Appendices

Appendix 1: Pension Discretions Policy Statement

9. **Background Papers**

Constitution of this Council – Article 12 and Officer Employment Procedure Rules

Local Government and Housing Act 1989

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