

**REPORT TO: WEST OF ENGLAND COMBINED AUTHORITY
COMMITTEE**

DATE: 17 MARCH 2023

**REPORT TITLE: COMBINED AUTHORITY COMMITTEE
CONSTITUTIONAL UPDATE**

DIRECTOR: INTERIM DIRECTOR OF LAW AND GOVERNANCE

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Purpose of Report

- 1 To make changes to the Monitoring Officer's delegations to address the Auditors concerns identified in the VFM report of November 2022.

Recommendation

- It is recommended that an additional paragraph 3.8 (e) is added to the functions of the Monitoring Officer in the Authorities constitution:

(e) Combined Authority Officers and Members are prohibited from obtaining legal advice without the written agreement of the Combined Authority Monitoring Officer. All legal services will be commissioned in accordance with arrangements settled by the Monitoring Officer from time to time. These arrangements will be set out in a legal services protocol which will be published on the authority's internet.

Reasons for recommendation

- To improve governance and to comply with the Key Recommendation 2 in the Grant Thornton VFM report on governance published in November 2022.

Background / Issues for Consideration

- 2 The recent Grant Thornton VFM report on governance published in November 2022 made recommendations including Key Recommendation 2.

“KR2 The Constitution of the Combined Authority should be revised to define the conditions under which it is acceptable for other officers and members to seek independent legal advice, without reference to the Monitoring Officer and/or Head of Legal Services.”

2.1 The current constitution provides:

3.8 Representing the West of England Combined Authority in the courts, tribunals or at public inquiries

(a) To authorise the institution, defence, withdrawal or compromise of any civil claims or legal proceedings, and or criminal proceedings, in consultation with the relevant chief officer, except where power to institute proceedings is delegated to specific officers.

(b) To appear personally or authorise officers (or agents) of the Combined Authority to appear on the Combined Authority’s behalf in court proceedings or at any tribunal or public or local inquiry.

(c) To engage counsel (or, where appropriate, others with suitable rights of audience) to represent the Combined Authority at any proceedings.

(d) To defend and settle (subject to consultation with the relevant chief officer and the Head of HR) any Employment Tribunal proceedings, except where any cases involve policy or are of particular sensitivity, when decisions are subject to consultation with the appropriate Committee Chair

2.2 While this goes some way to confirming the role of the Monitoring Officer in obtaining legal advice it is recommended that an additional paragraph (e) is added

(e) Combined Authority Officers and Members are prohibited from obtaining legal advice without the written agreement of the Combined Authority Monitoring Officer. All legal services will be commissioned in accordance with arrangements settled by the Monitoring Officer from time to time. These arrangements will be set out in a legal services protocol which will be published on the authority’s internet.

2.3 While legal advice is currently commissioned in accordance arrangements agreed by the Monitoring Officer this will codify the practice. The Committee is asked to agree this amendment to the Monitoring Officer’s delegations in the constitution.

Risk Management / Assessment

3 This recommendation will help avoid the risk that legal advice is commissioned contrary to the wider interest of the authority.

Finance Implications, including economic impact assessment where

appropriate

4 None.

Legal Implications

5 As set out above.

Climate Change Implications

6 None.

Human Resources Implications

7 None.

Background papers

None.

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