



The Law Society

Local Authority Chief Legal Officer Consultation

January 2009

SUPPORTING
solicitors

Contents

The Law Society	2
Solicitors in Local Government	2
Introduction	2
Local Authority Statutory Officers	2
1. Head of Paid Service	2
2. Chief Finance Officer	2
3. Monitoring Officer	3
The Case for Change	3
The Proposal	4
Consultation Questions.....	4
How to Respond	5
List of Consultees	5

This consultation will end on 27th March 2009

Local Authority Chief Legal Officer Consultation

The Law Society

The Law Society is the representative body for over 100,000 solicitors in England and Wales. The Society represents and supports the profession and lobbies on their behalf to regulators, government and others.

Solicitors in Local Government

Solicitors in Local Government represents all solicitors and trainees working in local authorities and similar organisations and is recognised by The Law Society

Introduction

Solicitors in Local Government and the Law Society are considering the merits of calling for legislation requiring each local authority to appoint a Chief Legal Officer. The Chief Legal Officer would hold a legal qualification and carry out the duties of the current local authority monitoring officer to report any illegality, maladministration and to investigate any misconduct by councillors. At the moment there is no requirement for a monitoring officer to be legally qualified.

Local Authority Statutory Officers

Every local authority must have the following 3 statutory officers:

1. Head of Paid Service¹

Each local authority is required to appoint a Head of Paid Service who is responsible for the manner in which the discharge by the authority of their different functions is co-ordinated; the number and grades of staff required by the authority for the discharge of their functions; the organisation of the authority's staff; and the appointment and proper management of the authority's staff.

2. Chief Finance Officer²

Legislation already requires each local authority to appoint a Chief Finance Officer who holds a financial qualification. The responsibilities of the Chief Finance Officer are to oversee the local authority's financial probity and report to the local authority if this probity appears to be compromised.

¹ S4 Local Government and Housing Act 1989

² S151 Local Government Act 1972, s73 Local Government Act 1985, ss112 and 113 Local Government Finance Act 1988

3. **Monitoring Officer**³

Local authorities can be held accountable by the courts, the Local Government Ombudsman and their Members by the National Code of Conduct and guidance from the Standards Board for England.

Each local authority's monitoring officer is the only officer who has responsibility for ensuring the local authority complies with each of these three important and overlapping jurisdictions. The Monitoring Officer must report to the local authority any contravention of the law, or any maladministration or injustice. S/he must investigate any allegations of misconduct by local councillors if requested to do so by the Standards Committee of their local authority.

The Monitoring Officer's threefold responsibilities are⁴:

1. **Contravention of any enactment or rule of law**

The Monitoring Officer must not only report to the local authority any contravention of the law but also any breach of guidance made under any legislation. A monitoring officer needs to be able to decide whether the local authority has complied with the law in such areas as diverse as social care services, licensing, planning or highways. The monitoring officer also needs to understand the general principles of administrative law including the European Convention on Human Rights.

2. **Maladministration or injustice**

The Monitoring Officer must report to the local authority any maladministration or injustice. Maladministration or injustice normally includes complaints where there is no formal legal remedy but there are concerns as to the way a local authority has done something rather than what they have done. If the complaint is not resolved by the local authority the Local Government Ombudsman can carry out an investigation.

3. **Councillors' misconduct**

Local councillors must abide by a Code of Conduct. The Standards Committee of the local authority has responsibility under the local assessment of complaints to determine breaches of the Code and the Monitoring Officer plays a leading role in the process.

The Case for Change

On a daily basis, the Monitoring Officer will need to come to a view as to whether the actions of their local authority are lawful. This will often be in circumstances where politicians will have urgent agendas to achieve results and there may be an intolerance of obstruction or delay. To operate successfully in such an environment, the Monitoring Officer has to have a fine understanding of politics and politicians and at all times a pragmatic and can do approach. What is critical, however, is that the Monitoring Officer is able to exercise fine legal judgement in such circumstances and then stand by that judgement in a robust way. Whilst other local authority officers will have most of these skills in abundance, it is our contention that the final judgement that a Monitoring Officer has to make cannot rest on

³ S5 Local Government and Housing Act 1989

⁴ S5(2) Local Government and Housing Act 1989

merely receiving legal advice (which may or may not be fully understood) but requires the application of this fine legal judgement.

The legal issues which local authorities face have over the years become more complex. We believe the role of the Monitoring Officer is as important as that of the Chief Finance Officer. The Chief Finance Officer can speak with authority on financial matters because s/he must be a member of a financial professional body. This requirement exists to ensure not only technical competence but also professional ethical standards.

We believe that in order to fulfil the role of Monitoring Officer it is necessary for the post holder must:

1. Be able to demonstrate the highest ethical standards so that the public have confidence that the post holder will:
 - act with integrity
 - not allow his or her independence to be compromised
 - act in the public interest
2. Be technically competent legally

We believe the time has come for each local authority to appoint a Chief Legal Officer in the place of a Monitoring Officer. The Chief Legal Officer, unlike the present Monitoring Officer, would be a solicitor, barrister, or legal executive with substantial practical legal experience. These legal professionals are all regulated by independent bodies obliged to regulate in the public interest. This means the public can have confidence that if a Chief Legal Officer fails to investigate complaints with integrity and competence the regulatory body has power to discipline him or her.

The Proposal

We propose that each local authority should be required to appoint a Chief Legal Officer who would be regulated by either the Solicitors Regulation Authority, the Bar Council or the Institute of Legal Executives and absorb the responsibilities of the Monitoring Officer.

Consultation Questions

We would very much welcome your views on the following questions:

1. Do you believe that there is a case for change to the current arrangements for Local Authority Statutory Officers?
2. What are your views on the suggestion that there should be a statutory requirement for each local authority to appoint a Chief Legal Officer?
3. Do you believe that the Monitoring Officer should be a member of a regulated profession, and if so which professions and why?
4. What technical skills do you believe the Monitoring Officer requires and why?
5. Are there any other responsibilities that you think the Chief Legal Officer should discharge?
6. If there is a case for change are there any other solutions?

How to Respond

Please send your response by 27th March 2009 to:

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Legal Policy
The Law Society
113 Chancery Lane
London
WC2A 1PL

Email: consultationresponse@lawsociety.org.uk

Extra Copies

Further paper copies of this consultation paper can be obtained from the above address. The Paper is also available at www.lawsociety.org.uk or from Solicitors in Local Government at www.slgov.org.uk

Representative Groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

The Law Society and Solicitors in Local Government may wish to publish responses to this consultation document. Please ensure your response is marked clearly if you wish your response or name to be kept confidential.

If you are replying by email, please ensure you expressly request confidentiality as relying upon any automatic confidentiality request generated by your IT system will not be sufficient.

Confidential responses will be included in any statistical summary of comments received and views expressed.

List of Consultees

Association of Council Secretaries and Solicitors
Bar Council
CIPFA
Communities and Local Government
Institute of Legal Executives
Local Government Associations
SOLACE
Standards Board for England
Standards Board for Wales
Monitoring Officers in England and Wales
SRA
Law Commission