



APPENDIX 1

Merseyside Waste Disposal Authority

Advice on Statutory Officers

1. **Introduction**

1.1 Merseyside Waste Disposal Authority (MWDA) has requested advice on the statutory officers which it is obliged to appoint and any relevant legal obligations relating to the appointment of such officers. There are 3 such officers, the Clerk; the Monitoring Officer; and Chief Finance Officer.

2. **Clerk to MWDA**

2.1 MWDA is required to appoint a clerk by section 34(8) of the Local Government Act 1985. Section 34(8) applies to MWDA by virtue of Article 4(1)(c) of the Waste Regulation and Disposal (Authorities) Order 1985, which provides that section 34 of the Local Government Act 1985 (chairman, vice-chairman and clerk) "shall have effect as if references to a joint authority included references to an authority established by this order".

2.2 The duties of the clerk are not defined in the legislation and so there is discretion for the authority over scope and nature of the duties which the clerk would be required to perform.

2.3 s34(8) says: "Each joint authority shall appoint a person to be the clerk to the authority and in making the appointment the authority shall have regard to the desirability of that person being the chief officer of a constituent council of the authority". This suggests that the nature of the duties may include high level liaison and facilitation between MWDA and the constituent authorities.

3. **Monitoring Officer to MWDA**

3.1 MWDA is required to appoint a monitoring officer by section 5 of the Local Government and Housing Act 1989. This says: "It shall be the duty of every relevant authority (a) to designate one of their officers (to be known as the "monitoring officer") as the officer responsible for performing the duties imposed by this section; and (b) to provide that officer with such staff, accommodation and other resources as are in his opinion sufficient to allow those duties to be performed;but the officer so designated shall not be their chief finance officer". "Relevant authority" is defined at section 5(8)(a) in relation to England and Wales as "a local authority of any of the descriptions specified in paragraphs (a) to (k) of section 21(1)". This includes, at 21(1)(h), "an authority established under section 10 of the Local Government Act 1985 (waste disposal authorities)".

3.2 The Act explicitly allows the monitoring officer to be the clerk/chief executive to the Metropolitan Police Authority and police authorities but the same person may not be the clerk/chief executive and the monitoring officer of local authorities, nor the City of London in its capacity as police and port health authorities. The prohibition does not appear to apply to other joint authorities and so it is feasible

that the clerk and the monitoring officer positions could be held by the same person in waste disposal authorities.

- 3.3 There is no specific qualification or experience that a monitoring officer is required to have by law, though the nature of the duties requires them to have access to legal and other support and there is the ability to prepare a report for the authority if the officer considers that he/she needs more resources.

4. **Chief Finance Officer**

- 4.1 MWDA is required to appoint a chief finance officer by section 73 of the Local Government Act 1985. This says: "Each new authority shall make arrangements for the proper administration of its financial affairs and shall secure that one of its officers has responsibility for the administration of those affairs".

- 4.2 MWDA counts as a "new authority" and so is covered by section 73 of the Local Government Act 1985 by virtue of Article 9(1) of the Waste Regulation and Disposal (Authorities) Order 1985, which says "Sections 72(1), (2) and (4), 73 and 77 of the Local Government Act 1985 (accounts, financial administration and capital and other money received by a residuary body) shall have effect as if references to a new authority included references to an authority established by this order".

- 4.3 Under s113 Local Government Finance Act 1988 a chief finance officer must be a member of one of the specified accountancy bodies (ie the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants in Scotland, the Chartered Association of Certified Accountants, CIPFA, the Institute of Chartered Accountants in Ireland, the Chartered Institute of Management Accountants, and any other such body approved by the Secretary of State - we are not aware of any other approved bodies) except if that person was appointed prior to the coming into force of section 113 (29 September 1988). This means that any new appointment must be of someone who is a member of one of the accounting bodies listed within section 113 and set out above.

5. **Persons who may fulfil the roles**

- 5.1 The wording of the legislative provisions which require MWDA to have a clerk, monitoring officer and chief finance officer require those roles to be undertaken by an officer of MWDA. Section 34(8) of the Local Government Act 1985 requires a joint authority to "appoint" a clerk. Section 5 of the Local Government and Housing Act 1989 requires a relevant authority to "designate one of their officers" as monitoring officer. Section 73 of the Local Government Act 1985 requires a new authority to "secure that one of its officers" has responsibility for the administration of financial affairs. This means that MWDA could not arrange for an external *contractor* to undertake those roles nor provide

external consultants to provide such roles on a consultancy basis (though an individual consultant could potentially do so if they were directly employed by the MWDA for a sufficient proportion of their time).

- 5.2 However, section 113 of the Local Government Act 1972 provides power for a local authority or health body (Health Authority, PCT or NHS Trust) to make the services of its officers available to another local authority or health body. This applies to MWDA by virtue of section 146A(1)(a) of the Local Government Act 1972. Any staff who are made available to another authority in this way remain employees of the body which appointed them for superannuation purposes, but they are able to take binding decisions on behalf of the local authority or health body to which they are made available on secondment under s113(2), as an officer of the body to which they are seconded. The terms of the secondment are usually set out in an agreement between the two authorities/bodies and the consent of the employee is also required. Such terms are likely to cover the length of the arrangements, who will manage the secondee, the costs involved and how they will be paid, and insurance and indemnities, amongst other things.
- 5.3 This makes it possible for one or more of MWDA's member authorities, other local authorities or health bodies to second staff to MWDA to take on the role of the statutory officers whom MWDA is required to appoint, either on a full or part time basis - sufficient to meet the requirements of the office. If MWDA was to consider this possibility, it would need to be alert to the potential for conflicts of interest of officers who are seconded. This is considered later in this note.

6. **Recruitment**

- 6.1 MWDA may choose to recruit people who could fulfil these obligations instead (again either on a full time or part time basis). It must appoint on merit any staff it recruits. This is an obligation under section 7 of the Local Government and Housing Act 1989, which applies to the appointment of staff to any paid office or appointment by a local authority. Usually the best way to satisfy this requirement is to have an open recruitment process, unless as a result of a reorganisation the authority believes that it is appropriate to redeploy staff into different posts.
- 6.2 MWDA is able to appoint its staff on the terms and conditions it thinks fit under section 112(2) of the Local Government Act 1972 and this applies to MWDA by virtue of section 146A(1)(a) of the Local Government Act 1972. The authority may also have employment standing orders and procedure rules which need to be followed in connection with the process of appointment of staff, consideration of which is outside the scope of this advice.
- 6.3 MWDA would need to appoint a clerk and would need to consider if this should be the chief executive or equivalent officer in any of the other member

authorities of MWDA. The clerk to an authority is often seen as the equivalent of a Chief Executive or Head of Paid Service or Chief Officer in principal authorities. If the authority chooses to appoint someone other than the chief executive or equivalent officer in any of the other member authorities of MWDA, then there should be appropriate reasons put forward to explain why the clerk should be someone else and why that person is appropriate.

7. Personal Office/Deputies

7.1 The chief finance officer and the monitoring officer have statutory duties which apply to them personally (for example to produce reports). However, section 5(7) of the Local Government and Housing Act 1989 provides for a monitoring officer's duties to be performed by a person nominated as deputy where the monitoring officer is unable to act because of absence or illness. There is also provision in the Local Government Act 2000 for a deputy monitoring officer to nominate a deputy if they feel that they ought not to perform a particular function.

7.2 Section 114(6) of the Local Government Finance Act 1988 makes provision for the chief finance officer's duties to be performed by a member of staff nominated by the chief finance officer when the chief finance officer is unable to act because of absence or illness.

8. Conflicts of Interest

8.1 There is obvious potential for an officer seconded from one authority to another to find themselves subject to conflicts between the interests of MWDA and the member authority which seconds the officer to MWDA. For example, they may find that they have access to information of one authority which would be of interest to the other authority, but they are prevented from disclosing the information because of confidentiality obligations. There may be occasions when MWDA and the relevant member authority have differing views on a matter to the extent that a seconded officer may find themselves unable to assist with the matter without compromising their compliance with their duties to either or both authorities. In such circumstances it would be appropriate to involve the relevant deputies, or consider the specific matter on its own facts and circumstances.

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