

# WIRRAL COUNCIL

## CABINET

21 JULY 2011

<b>SUBJECT:</b>	<b>APPOINTMENT OF A PROPER OFFICER (AND OTHERS) FOR THE PURPOSES OF THE NATIONAL ASSISTANCE ACT 1948 AND 1951</b>
<b>WARD AFFECTED:</b>	<b>ALL</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF LAW HR &amp; ASSET MANAGEMENT</b>
<b>RESPONSIBLE PORTFOLIO HOLDER:</b>	<b>SOCIAL CARE AND INCLUSION</b>
<b>KEY DECISION?</b>	<b>NO</b>

### 1.0 EXECUTIVE SUMMARY

1.1 This report seeks approval for the appointment of:

- (i) a Proper Officer;
- (ii) a Deputy Proper Officer; and
- (iii) Appointed Officers

for the purposes of section 47 the National Assistance Act 1948 as amended by the National Assistance (Amendment) Act 1951 (“the Acts”).

1.2 Cabinet authority is also sought to enable the Director of Adult Social Services, in consultation with the Cabinet Portfolio Leader for Social Care and Inclusion, to appoint, if considered necessary, alternative Appointed Officer(s) for the purposes of the Acts.

### 2.0 RECOMMENDATION

2.1 That:

- (i) Fiona Johnstone, Director of Public Health, be appointed the Council’s Proper Officer;
- (ii) Jane Harvey, Consultant in Public Health and Teresa Owen, Deputy Director of Public Health, be appointed the Council’s Deputy Proper Officers; and
- (iii) Debbie Mayor, Deputy Director Strategic Partnerships, and Rick O’Brien, Head of Branch (DASS), be appointed as Appointed Officers;

for the purposes of section 47 the National Assistance Act 1948 as amended by the National Assistance (Amendment) Act 1951.

- 2.2 That the Director of Adult Social Services, in consultation with the Cabinet Portfolio Leader for Social Care and Inclusion, be authorised to appoint, if considered necessary, alternative Appointed Officer(s) for the purposes of the National Assistance Act 1948 and National Assistance (Amendment) Act 1951.
- 2.3 That Council be recommended to amend the Council's Scheme of Delegations to Officers contained within the Council's Constitution to include:
- i. the appointment of the named Proper Officer and Deputy Proper Officers in paragraph 2.1; and
  - ii. the authority delegated to the Director of Adult Social Services in paragraph 2.2

for the purposes of the National Assistance Act 1948 and National Assistance (Amendment) Act 1951.

### **3.0 REASON FOR RECOMMENDATION**

- 3.1 The National Assistance Act 1948 ("the 1948 Act"), Section 47 makes provision for the removal to, and detention and maintenance in, suitable premises of persons in need of care and attention, by order.
- 3.2 Responsibility for seeking an order under section 47 is the Council, and it is the responsibility of the Council's Proper Officer, appointed under the Acts, to carry out an assessment of any person considered to fall within section 47 and present that evidence to a magistrate.
- 3.3 In addition to the appointment of a Proper Officer, there is a need to have 'Appointed Officers' for Section 47 within both the PCT and the Council. The Appointed Officers will provide advice and support regarding Section 47, ensuring that all partners have been involved in patient care prior to Section 47 being considered.

### **4.0 BACKGROUND AND KEY ISSUES**

- 4.1 Under Section 47, the Council has responsibility to seek an order from a magistrates' court for the removal of a person from his/her home on the grounds that the person:
- 1) is suffering from a grave chronic disease or, being aged, infirm or physically incapacitated, is living in unsanitary conditions; and
  - 2) is unable to look after him/herself and is not receiving proper care and attention from anyone else; and
  - 3) removal is necessary in his/her own interests or for preventing injury to the health of, or serious nuisance to, other persons.

- 4.2 The referral can be from anyone, although common sources include; General Practitioner; Police; Social Services; Neighbours; Environmental Health Officers.
- 4.3 Fortunately the use of section 47 is very low. However, in cases where section 47 has been considered and applied, the issues arising are invariably complex and a variety of other professions and other interested parties may be involved.
- 4.4 Any application made under section 47 is to the Magistrates Court. The Proper Officer will adduce all relevant evidence by way of a written certificate and by giving oral evidence.
- 4.5 The provisions of the 1948 Act required seven clear days notice to be given to the person who is the subject of any application under section 47 and is used for planned admissions. However, in urgent cases the 1951 Act introduced the power to remove an individual without delay where there is need to avoid the continuance of undue suffering to a person found in conditions to warrant use of this power.
- 4.6 The Proper Officer
- 4.7 The role of the Proper Officer under section 27 of the 1948 Act is to complete the necessary written certificate (referred to in paragraph 4.4 above) and if required to give evidence.
- 4.8 The Proper Officer must certify in writing that he/she is satisfied after thorough inquiry and consideration that it is necessary to remove the person from the premises in which he/she is residing and agrees with the criteria.
- 4.9 Under section 113 Local Government Act 1972 (as amended) ("LGA 1972"), an officer, employed by the Wirral PCT and whose services are placed at the disposal of the Council, shall be treated as an officer of the Council for the purposes of any enactment relating to the discharge of the Council's functions. Accordingly, the persons mentioned in paragraph 2 above will either be officers of the Council by virtue of their employment with the Council or will be deemed an officer of the Council under section 113 LGA 1972 by virtue of their employment with Wirral PCT.

## **5.0 RELEVANT RISKS**

- 5.1 The Council must appoint a Proper Officer and should also appoint a Deputy Proper Officer and Appointed Officer(s) in order to discharge its obligations under the Acts.
- 5.2 Prior to this report, the Chief Executive has exercised his delegated authority to appoint relevant persons to ensure that the Council discharges its obligation under the Acts as and when required.
- 5.3 The appointment of suitably qualified and experienced persons to the posts detailed within this report will ensure that any person in respect of whom

section 47 applies will be assessed and necessary action taken as considered and assessed to be appropriate.

## **6.0 OTHER OPTIONS CONSIDERED**

6.1 The persons nominated/recommended to occupy the posts in this report are considered the most suitably qualified and experienced persons to perform the respective roles; and in turn considered the most appropriate to assist the Council discharge its obligations, duties and responsibilities arising under the Acts.

## **7.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

7.1 There are no implications for Voluntary, Community and Faith groups arising from this report.

## **8.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

8.1 The financial implications arising from the appointments referred to in this report shall be met from existing approved budgets.

## **9.0 LEGAL IMPLICATIONS**

9.1 The legal implications are set out within this report.

## **10.0 EQUALITIES IMPLICATIONS**

10.1 There are no specific discrimination issues arising from this report. However, any assessment undertaken under section 47 will have due regard to any obligations and duties arising under equality legislation.

10.2 An equality impact assessment is not required for the purposes of the appointments proposed in this report.

## **11.0 CARBON REDUCTION IMPLICATIONS**

11.1 There are no carbon reduction implications in this report.

## **12.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

12.1 There are no planning and community safety implications in this report.

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## **APPENDICES**

None

## **REFERENCE MATERIAL**

No reference material has been used in the preparation of this report.