

Council/Appointment Sub Committee Meeting	
Meeting Date	25 July 2018
Report Title	Appointment of Monitoring Officer
Cabinet Member	Cllr Bowles, Leader
SMT Lead	Mark Radford, Chief Executive
Head of Service	N/A
Lead Officer	N/A
Key Decision	No
Classification	Open
Recommendations	1. To designate David Clifford as the Monitoring Officer for the Council with effect from 1 October 2018

1 Purpose of Report and Executive Summary

- 1.1 Following the appointment of the Chief Executive who was previously the Council's Monitoring Officer, the Deputy Head of the Legal Partnership was appointed as the Council's Monitoring Officer. Her temporary contract to cover these additional duties expires on 30 September 2018. At the time of her appointment she was acknowledged as a ready replacement for the Monitoring Officer as she had been the Council's Deputy Monitoring Officer for over five years, was a qualified solicitor and had significant extensive experience of constitutional matters and working closely with Swale members, however, due to potential perceived conflict other options for fulfilling this role has been considered
- 1.2 Since the Council is required by law to appoint a Monitoring Officer, this report asks the Committee to recommend to Council the appointment of David Clifford as the Council's Monitoring Officer with effect from 1 October 2018.

2 Background

- 2.1 The Council by law has to appoint three statutory officers. Appendix I summarises the roles and responsibilities and it should be noted that the Council's Head of Paid Service and the Chief Finance Officer cannot also hold the position of Monitoring Officer.
- 2.2 This report discusses the permanent appointment of the Council's Monitoring Officer. Under the Constitution this decision has to be made by Full Council.

- 2.3 The Monitoring Officer has a number of statutory duties and responsibilities relating to the Council's Constitution and the arrangements for effective governance and together the three statutory officers ensure effective governance and secure probity. These duties also include maintaining the Constitution, ensuring that no decision or omission of the Council gives rise to illegality or maladministration and promoting high standards of conduct as set out in the Council's Code of Conduct.
- 2.4 There is nothing within the legislation that makes having a legal background a requirement. It should be noted that the Director of Corporate Services previously successfully undertook this role for over 20 years without that formal background.
- 2.5 What is required is a particular set of skills involving amongst other things: the ability to analyse complex matters in a professional and pragmatic way, the ability to understand different perspectives and to seek to find the common ground, have an in-depth knowledge of the organisation as a corporate body, personal integrity and having good working relationships with members and senior management.

3 Proposals

- 3.1 It is proposed that Mr Clifford be appointed as the Council's Monitoring Officer with effect from 1 October 2018. Mr Clifford has significant experience and knowledge of the Council through his current corporate role and has experience of constitutional matters, working closely with Swale members and is fully cognisant of the need to promote high standards of ethical behaviour. This skill set and background suit the role and would ensure that the Council has its own Monitoring Officer. This has always been the case in Swale and under previous Officers this has contributed significantly to the good governance of the authority of which the Council has always been very proud. Mr Clifford would provide consistency of approach and understanding of the local issues within Swale.
- 3.2 If the recommendation is accepted then Mr Clifford will, in accordance with the legislation, appoint a Deputy Monitoring officer to assist with his Swale Borough Council responsibilities.

4 Alternative Options

- 4.1 **Make the current interim arrangements permanent:** Although professionally solicitors have a duty beyond that to their employer of maintaining their independence in the provision of legal advice in whatever circumstance and role that advice is given, perceptions have been raised about the closeness of the personal relationship. In corporate process terms it should also be noted that under the Complaints procedure the Monitoring Officer investigates any complaint against the Chief Executive. This has happened once in the time of the previous Chief Executive, however, if that situation had arisen in the interim period then the

Monitoring Officer would immediately delegate the matter and take no further part in investigating the complaint as the Constitution adequately deals with the process to follow where the Monitoring Officer has a conflict of interest.

- 4.2 **Seek to use the MKS Legal service to provide a Monitoring Officer-** In our partner MKS authorities the role is shared , however, it is difficult to see how an individual can cover three authorities and provide the level of support and independence required to satisfy good governance tests. This is also not considered appropriate as it reduces the flexibility required for the role. At the time of the interim appointment of the current Monitoring Officer the then Head of Legal Partnership endorsed this view. It is important that the Council has immediate access and this cannot be guaranteed where there is no dedicated resource.
- 4.3 I have previously expressed my views about sharing of Monitoring Officers. I do not agree with the proposition as I believe it is essential that each authority has access to its own independent Monitoring Officer advice and, given the nature of our working with the other two MKS authorities, there is potential for conflict of interests to arise. There have been instances where one authority has written to the other to ensure that clear division of advice is provided. Furthermore, the approach adopted at Swale, with its own dedicated Monitoring Officer, has in my view contributed significantly to the very positive external comments made about the governance of the authority.
- 4.4 **Appoint another officer as its Monitoring Officer** – subject to the comments in paragraphs 1.1 and 4.1, this is not recommended as any other individual suggested would not have the same degree of relevant experience.

5 Consultation Undertaken or Proposed

- 5.1 Given that this report concerns the appointment/designation of one of the Council’s statutory officers, the recommendation from the Appointments Committee will be presented to Full Council for them to make the final decision.
- 5.2 Cabinet Members and the Strategic Management Team have been consulted on this report.

6 Implications

Issue	Implications
Corporate Plan	The Council is responsible for putting in place proper arrangements for the governance of its affairs. The appointment of a Monitoring Officer with relevant experience and understanding of the authority will support the Council to achieve its corporate objectives.
Financial,	The appointment of the Monitoring Officer will not impact on the

Resource and Property	current budget financially and will enable the council to continue to use the MKS Partnership resources when appropriate.
Legal and Statutory	The Council is required to appoint a Monitoring Officer by virtue of Section 5 of the Local Government and Housing Act 1989.
Crime and Disorder	No implications
Environmental Sustainability	No implications
Health and Wellbeing	No implications
Risk Management and Health and Safety	If the recommendation is accepted, the risks are considered to be low given the extensive experience and knowledge of the authority that the proposed appointee has.
Equality and Diversity	No implications
Privacy and Data Protection	No implications.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: The role of the three statutory officers

8 Background Papers

None

APPENDIX I

The role of the three statutory officers

The authority has to appoint three statutory officers. The Council's Head of Paid Service and the Chief Finance Officer cannot also hold the position of Monitoring Officer. The Chief Finance Officer must have a recognised accountancy qualification.

Role	Nature of role	Current post holder
Head of Paid Service	The individual that has overall corporate management and operational responsibility for the way in which the organisation delivers its services.	Chief Executive
S151 officer (Chief Finance Officer)	<ul style="list-style-type: none"> • All local authorities must assign S151 duties to one officer who must be a qualified member of a recognised accountancy body; • must ensure compliance with all statutory requirements for accounting and internal audit (including supporting records and all systems of internal checks and control); • manage the financial affairs of the authority in all its dealings and transactions and in so doing secure the proper stewardship of Council (and Members) responsibilities; • must report under S114 powers to the Executive, the District Auditor and all Members of an authority if there is, or is likely to be any item of unlawful expenditure or an unbalanced budget; • owes a personal duty of care to local tax payers in managing Council resources on their behalf. In discharging this responsibility the S151 Officer must balance the needs and interests of both current and future taxpayers. 	Chief Finance Officer
Monitoring Officer	<u>Has</u> a number of statutory duties and responsibilities relating to the Council's Constitution and the arrangements for effective governance. These duties include maintaining the Constitution, ensuring that no decision or omission of the Council is likely to give rise to illegality or maladministration and promoting high standards of conduct.	Previously Director of Corporate Services and currently former interim head of legal partnership