

**MAIDSTONE BOROUGH COUNCIL**

**COUNCIL**

**17 SEPTEMBER 2014**

**REPORT OF CHIEF EXECUTIVE**

**Report prepared by David Edwards**

**Date Issued: 9 September 2014**

**1. APPOINTMENT OF MONITORING OFFICER**

**1.1 Key Issue for Decision**

1.1.1 To consider the appointment of John Scarborough, Head of Legal Partnership, as the Council's Monitoring Officer with effect from 1 November 2014.

**1.2 Recommendation of the Chief Executive**

1.2.1 To appoint, with effect from 1 November 2014, John Scarborough, Head of Legal Partnership, as the Monitoring Officer for the Council.

1.2.2 To transfer to the Head of Legal Partnership, with effect from 1 November 2014, the delegated functions and responsibilities in the Council's Constitution which refer to the Head of Legal Services.

**1.3 Reasons for Recommendation**

1.3.1 In order to comply with the requirements of section 5 of the Local Government and Housing Act 1989, the Council is required to appoint a Monitoring Officer and the decision must be taken by Full Council. The Council's Head of Paid Service and the Chief Finance Officer cannot also hold the position of Monitoring Officer.

1.3.2 The Monitoring Officer has 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. A list of the Monitoring Officer's main functions and responsibilities at Maidstone Borough Council is included within the Council's Constitution (see Part 2, Article 12.03).

- 1.3.3 The Monitoring Officer role at Maidstone Borough Council is presently held by the Head of Legal Services. This post will no longer exist with effect from 1 November 2014 as part of the Mid Kent Legal Services One Team arrangements which were approved by Maidstone, Swale and Tunbridge Wells Borough Councils on 1 September 2014. It is worth noting that the Head of Legal Services has acted as the Council's chief legal adviser with distinction for nearly 29 years.
- 1.3.4 The Mid Kent Legal Services One Team arrangements will enable the key benefits of the legal shared service to be realised for the benefit of Maidstone Borough Council and its partner authorities. They have been designed to provide a single legal service and reorganise existing legal resources so that they can best deliver the key corporate priorities of the three authorities. Full details are set out in the report to the Cabinet Member for Corporate Services which was published on 21 August 2014 and agreed on 1 September 2014.
- 1.3.5 It is proposed that John Scarborough, Head of Legal Partnership, is appointed as the Council's Monitoring Officer with effect from 1 November 2014 and that he is seconded to the Council from Swale Borough Council whilst carrying out his Monitoring Officer duties. Mr Scarborough is a qualified solicitor with nearly 25 years' experience working in local government legal services. He is also experienced in carrying out the Monitoring Officer role.
- 1.3.6 Legislation allows the Monitoring Officer to appoint a Deputy to act in his/her absence. If the recommendation is accepted, Mr Scarborough will appoint a Deputy Monitoring Officer to assist with his Maidstone Borough Council responsibilities. This will be the Deputy Head of Legal Partnership who will be appointed as part of the One Team proposals. These two Officers will lead on providing legal advice to meetings of Full Council, Cabinet and Standards Committee. (In the event that this post has not been filled by 1 November, Mr Scarborough will appoint an experienced lawyer to act as temporary Deputy Monitoring Officer.)
- 1.3.7 As well as the Monitoring Officer responsibilities set out above, the Head of Legal Partnership and Deputy Head of Legal Partnership will add senior fee earner value to the delivery of the Council's key corporate objectives. Whilst both Officers will travel between Maidstone, Swale and Tunbridge Wells BC sites, Members of the Council will also be able to contact them by mobile phone and e-mail during working hours.
- 1.3.8 In addition to the Head of Legal Partnership and Deputy Head of Legal Partnership, the One Team arrangements will also create for the first time a specialist Corporate Governance team within Mid Kent

Legal Services. This will include a Senior Corporate Governance Lawyer who will be based at Maidstone House.

- 1.3.9 Whilst politically sensitive and high profile ethical standards issues will continue to be dealt with by the Monitoring Officer, the Corporate Governance team will provide a more cost effective resource for the remaining corporate governance workload which presently sits with Mid Kent Legal Services. Examples are (1) revisions to the Constitution (although Monitoring Officers will continue to be the link with Members), (2) legal support on Data Protection/Freedom of Information Act matters, (3) Parish Council ethical standards issues, (4) Elections law support and (5) advice on new legislation.
- 1.3.10 The Head of Legal Partnership also holds the role of Monitoring Officer for Tunbridge Wells Borough Council and if Members approve the recommendations, a formal Conflicts of Interest protocol will be put in place to deal with any rare occasions when there may be potential conflicts between his shared service role and Monitoring Officer responsibilities. The Monitoring Officer for Swale Borough Council will continue to be the Director of Corporate Services.
- 1.3.11 It is also proposed to transfer to the Head of Legal Partnership, with effect from 1 November 2014, the delegated functions and responsibilities in the Council's Constitution which refer to the Head of Legal Services.

#### 1.4 Alternative Action and why not Recommended

- 1.4.1 The Council could decide to appoint another Council officer as its Monitoring Officer but without the same degree of legal and governance expertise.

#### 1.5 Impact on Corporate Objectives

- 1.5.1 The Council is responsible for putting in place proper arrangements for the governance of its affairs. The appointment of an experienced Monitoring Officer is a key component of these arrangements and will support the Council to achieve its corporate objectives.

#### 1.6 Risk Management

- 1.6.1 If the recommendation is accepted, the risks are considered to be low given the Head of Legal Partnership's extensive legal and governance experience. The risks of appointing a Monitoring Officer without these skills and experience would be much higher.

1.7 Other Implications

1.7.1

1.	Financial	X
2.	Staffing	X
3.	Legal	X
4.	Equality Impact Needs Assessment	
5.	Environmental/Sustainable Development	
6.	Community Safety	
7.	Human Rights Act	
8.	Procurement	
9.	Asset Management	

1.8 Financial

1.8.1 If the recommendation is accepted, it will enable the Council to make better use of existing Mid Kent Improvement Partnership resources, namely the legal and governance experience of the Head of Legal Partnership.

1.9 Legal

1.9.1 The Council is required to appoint a Monitoring Officer by section 5 of the Local Government & Housing Act 1989.

1.9.2 Section 113 of the Local Government Act 1972 allows one local authority to agree with another that it will place an officer at the disposal of the latter for the purposes of their functions (ie a secondment arrangement). There is no legal requirement for the Monitoring Officer to be actually employed by the Council.

1.10 Staffing

1.10.1 If the recommendation is accepted, the Head of Legal Partnership will be seconded to the Council from Swale Borough Council whilst carrying out his Monitoring Officer duties.

1.11 Relevant Documents

1.11.1 Appendices

None.

1.12 Background Documents

1.12.1 Mid Kent Legal Services One Team proposals report to the Cabinet Member for Corporate Services dated 21 August 2014.