

Appointment of Monitoring Officer

Timetable	
Meeting	Date
Council	19 April 2023

Will this be a Key Decision?	No
Urgency	Not Applicable
Final Decision-Maker	Council
Lead Head of Service	Claudette Valmond, Head of Legal Partnership
Lead Officer and Report Author	Robin Harris, Interim Monitoring Officer
Classification	Public
Wards affected	All

Executive Summary

Robin Harris, the Interim Monitoring Officer for Maidstone Borough Council, ("**the Council**") is becoming the Monitoring Officer for Swale Borough Council with effect from 25 April 2023.

To ensure legal compliance with the Local Government and Housing Act 1989 (as amended), this report recommends that Russell Fitzpatrick, the current Deputy Monitoring Officer, be appointed as the Monitoring Officer for the Council.

Purpose of Report

For decision.

This report makes the following recommendations to Council

1. That Russell Fitzpatrick be appointed as the Monitoring Officer for Maidstone Borough Council with effect from and including 25 April 2023.

Monitoring Officer Report

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	Good governance is essential in delivering the Council's priorities. The appointment of a monitoring officer is a legal requirement which supports the Council in delivering its priorities.	Head of Legal MKLS
Cross Cutting Objectives	No implications.	Head of Legal MKLS
Risk Management	There would be a risk in not appointing a monitoring officer, as this is a statutory requirement. Other risk factors are covered in the body of the report.	Head of Legal MKLS
Financial	No implications.	Head of Legal MKLS
Staffing	No implications.	Head of Legal MKLS
Legal	Section 5 of the Local Government and Housing Act 1989 (as amended) requires a district council to designate one of their Officers to perform the Monitoring Officer duties. These duties will be performed in accordance with Maidstone Borough Council's Constitution.	Head of Legal MKLS
Information Governance	No personal information is provided as part of the report.	Head of Legal MKLS
Equalities	No implications.	Head of Legal MKLS
Public Health	No implications.	Head of Legal MKLS
Crime and Disorder	No implications.	Head of Legal MKLS

Procurement	No implications.	Head of Legal MKLS
Biodiversity and Climate Change	No implications.	Head of Legal MKLS

2. INTRODUCTION AND BACKGROUND

- 2.1 Pursuant to the Local Government and Housing Act 1989 (as amended) ("**the 1989 Act**"), the Council is required to appoint a Monitoring Officer. The Council's Constitution requires that decision to be taken by Full Council.
- 2.2 The current monitoring officer for the Council is Robin Harris. He was appointed by Full Council in an interim position on 28 September 2022. As a result of a restructuring exercise at Swale Borough Council ("**Swale**"), there has been a change in the Monitoring Officer arrangements and as Robin Harris has been the Deputy Monitoring Officer for Swale in excess of 5 years it was a natural progression that Robin be appointed the Monitoring Officer for Swale.
- 2.3 This report recommends the appointment of Russell Fitzpatrick, the current (interim) Deputy Monitoring Officer, as the permanent Monitoring Officer for the Council.
- 2.4 Section 5 of the 1989 Act requires a district council to designate one of their Officers to perform the Monitoring Officer duties which includes:
- (a) the duty to consider proposals and prepare a report for consideration by the district council if a proposal is likely to give rise to a contravention of any enactment or rule of law; or
 - (b) likely to lead to any maladministration or failure as is mentioned in Part 3 of the Local Government Act 1974 (Local Commissioners).
- 2.5 The Monitoring Officer has various 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 proposal, decision, or omission of the Council is likely to give rise to illegality or maladministration and promoting and maintaining high standards of Member conduct. A full list of the Monitoring Officer's responsibilities and delegated powers is included within the Council's Constitution.
- 2.6 It is proposed that, subject to the approval of Full Council, Russell Fitzpatrick be appointed as the Council's Monitoring Officer with effect from (and including) 25 April 2023 .
- 2.7 Russell Fitzpatrick is the Team Leader (Planning) for Mid Kent Legal Services ("**MKLS**") and Deputy Monitoring Officer for Tunbridge Wells Borough Council and the interim Deputy Monitoring Officer for the Council. He is an Attorney

of the High Court of South Africa having been admitted as such on 12 June 1998. He has over 22 years' experience working as a lawyer in the United Kingdom. During this time, he has worked both in the private and public sectors having worked for the Environment Agency and, since 2011, in local government legal services during which time he supported both officer's and Members as the legal officer at planning committees. He has been employed by MKLS since 2015 and has throughout his 7½ years with MKLS regularly attended and continued to advise and support both officer's and Members at planning committees for the three partnership authorities, Maidstone, Tunbridge Wells and Swale Borough Council's.

- 2.8 If the recommendation is accepted by Full Council, Russell Fitzpatrick will appoint one or more Deputy Monitoring Officer(s) to assist him.
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3. AVAILABLE OPTIONS

- 3.1 Option 1: That the current (interim) Deputy Monitoring Officer, Russell Fitzpatrick be appointed as the Council's Monitoring Officer.
- 3.2 Option 2: The Council could decide to appoint a different officer to undertake the Monitoring Officer role.
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4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Option 1. For the purposes set out in this report, it is considered that the current (interim) Deputy Monitoring Officer, Russell Fitzpatrick, is the best qualified officer to undertake the role.
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5. RISK

- 5.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 This report concerns the appointment of one of the Council's three statutory officers. Pursuant to the Council's Constitution the recommendation is being made directly to Full Council.
- 6.2 The proposed appointment has been discussed and is supported by the Council's Chief Executive.
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7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 If the recommendation is approved, the decision will be communicated to staff and relevant stakeholders.

8. REPORT APPENDICES

None.

9. BACKGROUND PAPERS

The Full Council Report and Decision of 28 September 2022 relating to the "Appointment of [the Interim] Monitoring Officer".