

Report to: **COUNCIL**
Date: **22 September 2020**
Title: **Designation of Monitoring Officer**
Portfolio Area: **Leader of the Council, Cllr Neil Jory**

Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken:

A version of this report will also be considered at the equivalent South Hams District Council meeting to be held on 24 September 2020

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RECOMMENDATIONS:

That Council APPROVES the following:

- 1. To remove the Monitoring Officer responsibilities and duties from the Business Manager (Specialists) role;**
- 2. To designate the role of the Monitoring Officer to a Level 3 Head of Legal Services (once appointed);**
- 3. To appoint to the role of Head of Legal Services and Monitoring Officer via an external recruitment process; and**
- 4. To ask the Chief Executive to carry out a review of the Legal Services team, including a review of the role(s) and remuneration of the Deputy Monitoring Officer(s) and the resources needed to provide an effective legal service.**

1. Executive summary

- 1.1 Under the current staffing arrangements the statutory responsibilities of the Monitoring Officer sit with the Business Manager (Specialists). This is a result of the former Head of Legal Services accepting the role of Business Manager in December 2019 and retaining the statutory duties.

- 1.2 The newly appointed Chief Executive and Head of Paid Service conducted a review of the arrangements to ensure there was clarity of accountability for the statutory functions, and that the Council could reduce the risk of legal challenge by making sure the Monitoring Officer had the capacity to respond in a timely and effective manner to all issues referred to the role.
- 1.3 The report proposes a route for changing the designation of the Monitoring Officer role and recommends the designation of the Monitoring Officer role to the Head of Legal Services (once appointed).

2. Background

- 2.1 Under Section 5 of the Local Government & Housing Act 1989 (as amended), the Council has a duty to appoint a Monitoring Officer.
- 2.2 The Monitoring Officer has a number of statutory duties and responsibilities relating to the Council's Constitution and 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.
- 2.3 A full list of the Monitoring Officer's responsibilities and delegated powers is included within the Council's Constitution (see Part 2, Article 10.2)
- 2.4 Neither of the Council's other statutory officers - the Head of Paid Service and the Chief Finance Officer - is permitted to also hold the position of Monitoring Officer.
- 2.5 There is no statutory requirement for the position to be held by a legally qualified officer, although this is the most common arrangement in the majority of councils where the senior legal officer typically holds this position.
- 2.6 The Council's Constitution also permits the Monitoring Officer to be a shared position with South Hams District Council.
- 2.7 Following the restructure of SLT and ELT in 2019, the incumbent Monitoring Officer was appointed to the role of Business Manager (Specialists):
 - The post holder maintained the statutory role of monitoring officer

- The role of Head of Legal Services at Level 3 was left vacant pending recruitment to the Chief Executive and Head of Paid Service role
 - One of the current Deputy Monitoring Officers was given a special responsibility allowance to direct and supervise the broader areas of work within the Legal Services Community of Practice.
 - There are two Deputy Monitoring Officers (Senior Specialists within the Legal Community of Practice).
- 2.8 The role currently sits within the Extended Leadership Team and attends SLT in an advisory capacity by invitation. The role reports to the Director of Service Delivery, with a 'dotted line' reporting to the Director of Governance and Assurance.
- 2.9 The role of Business Manager (Specialists) is a full-time and complex operational role and places competing demands on the post holder who retains the responsibility and duties of the Monitoring Officer.

3. Outcomes/outputs

- 3.1 Nine months after the implementation of the current arrangements, the Chief Executive and Head of Paid Service conducted a review to make sure that there is clarity of accountability for the statutory functions of the role, and to minimise the risk of a legal challenge by making sure the role has sufficient capacity to respond in a timely and effective manner to any matter that is referred to, or is the responsibility of, the Monitoring Officer.
- 3.2 The designation or withdrawing of the statutory duties of the Monitoring Officer to an officer must be made by the Full Council.

4. Proposal for change and alternative option

- 4.1. Council is asked to adopt the following recommended proposal for changing the designation of the Monitoring Officer duties and responsibilities.
- 4.2 **To remove the Monitoring Officer duties and responsibilities from the Business Manager (Specialists) and to appoint to the vacant L3 Head of Legal Services role and designate the appointee the Monitoring Officer.**
- 4.3 This would appoint to the role left vacant pending the appointment of the Chief Executive. The role would take on the dual role of Monitoring Officer and Head of Legal Services, and would be supported by a Deputy Monitoring Officer(s).

- 4.4 The proposal will provide clarity of accountability for the statutory functions and increase the capacity to respond in a timely and effective manner and thereby reduce the risk of legal challenge against the Council.
- 4.5 Under this proposal, the Monitoring Officer would report to the Director of Customer Service for operational matters but would retain the 'dotted line' reporting to Director of Governance and Assurance where appropriate, including on matters of governance.
- 4.6 The restoration of this structure will also firmly place the statutory role of the Monitoring Officer alongside the other legal duties carried out the wider Legal Services Team and the incumbent will have an oversight of all legal matters, including any potentially contentious issues that may require the Monitoring Officer's attention and/or input at any early stage to prevent the unnecessary escalation of the matter.
- 4.7 In addition, the proposed structure will enable the incumbent to prioritise the statutory duties of the Monitoring Officer without the competing demands of another senior and complex role. The intention being that the Monitoring Officer will be able to be proactive in the advice and support they provide on governance issues, for example on the Council's Constitution and decision-making arrangements, as well as being reactive to issues as they arise.
- 4.8 A decision to appoint to the vacant L3 Head of Legal Services would be supported by a review of the wider Legal Services function to make sure both the regulatory functions (e.g. supporting the DM Committee and Officers, and the governance of the organisation) and property function (e.g. sale, purchase, lease and letting of Government assets) is sufficiently resourced.
- 4.9 The Head of Paid Service will carry out a review of the capacity and resources required.

4.(b) Alternative option considered

- 4.10 **To designate the current Director of Governance and Assurance as the Monitoring Officer and transfer the statutory responsibilities.**
- 4.11 This would have the benefit of placing the Monitoring Officer role firmly within SLT and will give Members clarity over where the statutory responsibilities lie.
- 4.12 Although the fact that the Director of Governance and Assurance is not a qualified lawyer does not prohibit the appointment, it will mean providing sufficient support through the continuation of the

two Deputy Monitoring Officer roles or considering the appointment of an additional Deputy Monitoring Officer).

4.13 This option therefore has the potential effect of increasing the clarity of accountability, but carries the risk that matters referred to the Monitoring Officer are not responded to in a timely manner because it may be necessary to seek specialist legal advice from a Deputy Monitoring Officer.

4.14 There is a further concern that the wide ranging senior and strategic responsibilities carried out by the Director of Governance and Assurance might, in reality, leave little time to the focus on the statutory role. Without additional capacity, this could simply replicate the challenges inherent with the existing arrangement.

5. Proposed Way Forward

5.1 The recommendation is to support the proposed route and to remove the Monitoring Officer responsibilities and duties from the Business Manager (Specialists) role. Further it is recommended that the Council designate the role the Monitoring Officer to a Level 3 Head of Legal Services (once appointed), and that the Head of Paid Services makes an appointment to the role of Head of Legal Services and Monitoring Officer via an external recruitment process. Following the appointment, the Chief Executive and newly appointed Head of Legal Services should carry out a review of the Legal Services team, including a review of the role(s) and remuneration of the Deputy Monitoring Officer(s) and the resources needed to provide an effective legal service.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Yes	Under Section 5 of the Local Government & Housing Act 1989 (as amended), the Council has a duty to appoint a Monitoring Officer. The appointment must be made by full Council. The Head of Paid Service is responsible for the staffing structure of the Council.
Financial implications to include reference to value for money		The recommended proposal would appoint to the vacant L3 role of Head of Legal Services. The subsequent review of the legal service may require the addition of new post(s) onto the Establishment, or to the awarding of additional Special Responsibility Allowances to Deputy Monitoring Officers. The Business Manager (Specialists) will

		have the Special Responsibility Allowance equating to 20% of salary protected for 18 months.
Risk		The risk to the Council of continuing with the current arrangements is the greater potential for litigation if the Monitoring Officer is unable to provide timely and effective advice to the Council because of the competing priorities of the Business Manager role.
Supporting Corporate Strategy		The establishment of a sufficiently resourced Monitoring Officer role will support the Corporate Strategy of maintaining good governance.
Climate Change - Carbon / Biodiversity Impact		The report has no direct impact.
Comprehensive Impact Assessment Implications		
Equality and Diversity		The report has no direct impact.
Safeguarding		The report has no direct impact.
Community Safety, Crime and Disorder		The report has no direct impact
Health, Safety and Wellbeing		The report has no direct impact
Other implications		

Supporting Information

Appendices:

None

Background Papers:

None