
APPOINTMENT OF MONITORING OFFICER

To: **Council – 9 October 2008**

By: **Democratic Services and Scrutiny Manager**

Classification: **Unrestricted**

Ward: **Not applicable**

Summary: To agree the process for appointing a Monitoring Officer.

For Decision

1.0 Introduction and Background

- 1.1 The post of “monitoring officer” is a statutory appointment. Under section 5 of the Local Government and Housing Act 1989, a district Council must designate one of its officers as “monitoring officer”. It must be a duty of the monitoring officer to prepare a report to Council where the monitoring officer believes that a proposed action by the Council (a committee, sub-committee and so on) would be unlawful or be likely to lead to misadministration or injustice.
- 1.2 The Local Government Act 2000 extended the role of the monitoring officer to include managing the Council’s “ethical framework”; including all processes relating to local Standards Committees.
- 1.3 In a district council, the monitoring officer can not be the head of the paid service (i.e. Chief Executive) or the chief financial officer (i.e. Head of Financial Services).
- 1.4 An extract from the Council’s constitution is included at Annex 1 showing the principal duties of Thanet Council’s monitoring officer.

2.0 The Current Situation

- 2.1 Until recently Paul Moore, a Corporate Director, fulfilled the role of monitoring officer. Mr. Moore ceased employment with the Council on 28 September. On an interim basis, the Chief Executive has appointed Miles Smith to act as the Council’s monitoring officer, pending a permanent appointment being made to the post of Head of Legal & Democratic Services, which now includes the monitoring officer role for the Council.
- 2.2 The Democratic Services and Scrutiny Manager has the role of deputy monitoring officer.

3.0 The Way Forward

- 3.1 It is suggested that Council establishes a Member Working Party to appoint the Head of Legal and Democratic Services (including advising on the short-listing process, interviewing short-listed candidates and determining the successful candidate) and inform Council of the outcome of that process.

3.2 The membership of the Working Party is suggested as:

- 3 members of the Conservative Group
- 2 members of the Labour Group

3.3 It is suggested that independent members of the Standards Committee will be invited to attend the Working Party, but would not be formal voting members of it.

4.0 Corporate Implications

4.1 Financial

4.1.1 Budget provision has already been made for the post of Head of Legal and Democratic Services.

4.2 Legal

4.2.1 This is a statutory appointment under the Local Government and Housing Act 1989 and Local Government Act 2000, as explained within the report.

4.3 Corporate

4.3.1 The monitoring officer has a crucial role to play in ensuring good corporate governance, not just in terms of probity and lawfulness, but as a pivotal point in the Council's overall decision-making process.

4.4 Equity and Equalities

4.4.1 There are no direct equity or equalities issues arising from this report.

5.0 Recommendation(s)

5.1 That Council establishes a Member Working Party to appoint the Head of Legal and Democratic Services (monitoring officer) and inform Council of the outcome.

5.2 That the Working Party has a membership of three members of the Conservative Group and two members of the Labour Group.

6.0 Decision Making Process

6.1 This is a Council decision.

Contact Officer:	Glenn Back, Democratic Services and Scrutiny Manager, ext.7187
Reporting to:	Richard Samuel, Chief Executive

Annex List

Annex 1	Extract from Constitution showing the principal duties of the Council's monitoring officer.
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Background Papers

Title	Details of where to access copy
<i>None</i>	

Corporate Consultation Undertaken

Finance	Sarah Martin, Legal Services Manager
Legal	Peter Reilly, Acting Legal Services Manager

ANNEX 1

Extract from Constitution showing the principal duties of the Council's monitoring officer.

- (a) **Maintaining the Constitution.** The Monitoring Officer will maintain an up-to-date version of the Constitution and will ensure that it is widely available for consultation by members, staff and the public.
- (b) **Ensuring lawfulness and fairness of decision making in accordance with the powers and duties contained in the Local Government and Housing Act 1989.** After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the full Council or to the Cabinet in relation to an Executive function if he/she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration.

Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered.
- (c) **Supporting the Standards Committee.** The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct through provision of support to the Standards Committee.
- (d) **Receiving reports.** The Monitoring Officer will receive and act on reports made by ethical standards officers and decisions of the case tribunals.
- (e) **Conducting investigations.** The Monitoring Officer will conduct investigations into matters referred by ethical standards officers and make reports or recommendations in respect of them to the Standards Committee.
- (f) **Proper officer for access to information.** The Monitoring Officer will ensure that Cabinet decisions, together with the reasons for those decisions and relevant officer reports and background papers are made publicly available as soon as possible in accordance with this Constitution.
- (g) **Advising whether Cabinet decisions are within the budget and policy framework.** The Monitoring Officer will advise whether decisions of the Cabinet are in accordance with the budget and policy framework.
- (h) **Providing advice.** The Monitoring Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety, probity and budget and policy framework issues to all Councillors.
- (i) **Restrictions on posts.** The Monitoring Officer cannot be the Chief Finance Officer or the Head of Paid Service.