

## **CABINET**

**4 APRIL 2017**

### **SHARED LEGAL SERVICE WITH GRAVESHAM BOROUGH COUNCIL – DESIGNATION OF GRAVESHAM'S MONITORING OFFICER**

Portfolio Holder: Councillor Adrian Gulvin, Resources  
Report from: Perry Holmes, Chief Legal Officer  
Author: Jan Guyler, Head of Legal Services

#### **Summary**

This report seeks authority from the Cabinet to make an agreement with Gravesham Borough Council to place Medway Council's Chief Legal Officer (CLO) at the disposal of Gravesham Borough Council. Medway Council has already agreed to enter into a shared service arrangement for Legal Services with Gravesham Borough Council. This is the final formality to enable Medway Council's Chief Legal Officer to assume the role of Monitoring Officer at Gravesham Borough Council.

#### **1. Budget and Policy Framework**

- 1.1 The Council's Constitution provides that the agreement to place any of its officers at the disposal of another local authority can be agreed by Cabinet (Chapter 3, Part 1 – Responsibility for local choice functions, function 16).

#### **2. Background**

- 2.1 On 9 January 2017 Gravesham Borough Council's Cabinet agreed that delegated authority be given to Medway Council to provide the Legal Services function on behalf of Gravesham Borough Council, through a shared service arrangement.
- 2.2 This delegation was accepted by Medway's full Council on 26 January 2017. The Shared Legal Service will take effect from 1 April 2017 when five members of staff will be transferred to the employment of Medway Council under TUPE. Prior to being considered by full council the proposals for a shared legal service were also considered by the

Business Support Overview and Scrutiny Committee on 5 January 2016 and Cabinet on 17 January 2017.

- 2.3 Section 5 of the Local Government and Housing Act 1989 requires that all local authorities must designate an officer to carry out the statutory role of Monitoring Officer. The primary role of the Monitoring Officer is to ensure that, at all times, the council and its Members and Officers act in a lawful manner.
- 2.4 To facilitate the smooth introduction of the Shared Legal Service, Gravesham Borough Council's Full Council on 21 February 2017 agreed the following:
- the existing Chief Legal Officer and Monitoring Officer for Medway Council, Mr Perry Holmes, is formally designated as the Monitoring Officer for Gravesham Borough Council to take effect from the date on which the necessary formalities are completed by Medway Council which will be by no later than 28 April 2017, and;
  - in the interim Mr Nick Brown be designated as the Monitoring Officer for Gravesham Borough Council until such time as Medway has completed the necessary formalities; such interim arrangement to expire no later than 28 April 2017.
- 2.5 In order for Medway Council's Chief Legal Officer to be treated as an officer of Gravesham Council for the purpose of designation as their Monitoring Officer it is necessary for the Cabinet to authorise the making of an agreement to place its Chief Legal Officer, Perry Holmes, at the disposal of Gravesham Borough Council under s113 of the Local Government Act 1972. This completes the formalities required for implementation of Gravesham Borough Council's decision to designate Medway Council's Chief Legal Officer as its Monitoring Officer.

### 3. Options

- 3.1 **Option 1: Do Nothing.** This would require Gravesham Borough Council to designate the Monitoring Officer role to another individual. Medway Council's Chief Legal Officer and Monitoring Officer has delegated authority to deliver and manage the shared legal services team and is therefore ideally placed to take on the role of Monitoring Officer for Gravesham Borough Council.
- 3.2 **Option 2: Agree to placing Medway Council's CLO at GBC disposal.** This would provide symmetry across the two local authorities given the delegated authority to Medway Council's Chief Legal Officer and Monitoring Officer to manage and deliver the shared legal service.

### 4. Advice and analysis

- 4.1 The Cabinet agreed on 17 January 2017 to delegate authority to the Chief Legal Officer of Medway Council to assume responsibility for the management and delivery of legal services for Gravesham Borough

Council jointly with the services provided for Medway Council and for this to be reflected in the Council's Scheme of Delegation.

- 4.2 The designation of Medway Council's Chief Legal Officer and Monitoring Officer as the Monitoring Officer for Gravesham Borough Council is envisaged in the shared services agreement as approved by Cabinet and reported to full Council and will ensure the smooth introduction and operation of the shared Legal Services and symmetry between the two local authorities.

## 5. Risk management

Risk	Description	Action to avoid or mitigate risk
Either Gravesham Borough Council chooses to end the designation or Medway Council chooses to withdraw from the agreement to place Medway Council's Chief Legal Officer at the disposal of Gravesham Borough Council.	The existing Chief Legal Officer and Monitoring Officer for Medway Council, Mr Perry Holmes, is formally designated as the Monitoring Officer for Gravesham Borough Council subject to completion of the formalities by Medway. Either party may choose to withdraw from the arrangement leaving Medway with a shortfall in its budget of £10,000 and Gravesham with no Monitoring Officer.	Regular reviews of the designation and scope of work involved will take place between the two authorities. A Deputy Monitoring Officer is appointed to maintain business continuity during the shared Legal Service.

## 6. Consultation

- 6.1 There has been full consultation with the Chief Legal Officer and affected staff about the shared service arrangements and the designation of Gravesham Borough Council's Monitoring Officer.

## 7. Financial Implications

- 7.1 Agreement has been reached that will see Gravesham Borough Council make an annual payment of £10,000 to Medway Council for the provision of Monitoring Officer services, with effect from 2017-2018.

## 8. Legal Implications

- 8.1 Section 5 of Local Government and Housing Act 1989 requires local authorities to designate "one of their officers" as the Monitoring Officer. The role of Monitoring Officer cannot be delegated from one local authority to another.
- 8.2 Section 113 of the Local Government Act 1972 allows a local authority to place any of its officers, who consent to the arrangement, at the disposal of another local authority on such terms as may be agreed

between the parties, who are then treated as officers of the other relevant local authority.

- 8.3 Schedule 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 lists the functions that may be (but need not be) the responsibility of the executive of the authority. Schedule 2, paragraph 20 refers to the making of agreements with other local authorities for the placing of staff at the disposal of those other local authorities.
- 8.4 The Council's Constitution provides that the function of making agreements with other local authorities for the placing of staff at the disposal of those other authorities shall be the responsibility of the Leader and Cabinet. (Chapter 3, Part 1 – Responsibility for local choice functions, function 16).

## **9. Recommendation**

- 9.1 The Cabinet is asked to authorise the making of an agreement with Gravesham Borough Council to place Medway Council's Chief Legal Officer at the disposal of Gravesham Borough Council for the purpose of his designation as that authority's Monitoring Officer.

## **10. Suggested reasons for decision**

- 10.1 To complete the formalities required for implementation of Gravesham Borough Council's decision to designate Medway Council's Chief Legal Officer as its Monitoring Officer.

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### **Appendices**

None

### **Background Papers**

None