

CABINET

30 MARCH 2021

MONITORING OFFICER SERVICE TO BE PROVIDED TO KENT AND MEDWAY FIRE AND RESCUE AUTHORITY

Portfolio Holder: Councillor Adrian Gulvin, Portfolio Holder for Resources
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Summary

This report seeks authority from the Cabinet to make an agreement with the Kent and Medway Fire and Rescue Authority (KMFRA) to place Medway Council's Chief Legal Officer (CLO) at the disposal of KMFRA to assume the role of Monitoring Officer (MO) at KMFRA.

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).
- 1.2. The agreement is due to commence on 1 April 2021 for a period of 4 years.
- 1.3. In line with rule 15.11 of Chapter 4, Part 5 of the Constitution, call-in can be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the Public's interests. On this occasion it is proposed that the call-in period be waived as the agreement is due to come into effect on 1 April 2021. The Chairman of the Business Support Overview and Scrutiny Committee has agreed that the decisions proposed are reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in.

2. Background

- 2.1. The KMFRA, like all other local authorities is required by the Local Government and Housing Act 1989 to appoint a Monitoring Officer, whose statutory duty is to report to the Authority on any proposed actions which may contravene the law or constitute maladministration and to ensure the authority, its officers and elected Members maintain the highest standards of

conduct. The duties are captured in a Service Level Agreement between the two authorities.

- 2.2. The current Monitoring Officer arrangement ends on 31 March 2021. The contract price negotiated is £7,000 per annum. The Chief Legal Officer and MO is satisfied that this contract price is reasonable to cover the MO duties captured in the Service Level Agreement (SLA) and considers that this work is manageable in addition to the existing workload. The KMFRA are aware that there will be a change in personnel in the CLO/MO role due to the current CLO/MO moving to a new post and are content to proceed to work with the newly appointed CLO/MO and the Deputy MO in the interim.
- 2.3. The appointment of Medway Council's Monitoring Officer with effect from 1 April 2021 was approved by KMFRA members on 23 February 2021. A copy of the report to KMFRA is attached as Appendix 1.
- 2.4. In order for Medway Council's Chief Legal Officer to be appointed as KMFRA's Monitoring Officer it is necessary for the Cabinet to authorise the making of an agreement to place its Chief Legal Officer at the disposal of KMFRA under S113 of the Local Government Act 1972. This completes the formalities required to enable implementation of KMFRA'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 KMFRA to designate the Monitoring Officer role to another individual. Medway Council's Chief Legal Officer and Monitoring Officer has experience of providing MO services to another local authority and is therefore ideally placed to take on the role of Monitoring Officer for KMFRA.
- 3.2. **Option 2:** Agree to placing Medway Council's CLO at KMFRA's disposal which will bring in an income to the Council of £7,000 per annum.

4. Advice and analysis

- 4.1. The Monitoring Officer and Deputy Monitoring Officer have experience of providing an MO service to other another local authority (Gravesham) since 2017 as part of a Shared Legal Service. The duties to be undertaken on behalf of KMFRA are set out in a Service Level Agreement. They are considered not to be onerous and the contract price agreed fairly reflects the level of work.

5. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Either KMFRA 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 KMFRA.	The Chief Legal Officer and Monitoring Officer for Medway Council is formally designated as the Monitoring Officer for KMFRA 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 £7,000 and KMFRA 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 term of the agreement.	E3

6. Consultation

- 6.1. There has been full consultation with the Chief Legal Officer and Deputy Monitoring Officer about the appointment of Medway Council's Monitoring Officer as KMFRA Monitoring Officer.

7. Climate change implications

- 7.1. There are no climate change implications arising from this arrangement.

8. Financial implications

- 8.1. Agreement has been reached that will see KMFRA make an annual payment of £7,000 to Medway Council for the provision of Monitoring Officer services, with effect from 1 April 2021 for a 4 year term. This represents new income in addition to the budget for 2021/22 agreed on 18 February 2021.

9. Legal implications

- 9.1. Section 5 of Local Government and Housing Act 1989 requires local authorities to designate "one of their officers" as the Monitoring Officer.
- 9.2. 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 their relevant local authority.
- 9.3. 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.

- 9.4. 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).

10. Recommendations

- 10.1. The Cabinet is asked to authorise the making of an agreement with Kent and Medway Fire and Rescue Authority (KMFRA) to place Medway Council's Chief Legal Officer at the disposal of KMFRA for the purpose of his designation as that authority's Monitoring Officer.
- 10.2. The Cabinet is asked to agree that recommendation 10.1 is considered urgent and therefore should not be subject to call-in.

11. Suggested reasons for decisions

- 11.1. To enable KMFRA to fulfil their statutory requirement to appoint a Monitoring Officer and to provide an income to Medway Council.
- 11.2. The agreement is due to come into effect on 1 April 2021.

Lead officer contact

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Appendices

Appendix 1 - Copy of KMFRA's report seeking approval to appoint the MO.

Background papers

None.