

**Cheltenham Borough Council**  
**Standards Committee 11 September 2009**  
**(For information)**  
**Council 29<sup>th</sup> June 2009**

**Report on role of Borough Solicitor and Monitoring Officer**  
**Report of the Chief Executive (Head of Paid Service)**

**1. Executive Summary and recommendation**

**1.1 The issue**

- 1.1.1** To consider findings and agree recommendations from the Staff and Support Services panel meeting on 11<sup>th</sup> June 2009, including recommending to Council the designation of the Monitoring Officer.

**1.2 Summary**

- 1.2.1** On 13th May 2009 Staff and Support Services Committee considered interim arrangements for the role of Borough Solicitor and Monitoring Officer in light of the prospect of sharing the role. A joint role with Tewkesbury (or elements of it) has emerged as a viable opportunity, along with the potential for a shared legal service.

**1.3 I therefore recommend that:**

- 1.3.1 Council be recommended to designate Sara Freckleton as Cheltenham Borough Council's Monitoring Officer for the purposes of s5(1) of the Local Government and Housing Act 1989 with effect from 1<sup>st</sup> July 2009.**

**1.4 Summary of implications:**

**1.4.1 Financial**

*Not for publication by virtue of paragraph 3 Part 1  
Schedule 12A Local Government Act 1972 and  
If discussed during the meeting will be in closed session*

## 1.4.2 Legal

S.5(1) of the Local Government and Housing Act 1989 obliges each local authority to designate one of its Officers as the Monitoring Officer and that officer is then charged with certain statutory responsibilities in respect of the authority. The officer designated as the Monitoring Officer has the benefit of additional statutory protection regarding their continued designation and employment.

Section 113 of the Local Government Act 1972 allows an authority to second an officer to another authority for the purpose of carrying out that authority's functions. In this case, upon secondment, Sara Freckleton will become an officer of Cheltenham Borough Council for the purposes of s5(1) of the 1989 Act.

An appropriate agreement will need to be prepared and completed between Cheltenham Borough Council and Tewkesbury Borough Council to give effect to the shared role.

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## 1.4.3 Human Resources

The HR implications regarding the joint role are as contained in the body of this report. There will be HR implications as a result of decisions around the employment options that will need to be explored further in the detailed business case for a shared legal service e.g. TUPE.

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## 2. Background

- 2.1** S.5(1) Local Government and Housing Act 1989 requires every council to designate one of its officers as the Monitoring officer and S.5(3) charges that officer with certain statutory powers and responsibilities which they must exercise in relation to the council. Council agreed on 13th February 2009 to continue the temporary arrangements for the role, up to the end of September 2009 so that opportunities for collaboration between councils in relation to legal services could be further investigated (following the Joint Improvement Board decision and recommendation for legal shared services, December 2008).
- 2.2** Opportunities to share the Borough Solicitor and Monitoring Officer role (or an element of it) were discussed with Tewkesbury Borough Council, and Gloucester City Council. Gloucester City Council considered that a shared role presented an interesting prospect however did not subsequently seek to take the matter forward. Tewkesbury Borough Council is very interested, as are we, in progressing a joint

## Borough Solicitor and Monitoring Officer and arrangements for a shared legal service

- 2.3** Tewkesbury Borough Council is currently undergoing a management restructure, and consultation has now concluded. The restructure proposals are due to be agreed at a special Council meeting on 17<sup>th</sup> June 2009. Tewkesbury Borough Council are prepared to re-visit their current proposed structure in light of proposals for a joint role and a shared legal service - the report to their full Council on 17<sup>th</sup> June, for example, would include a recommendation regarding secondment to a shared role.
- 2.4** Both Councils are aligned behind the aim to set in place shared arrangements for Borough Solicitor and Monitoring Officer, by 1<sup>st</sup> October 2009 (or sooner if practicable), with a view to having a shared legal service across the two Councils in place by 1<sup>st</sup> October 2009. At the Staff and Support Services on 13<sup>th</sup> May 2009, it was agreed that a panel be set up to explore the practical implications of role sharing (Borough Solicitor and Monitoring Officer) and assess the suitability of the potential incumbent to a shared role. The panel met on 11<sup>th</sup> June 2009 to carry out this dual role. Its findings and recommendations are summarised in Appendix A.
- 2.5** Staff and Support Services agreed that a secondment arrangement be set in place between Cheltenham Borough Council and Tewkesbury Borough Council, and that Tewkesbury's current Borough Solicitor be seconded into the role effective from 1<sup>st</sup> July 2009. This would help expedite the shared service arrangement, and assist with the transition pending establishing a shared legal service. The secondment arrangement would involve the secondee working two days per week in the role and the Council's current substantive Head of Legal Services deputising as Borough Solicitor for three days per week until 1<sup>st</sup> October (or other such date as agreed).
- 2.6** The designation of the Borough Solicitor as Monitoring Officer requires a specific resolution of full Council. It is recommended that Council designate Sara Freckleton as Cheltenham Borough Council's Monitoring Officer as from 1<sup>st</sup> July 2009. If approval is given, the current temporary designation (due to end on 30 September 2009), would automatically cease. This designation date would allow this key role to be shared early on, for the reasons cited in 2.5.
- 2.7** The Monitoring Officer is a full personal designation, but is not in itself a full time role. There will be a period of transition during which the Deputy Monitoring Officer, once designated by the Monitoring Officer may need to deputise more frequently during transition. The current thinking is that this would be the Head of Legal Services)
- 2.8** Under the secondment arrangement, it is intended that the Borough Solicitor and Monitoring Officer remain an employee of Tewkesbury Borough Council (to simplify the transition to the joint role and shared service) for employment purposes (i.e. subject to Tewkesbury employment terms and conditions).
- 2.9** The secondment arrangement with Tewkesbury Borough Council will govern how the shared role will operate, and will be subject to a three month notice period on either side. Clarity over role expectations has been provided through a role description and person specification based on the Council's current Borough Solicitor and Monitoring Officer role. The secondment agreement will set out clearly how the management arrangements and issues such as ongoing performance management will operate (of particular importance regarding the statutory protections that attach to a Monitoring Officer role), and service continuity in the event that arrangement is not be workable from either side.

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<b>Background Papers</b>	Report to Staff and Support Services Committee (13 <sup>th</sup> May 2009)  Report to Council (13 <sup>th</sup> February 2009)  Report to Staff and Support Services Committee (2 <sup>nd</sup> February 2009)  Verbal report to full Council (8 <sup>th</sup> February 2008)  Staff and Support Services Committee Report (28 <sup>th</sup> January 2008)
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<b>Accountability</b>	Staff and Support Services Committee
<b>Scrutiny Function</b>	EBI

**STAFF AND SUPPORT SERVICES PANEL MEETING REGARDING THE SHARED BOROUGH SOLICITOR AND MONITORING OFFICER**

**4.30pm 11<sup>th</sup> June 2009, Sherbourne Room, Municipal Offices**

Panel Members attending: Cllr C Hay (agreed as Chair of Panel); Cllr R Garnham; Cllr S Hutton; Cllr S Jordan. Apologies: Cllr L Godwin

Also attending: Andrew North (Chief Executive), Pat Pratley (Strategic Director Corporate Services), Peter Cruden (Interim Head of Legal Services), Amanda Attfield (Assistant Director HR & OD)

1. Colin Hay agreed to Chair the Panel.
2. The Panel was set up (as agreed by the Staff and Support Services Committee on 13<sup>th</sup> May 2009), to consider the practicalities of sharing a Borough Solicitor and Monitoring Officer, and to interview the potential incumbent so that there could be confidence that the capabilities and experience were there to carry out a shared role – from both technical and leadership perspectives – and that the practicalities could be addressed.
3. The Panel were briefed on the background to the proposed shared role.
4. The candidate gave a presentation, followed by questions and answers. The panel then interviewed the candidate.
5. Certain practicalities around a shared role were discussed as follows:
  - There was a clear commitment from both Cheltenham and Tewkesbury regarding the possibility of a shared legal service and shared Borough Solicitor and Monitoring Officer. This commitment will be needed on a continuing basis.
  - Both sides want to progress as quickly as possible, aiming to agree the basis of the arrangement at respective Councils - 17<sup>th</sup> June (TBC), 29<sup>th</sup> June (CBC), aiming for the shared legal service to be in place by 1<sup>st</sup> October 2009; the shared Borough Solicitor and Monitoring Officer could be in place sooner - 1<sup>st</sup> July 2009.
  - The Monitoring Officer element of the role could be separated out from the wider shared service arrangement should that be necessary i.e. any change in the designation need not impact the wider shared legal service arrangements. In practice, however, this would be difficult to achieve and the clear preference is for the designation to be as currently arranged i.e. with the Borough Solicitor role. In all practical terms, if the incumbent was deemed satisfactory from a Borough Solicitor perspective, there would be no reason not to recommend designation as Monitoring Officer.
  - A 3 month notice period from either side would be in place, and the secondment agreement would make clear the necessary management and performance management arrangements, and how these might operate jointly (appraisal for example). This would help mitigate risk on both sides i.e. from a service continuity perspective.

- There would be a transition period until the shared legal service takes effect, during which there will be time to assess the shared role working in practice, as such a decision on the shared role at this stage presented little risk to the Council.
  - Contact and communication arrangements would need to be in place, including clarity about attendance at member meetings and management meetings, and with the Standards Committee.
  - A thorough understanding of the constitution would be needed, although it was accepted that in many respects there were many commonalities and the governing legislation was the same.
  - A Deputy Monitoring Officer would need to be nominated.
  - Clarity about the level of support for the role within legal services teams would be needed.
  - Confidentiality issues would need to be assured for both councils, and conflict of interest issues addressed, for example a protocol would need to be in place to govern this – whilst rare, this would ensure clarity in case of any emerging issues.
6. The panel unanimously agreed to propose to the Staff and Support Services Committee on 15<sup>th</sup> June 2009, that the secondment arrangement be set in place as proposed with the incumbent being seconded into the role, and that a recommendation be made to Council on 29<sup>th</sup> June 2009 that Sara Freckleton be designated as Cheltenham Borough Council's Monitoring Officer - effective from 1<sup>st</sup> July 2009.
7. The Panel Meeting closed at 18.20pm