

REPORT REFERENCE NO.	DSFRA/23/19
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY
DATE OF MEETING	25 SEPTEMBER 2023
SUBJECT OF REPORT	APPOINTMENT OF MONITORING OFFICER AND CLERK TO THE AUTHORITY
LEAD OFFICER	Chief Fire Officer
RECOMMENDATIONS	<p>(a) <i>That the Authority determines the appointment of a relevant officer to serve as its Monitoring Officer from 25 September 2023;</i></p> <p>(b) <i>That the Authority determines the appointment of a Clerk to the Authority with effect from 25 September 2023;</i></p> <p>(c) <i>That the Clerk be authorised to make any consequential changes to Authority Constitutional Governance Framework documents (Standing Orders, Scheme of Delegations etc.) as may be necessitated by the decision of the Authority in relation to the discharge of the roles of Monitoring Officer and Clerk.</i></p>
EXECUTIVE SUMMARY	The current Monitoring Officer and Clerk to the Authority has advised that she has left the employment of Plymouth City Council and thus, the Authority is asked to determine a replacement.
RESOURCE IMPLICATIONS	The cost of an external Monitoring Officer arrangement can be contained within existing budget provision.
EQUALITY RISKS AND BENEFITS ANALYSIS	None identified.
APPENDICES	<p>A. Statutory Duties of Monitoring Officer and Authority</p> <p>B. Extract from Authority Scheme of Delegations – Section 6 (Matters Delegated to the Monitoring Officer)</p> <p>C. Extract from Authority Scheme of Delegations – Section 5 (Matters Delegated to the Clerk)</p>
BACKGROUND PAPERS	Local Government & Housing Act 1989 (Section 5)

1. INTRODUCTION

- 1.1. The Devon & Somerset Fire & Rescue Authority is a “relevant authority” for the purposes of Section 5 of the Local Government & Housing Act 1989 (the Act). This requires the Authority to designate one of its officers as Monitoring Officer.
- 1.2. This designation must be undertaken by the full Authority – it is not a matter that can be delegated.
- 1.3. The roles of Monitoring Officer and Clerk were being discharged externally by the Head of Legal Services at Plymouth City Council in accordance with the decision taken by the Authority at its meeting on 19 April 2023 (Minute DSFR/22/37 refers).
- 1.4. The Monitoring Officer and Clerk to the Authority, Emma Jackman, secured a new post and left the employment of Plymouth City Council on 31 July 2023. Her appointment, however, continued with the Authority via a temporary arrangement with her new local government employer. This arrangement ends at the end of this sitting of the Authority (i.e. 25 September 2023).
- 1.5. While the formal role of Monitoring Officer and Clerk to the Authority is held by Emma Jackman, in practice, it has been largely delivered by the current Deputy Monitoring Officer, Samantha Sharman (Democratic Services Manager) with Emma’s oversight. Additionally, this has seen Samantha attend formal meetings of the Service’s Extended Leadership Team and play an active role in the decision-making processes, ensuring the interests of the Authority are represented.
- 1.6. The appointment of Monitoring Officer and Clerk to the Authority is for a named officer (in accordance with Section 5 (as amended) of the Local Government & Housing Act 1989) – paragraph 2.1 (1) (a) refers - and thus, the role of Monitoring Officer and Clerk needs to be filled to provide ongoing assurance and probity to the Authority.

2. LEGISLATION REQUIREMENT AND DUTIES OF MONITORING OFFICER

- 2.1. Section 5 (as amended) of the Local Government & Housing Act 1989 (the Act) provides:
 - (1) It shall be the duty of every relevant authority—
 - (a) to designate one of their officers (to be known as “the monitoring officer”) as the officer responsible for performing the duties imposed by this section ; and
 - (b) to provide that officer with such staff, accommodation and other resources as are, in his opinion, sufficient to allow those duties to be performed.

- 2.2. Additionally, by virtue of Section 5(1), the officer so designated as the Monitoring Officer cannot be the chief finance officer. For combined fire and rescue authorities such as this Authority, the Head of Paid Service could be designated as the Monitoring Officer but this would not be best practice and would not be recommended as – for probity purposes – it is best to retain a clear separation between the roles of what is commonly referred to as the “Golden Triangle” of Statutory officers i.e.
- the Head of Paid Service (for this Authority, this role is discharged by the Chief Fire Officer;
 - the Monitoring Officer; and
 - the Chief Financial Officer (for this Authority, this role is discharged by the Director of Finance and Corporate Services).
- 2.3. Sections 5(2) and 5(5) of the Act specify, respectively, the duties of both the Monitoring Officer and the Authority (in the event that the Monitoring Officer exercises their duties). These duties are set out in Appendix A to this report.
- 2.4. Unlike the Chief Financial Officer, there is no legislative requirement for the Monitoring Officer to hold a relevant qualification (e.g. solicitor) but clearly a good working knowledge of applicable legislation (e.g. Local Government Act 1972; Local Government & Housing Act 1989; Localism Act 2011) would be advantageous.
- 2.5. Finally, Section 5(7) allows the Monitoring Officer to nominate a deputy, who may only discharge the Monitoring Officer duties in the event of the Monitoring Officer being unable to act owing to absence or illness.

3. AUTHORITY MATTERS DELEGATED TO MONITORING OFFICER

- 3.1. While Section 5(2) sets out the legislative function of the Monitoring Officer, in practice the Monitoring Officer has also exercised a number of other functions, as delegated by the Authority and which are commensurate with the role of Monitoring Officer. These functions are currently contained in the Section 6 of Authority’s approved Scheme of Delegations and attached at Appendix B to this report, for ease of reference.
- 3.2. Each of these functions could, though, be exercised by another officer of the Authority as appropriate.

4. CLERK TO THE AUTHORITY

- 4.1. “Clerk” is a term more usually associated with both Town and Parish Councils, where the individual concerned exercises a number of functions that in essence relate to meeting administration together being the responsible financial officer and ensuring the council runs its business lawfully.

- 4.2. In relation to this Authority, the role of “Clerk” is more concerned with ensuring effective meeting administration (despatch of agendas etc.). There are a number of functions currently delegated by the Authority to the Clerk. These are set out in Section 5 of the approved Scheme of Delegations and attached at Appendix C to this report, for ease of reference.
- 4.3. At present, the role of Clerk is currently discharged by the Director of Governance & Digital Services.
- 4.4. Each of the functions identified at Appendix C could, though, be exercised by another officer of the Authority as appropriate.

5. OPTIONS FOR MONITORING OFFICER AND CLERK MOVING FORWARDS

- 5.1. There are options proposed to the Authority in filling this role which include:
- Appointing an alternative officer at Plymouth City Council (such as the interim Head of Legal Services); and
 - Revisiting the option to appoint Devon County Council (or another constituent authority); and
 - Appointing an in-house officer.
- 5.2. If an external authority (other than Plymouth City Council) is to be appointed, it is recommended that the Authority considers re-tendering for the role of Monitoring Officer for the twelve months period up to September 2024. Somerset Council was not in a position to tender for this role earlier in the year due to constraints with setting up the new Unitary Authority but may be in a position to do so now.

6. OPTIONS APPRAISAL

Option 1 – retain the services of Plymouth City Council and appoint a new, named Monitoring Officer

- 6.1. The appointment of an external Monitoring Officer has achieved cost savings to the Authority since the previous postholder (Director of Governance & Digital Services) retired and the post was removed from the Executive Board structure.
- 6.2. The ongoing cost of the external appointment of a Monitoring Officer within Plymouth City Council is £0.025m per annum and continuing this arrangement would see Alison Critchfield (interim Head of Legal Services) appointed as Monitoring Officer and Clerk to the Authority.
- 6.3. The advantages of having an external Monitoring Officer are:
- Support from a larger organisation with legal resources at hand;
 - Cost savings estimated to be in the region of c.£25k.

- 6.4. The disadvantages of having an externally appointed Monitoring Officer are:
- Ability to access advice at short notice is limited due to the workloads of the postholder;
 - Attendance at Authority and Committee meetings is limited to the agreed number with additional cost implications should any protracted issue arise;
 - Day to day contact and relationship with the Executive Board has been limited thus the knowledge of Service activities and thinking is restricted. The Monitoring Officer has not been in a position to attend Executive Board meetings due to capacity issues; and
 - Depending on the geographic location of the postholder, distance for attendance at Authority meetings may also be a factor.

Option 2 – consider approaching Devon County Council

- 6.5. The second option considered previously was to make an external appointment with Devon County Council who expressed an interest in taking on this responsibility. This option was previously discounted on the basis that it was substantially more expensive than that of the offer from Plymouth City Council. There remains the option to explore this again but, given the Authority's budgetary constraints in 2024-25, the cost of this provision will need to be considered. This arrangement is likely to bring many of the advantages and disadvantages outlined in paragraphs 6.3 and 6.4., however.
- 6.6. Should this option be determined as the preferred way forward, the Deputy Monitoring Officer would temporarily take on the role of Monitoring Officer and Clerk to the Authority until such time as a named individual within Devon County Council along with the terms of their engagement could be recommended to the Authority for approval.

Option 3 – internal appointment with External Contingent Support

- 6.7. The Democratic Services Manager, namely Samantha Sharman, has been deputising for the current Monitoring Officer since mid-April 2023 so a third option for consideration is to make the appointment of Monitoring Officer and Clerk to the Authority part of this role.
- 6.8. The advantages of having an internally appointed Monitoring Officer and Clerk to the Authority are:
- This would give the Authority and Service direct support on a day-to-day basis from a member of staff with extensive knowledge of the statutory framework in which the Fire & Rescue Authority operates together with the Service's governance arrangements;
 - There would be a cost reduction (c.£20k per annum) on the basis that the Democratic Services Officer role would be removed, and the current role of Democratic Services Manager expanded to encompass the Statutory role of Monitoring Officer and Clerk to the Authority. This additional responsibility would likely see this role attract remuneration equivalent to that of a Grade 11 on the NJC scale but would be formally confirmed through job evaluation;

- Building on the existing relationships with our constituent Authorities and Cornwall Council, we would look to formalise an arrangement which would allow the Monitoring Officer to obtain specialist legal advice as needed. Contingency arrangements in respect to the Deputy Monitoring Officer role are already in place via a zero-hour contract with the previous Democratic Services Manager; and
- The Authority and Executive Board has formed a relationship with the postholder so there is confidence that this is a viable option.

6.9. A potential disadvantage of an internal appointment at this level would be:

- resilience issues with annual leave, sickness etc., however, as outlined above, there are existing contingency arrangements in place through the previous post holder who is retained by the Service for this purpose.

6.10. There is no requirement for the Monitoring Officer to be legally qualified (indeed the previous postholder was not legally qualified) and there is already access in place for legal advice to be sought from either Plymouth City Council or Cornwall County Council as required under a Service Level Agreement. That said, the present incumbent has expressed interest (to which we would fully support) in developing their specialist knowledge further in this area and would look to undertake further development plan as appropriate.

7. CONCLUSION

7.1. All three options outlined above would provide a credible way forward for the provision of a Monitoring Officer and Clerk to the Authority. It is, however, the view of the three Statutory Officers (Treasurer, Monitoring Officer/ Clerk to the Authority and Chief Fire Officer), that an internal appointment would, on balance, be in the best interest of the Authority.

7.2. Once the Authority has determined this matter, the contractual basis for this arrangement will be drawn up in accordance with the information provided in this report. The appointment to these role is with effect from 25 September 2023.

GAVIN ELLIS
Chief Fire Officer

APPENDIX A TO REPORT DSFRA/23/19

Duties of Monitoring Officer (Section 5, Local Government & Housing Act 1989)

- (2) It shall be the duty of a relevant authority's monitoring officer, if it at any time appears to him that any proposal, decision or omission by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any joint committee on which the authority are represented constitutes, has given rise to or is likely to or would give rise to—
- (a) a contravention by the authority, by any committee, or sub-committee of the authority, by any person holding any office or employment under the authority or by any such joint committee, of any enactment or rule of law or of any code of practice made or approved by or under any enactment; or
 - (b) any such maladministration or failure as is mentioned in Part 3 of the Local Government Act 1974 (Local Commissioners)
- to prepare a report to the authority with respect to that proposal, decision or omission.
- (3) It shall be the duty of a relevant authority's Monitoring Officer...in preparing a report under this section to consult so far as practicable with...the person who is for the time being designated as the head of the authority's paid service and with their chief finance officer.

Duties of the Authority (Section 5(5), Local Government & Housing Act 1989)

It shall be the duty of a relevant authority—

- (a) to consider any report under this section by a monitoring officer or his deputy...in the case of a fire and rescue authority created by an order under section 4A of the Fire and Rescue Services Act 2004, no later than...twenty one days after copies of the report are first sent to members of the authority; and
- (b) without prejudice to any duty imposed by virtue of section 115 of the Local Government Finance Act 1988 (duties in respect of conduct involving contraventions of financial obligations) or otherwise, to ensure that no step is taken for giving effect to any proposal or decision to which such a report relates at any time while the implementation of the proposal or decision is suspended in consequence of the report;

and nothing in section 101 of the Local Government Act 1972 (delegation) shall apply to the duty imposed by virtue of paragraph (a) above.

APPENDIX B TO REPORT DSFRA/23/19

6. MATTERS DELEGATED TO THE MONITORING OFFICER

- 6.1. To maintain a Register of Interests for Members and Co-opted Members in accordance with Section 29 of the Localism Act 2011 and to ensure that:
 - (a). the Register is available for public inspection at all reasonable hours; and
 - (b). the Register is published on the Authority's website.
- 6.2. In accordance with Section 33(2)(a) of the Localism Act 2011, to grant a dispensation from the restriction either not to participate in discussion of, or participate in discussion of and vote on, any matter in which a Member or Co-opted Member has a disclosable pecuniary interest only in instances where, without the dispensation, the number of persons prohibited from participating in any particular business would be so great a proportion of the relevant body as to impede transaction of the business.
- 6.3. In relation to the Members Code of Conduct adopted in accordance with Section 27(2) of the Localism Act 2011, to:
 - (a). receive any allegations of breaches of the Code and determine, in consultation with the "independent person" whether or not any such allegation should be investigated; and
 - (b). to arrange for the undertaking of any investigations as required and report as required on the outcomes of such investigations to the Standards Committee or Hearing Panel thereof.
- 6.4. To maintain a register of interests in contracts declared by Officers of the Devon and Somerset Fire and Rescue Authority in accordance with Section 117 of the Local Government Act 1972;
- 6.5. "Proper Officer" for the purposes of Part VA (sections 100A to 100K)(as inserted by the Local Government (Access to Information) Act, 1985) of the Local Government Act 1972, specifically as the officer who:
 - (a). shall determine whether to exclude reports from agendas and connected reports of meetings of the Authority (or its committees or sub-committees) made available to public inspection on the grounds that the excluded report may, in his opinion, be considered by the meeting in the absence of the public;
 - (b). shall make a written summary (without disclosing exempt information) of the proceedings of any part of any meeting during which the public were excluded where the minute(s) of those proceedings does not provide the public with a reasonably fair and coherent record of the proceedings; and
 - (c). shall compile, and determine the contents of, lists of background papers used in the drafting of reports which are open to inspection by the public.

- 6.6. In accordance with Standing Orders, to institute, defend or settle legal proceedings (either in the name of the Authority or an individual officer of the Authority) at common law or under any enactment, statutory instruments order or bye law conferring functions upon the Authority (or in respect of functions undertaken by it) and to lodge an appeal in respect of any such proceedings. For the avoidance of doubt, this delegation shall extend to the taking of all procedural steps including service of notices - statutory or otherwise - counter-notices, the Laying of Informations and to any proceedings which the Monitoring Officer considers expedient to take for the protection of the interests of the inhabitants of the Authority's area. (NOTE: this function may also be exercised by the Chief Fire Officer).
- 6.7. In accordance with Standing Orders, to sign on behalf of the Authority any document necessary to any legal procedure or proceedings unless:
 - (a). another person is required by law (e.g. Act of Parliament) to sign such a document; or
 - (b). the Authority has specifically authorised another officer to sign the document in question.
- 6.8. To receive, return (if appropriate) and open tenders in accordance with Contract Standing Orders.
- 6.9. Following consultation with the Authority Chair, to suspend the Chief Fire Officer immediately in an emergency or if an exceptional situation arises whereby allegations of misconduct by the Chief Fire Officer are such that their continued presence at work poses a serious risk to the health and safety of others or to the resources, information or reputation of the Authority.

APPENDIX C TO REPORT DSFRA/23/19

5. MATTERS DELEGATED TO THE CLERK

- 5.1. In accordance with the Devon & Somerset Fire & Rescue Authority (Combination Scheme) Order 2006 (as amended), to calculate annually the apportionment of places on the Authority to constituent authorities, using the most up-to-date local government electoral roll statistics available on the Office for National Statistics website, and to notify constituent authorities of the outcome of this in sufficient time to enable relevant appointments to be made at their annual meetings.
- 5.2. To receive and/or publish notices in accordance with the provisions of Standing Orders
- 5.3. In accordance with Standing Orders, to call an extraordinary meeting of the Authority if so required.
- 5.4. In accordance with Standing Orders and following consultation with either the Authority or relevant Committee Chair (as the case may be), to establish any Working Party or “task and finish” group as considered conducive and timely to the work of the Authority (NOTE: this delegation may also be exercised by the Chief Fire Officer).
- 5.5. “Proper Officer” for the purposes of Regulations 13 and 14 of the Local Government (Committees and Political Groups) Regulations 1990.
- 5.6. To approve and grant any dispensation to exempt a Member from the requirement in Standing Orders to attend at least one Authority meeting within a six month consecutive period, subject to the dispensation being approved and granted either prior to, or before the end of, the six month consecutive period concerned. For clarity, Authority meeting also includes Committee meetings of the Authority or any joint committee to which a Member has been appointed by the Authority.
- 5.7. In accordance with Standing Orders, to affix (and attest the affixing of) the Seal of the Authority to any relevant document.