

Broads Authority

02 December 2022

Agenda item number 17

Appointment of a Monitoring Officer and provision of legal services

Report by Chief Executive

Purpose

To appoint the Authority's Monitoring Officer and note the continued use of Birketts for legal services.

Recommended decisions

- i) Appoint Jonathan Goolden of Wilkin Chapman LLP as the Authority's Monitoring Officer with effect from 1 January 2023 either:
 - a) for an interim period of 6 months to allow a wider procurement process; or
 - b) on a permanent basis.
- ii) Thank East Suffolk Council for their provision of a Monitoring Officer.
- iii) To note the continuing use of Birketts LLP for the provision of legal services to the Authority under the Kent Commercial Services Framework, from 1 January 2023 to 31 December 2026.

1. Appointment of a Monitoring Officer

- 1.1. The Authority is required¹ to appoint a Monitoring Officer. Since June 2020² East Suffolk Council officers have provided that service. Mrs Slater and Mr Bing, as Head of Legal and Democratic Services and Monitoring Officer at East Suffolk Council, have filled the role of Monitoring Officer for the Broads Authority.
- 1.2. On 27 September 2022, the Chief Executive of East Suffolk Council gave 3 months' notice to terminate the arrangement, due to pressure of other work and the difficulty in filling a senior lawyer vacancy.
- 1.3. There are four options for the appointment of a Monitoring Officer.

¹ Section 5 Local Government and Housing Act 1989

² Broads Authority decision at their meeting on 25 June 2020

(a) Internal Appointment

As the postholder doesn't have to be a solicitor, the Authority could appoint an existing senior member of staff into the role. Given the recent history of Code of Conduct complaints regarding the relationship between Members and officers, such an internal appointment is not deemed appropriate.

(b) Recruit a suitably qualified individual

Some members will recall that in the past the Authority has had its own solicitor and Monitoring Officer from May 2016 to March 2019. It could seek to directly employ a qualified solicitor to act as Monitoring Officer on a full-time/part-time contract. There are two problems with this route. In the current employment environment, it may prove difficult to recruit an appropriate individual and secondly, in the event of them being unavailable the Authority would not have backup.

(c) Contract in from a Local Authority

The potential for a similar relationship with that to East Suffolk has been explored in the last few weeks, but many local authority legal departments are under the same pressures as East Suffolk and are unable to provide such a service. There is also the potential problem of a conflict of interest if an authority in the local area is used.

(d) Contract with a firm of solicitors

Members will recall that the Authority contracted with a firm of solicitors (Birketts LLP) to appoint their Monitoring Officer, from May 2019 to June 2020. However, the Practice Manager at Birketts gave notice to terminate the arrangement because of potential difficulties with their role in providing expert planning advice to the Authority.

East Suffolk Council and the Authority have been using the expert monitoring advice of Jonathan Goolden of Wilkin Chapman LLP, the largest law firm in Lincolnshire and East Yorkshire. Members will recall that he provided advice on conflicts of interest.

Jonathan was a member of the core drafting team for INLOGOV working on the modular constitutions project for English local government and lectures widely on governance and ethical standards issues. Together with his team of experienced former police and local government officers, he has investigated and led a large number of reviews of complex and politically high-profile cases of alleged misconduct in the public sector. His investigation of Boris Johnson's conduct as Mayor of London and Chairman of the then Metropolitan Police Authority in relation to the arrest of Damien Green MP was cited as an example of best practice of a high-pressured investigation by Hull Business School in research for the Standards Board for England.

More recently, he has reviewed the handling of significant whistle-blowing allegations in a mental health NHS trust, child safeguarding and taxi licensing issues at a district council and assisted a London Borough hold its first full council meeting after a major and very high-profile disaster.

He has been recently joined by Estelle Culligan who has worked as head or director of law and Monitoring Officer for various councils. It is considered an advantage in having a solution providing expert advice, spatially a little removed from the immediate area.

- 1.4. Having reviewed these options, the recommendation is that:
 - a) the provision of a Monitoring Officer would be best achieved from an external law firm, and
 - b) Wilkin Chapman LLP represent the best appointment (using the combined expertise of Jonathan Goolden and Estelle Culligan as MO and Deputy MO).
- 1.5. If the Authority supports these conclusions then there are two options for the appointment of Jonathan Goolden of Wilkin Chapman LLP as the Authority's Monitoring Officer.
- 1.6. Firstly, given the importance of having a Monitoring Officer in post from 1 January 2023, the Authority could appoint Jonathan Goolden for the interim period of, say, six months, to give time for obtaining alternative quotations from other legal firms.
- 1.7. Secondly, appoint on a permanent basis, justified by the previous difficulties the Authority has had in appointing a Monitoring Officer, the fact that it is not a full-time role and inviting quotations from other firms "*is not considered reasonably practicable in the Authority's interest so to do*" (Extract 6(h) from Standing Orders for Contracts).
- 1.8. If Mr Goolden's appointment is agreed then it is understood that he would then appoint Estelle Culligan as his deputy.

2. Legal Services

- 2.1. At its meeting on 31 January 2020 the Authority appointed Birketts LLP to provide legal advice using the Crown Commercial Services Agreement (CCSA). This arrangement ends on 31 December 2022. In the intervening period Birketts have provided a timely and high-quality service across a wide range of issues.
- 2.2. At a recent meeting the Authority approved the use of national public sector frameworks for the procurement of services. Birketts has been appointed to Lot 2a of the Crown Commercial Services Framework RM6240 and the KCS (Kent Commercial Services) Framework.
- 2.3. The KCS Framework is broad in scope, covering the following topics:

Business Law and Acquisition
Charity Law
Charity Law
Civil Litigation Law
Commercial Property Law
Construction Law
Data Protection and Freedom of Information
Dispute Resolution and Litigation
Dispute Resolution

Education Law
Employment Law
Energy, Waste and Sustainability
Food, Rural, Environmental, Natural Resources
Health and Safety
Human Resources
Intellectual Property Rights and Licensing
Planning and Highways Law
Procurement and Contract Services
Property and Land Law

- 2.4. Kent Commercial Services has confirmed that it is content for Birketts to issue generic call-off contracts to its clients on the basis of a direct award, so long as our clients can meet the criteria set out below.

DIRECT AWARD

Placing an order with any capable supplier awarded on the framework agreement, without re-opening competition, following the criteria set out below.

Regulation 33(8)(a) of the Public Contracts Regulations 2015 (PCR 2015) sets out the criteria for making a direct award where a framework agreement is concluded with more than one supplier:

- All the terms governing the provision of the works, services and supplies concerned are set out in the framework agreement, and*
- The objective conditions for determining which of the suppliers on the framework agreement shall perform them are set out in the procurement documents.*
- In accordance with the above regulation, direct award orders may be placed under this framework agreement provided the customer can meet any one of the following objective conditions:*
- Customer is satisfied that, following their own due diligence, they can identify the supplier that offers best value for their requirement*
- The supplier is able to supply the required goods/services within the customers timescales*
- The supplier scored the highest mark for price/quality in the framework agreement evaluation*
- Goods/services required are unique/exclusive to one vendor/supplier*
- Continuity of existing goods/services from an awarded supplier*

- 2.5. The Authority meets the criteria for a direct award as the condition of continuity of existing goods/services from an awarded supplier applies and an Access Agreement with KCS has been signed which is valid until 31 December 2026.
- 2.6. The exception, related to navigation matters still applies, and NPLaw will continue to be engaged to provide advice and prosecutions on navigation matters, for the same period as above, at the discretion of the Chief Executive as and when needed.

3. Financial implications

- 3.1. Birketts' hourly rates are set under the KCS Framework and Wilkin Chapman's costs will be on a time spent basis (see exempt appendix). Given that the East Suffolk Monitoring

Officer needed to consult Mr Goolden on specific technical issues the overall amount of time could be significantly lower.

4. Risk implications

- 4.1. The Authority has a legal obligation to appoint a Monitoring Officer and needs to ensure the appointee has the required knowledge and experience to fulfil the role.

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[Broads Plan](#) strategic actions: all

Exempt Appendix – Fees & Hourly Rates