

Cherwell District Council

Council

20 February 2017

Appointment of Interim Head of Paid Service, Interim Returning Officer and Interim Electoral Registration Officer
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Report of Chief Executive

This report is public

Purpose of report

To appoint an Interim Head of Paid Service, Interim Returning Officer and Interim Electoral Registration Officer.

1.0 Recommendations

The meeting is recommended:

- 1.1 That in accordance with Section 4 of the Local Government and Housing Act 1989 Ian Davies be appointed as Interim Head of Paid Service for Cherwell District and South Northamptonshire Councils with effect from 13 March 2017.
- 1.2 That, in accordance with Section 8 of the Representation of the People Act 1983 and all related legislation, and with effect from 13 March 2017, Paul Sutton be appointed as Interim Electoral Registration Officer for Cherwell District and South Northamptonshire Councils;
- 1.3 That, in accordance with Section 35 of the Representation of the People Act 1983 and all related legislation, and with effect from 13 March 2017, Paul Sutton be appointed as Interim Returning Officer for Cherwell District and South Northamptonshire Councils with authority to act in that capacity for elections to the Council and all parish and town councils within the area of both councils;
- 1.4 That Paul Sutton be also appointed or authorised to act in respect of all related electoral, polling or referendum duties, including in relation to County Council elections, elections to the European Parliament, and for national and regional polls or referendums and be authorised to exercise all delegated powers of the Returning Officer and Electoral Registration Officer as set out in the constitution.
- 1.5 That, in relation to the duties of Returning Officer or any other electoral, referendum or polling duties arising from such appointment, the Returning Officer shall be entitled to be remunerated in accordance with the scale of fees approved from time

to time by Council for local elections, or the relevant scale of fees prescribed by a Fees Order in respect of national, regional or European Parliament elections, polls or referendums.

- 1.6 That in all cases where it is a legal requirement or normal practice to do so, the Returning Officer may elect for such fees to be superannuable, and the Council shall pay the appropriate employer's contribution to the superannuation fund, recovering such employer's contributions from central government or other local authorities or agencies where this can be done.
- 1.7 That, in relation to the conduct of local authority elections and polls, and elections to the United Kingdom Parliament, and all other electoral duties where the Councils are entitled by law to do so, they shall take out and maintain in force insurance indemnifying the Councils, the Electoral Registration Officer and the Returning Officer against legal expenses reasonably incurred in connection with the defence of any proceedings brought against the Councils, Electoral Registration Officer or the Returning Officer and/or the cost of holding another election in the event of the original election being declared invalid (provided that such proceedings or invalidation are the result of the inadvertent contravention of the Representation of the People Acts or other legislation governing the electoral process, and (provided that, in the case of the Electoral Registration Officer and the Returning Officer, such proceedings or invalidation arise from an act or omission which the Officer reasonably believes is within the Officer's powers).
- 1.8 That, in the event of such insurance carrying an 'excess' clause by which an initial portion of risk is not insured, the Councils, through their internal insurance fund or otherwise, will indemnify the Electoral Registration Officer and Returning Officer up to the value of such excess.
- 1.9 That the Councils note their duty to provide support to the Electoral Registration Officer and Returning Officer
- 1.10 That the Joint Commissioning Committee be asked to consider the payment of an honorarium to the interim Chief Executive, in recognition of the additional responsibilities and duties of the role.

2.0 Introduction

Sue Smith, Chief Executive will leave the Councils on 12 March 2017. As Chief Executive, Sue is also appointed as Head of Paid Service, Returning Officer and Electoral Registration Officer. In order to comply with legislation the councils must ensure they appoint to these roles on an interim basis pending the recruitment and appointment of a new shared Chief Executive.

3.0 Report Details

Interim Head of Paid Service

- 3.1 Section 4 of the Local Government and Housing Act 1989 requires every relevant authority to 'designate' one of their officers as Head of Paid Service. The Council's

constitution designates this post holder as Chief Executive. Since February 2011 the shared Chief Executive and Head of Paid Service roles have been held by Sue Smith.

- 3.2 In consultation with the Leaders of the Council, the current Chief Executive has approached Ian Davies and asked him to take up this position until a new Chief Executive is appointed. The job description for the Chief Executive designates the Chief Executive as Head of Paid Service for both Councils and both Councils will need to make these appointments at the appropriate time.
- 3.3 Ian Davies has been a shared strategic director since 2011 and previously was a director at Cherwell District Council. Ian Davies was previously appointed as Interim Head of Paid Service for Cherwell District Council in 2010 following the departure of the former Chief Executive and held this position until the appointment of Sue Smith as shared Chief Executive in 2011.
- 3.4 The Interim Head of Paid Service will appoint a deputy when appointed; the current appointee is Paul Sutton, Chief Finance Officer.
- 3.5 Pay and conditions for members of the Joint Management Team are a matter for the Joint Commissioning Committee (JCC). It is recommended that JCC be asked to consider the payment of an honorarium to the interim Chief Executive, in recognition of the additional responsibilities and duties of the role.

Interim Returning Officer and Electoral Registration Officer

- 3.6 Both Cherwell District and South Northamptonshire Councils have a statutory responsibility to appoint a Returning Officer and Electoral Registration Officer.
- 3.7 The positions of Returning Officer and Electoral Registration Officer are a personal responsibility on the officer concerned. In other words, the appointments are separate from appointment as an Officer of the Councils. In carrying out each role the Officer concerned is accountable to his or her statutory responsibility, not to the Councils that are their main employer. For that reason, the provisions in the appointing resolutions need to be more explicit than would be the case with ordinary appointments.
- 3.8 It should be noted that whilst these are separate appointments the councils have a duty to provide support to the appointee as set out below:

Assistance for Electoral Registration Officers

- 3.9 In England a district council or London borough council is required to assign such officers to assist the registration officer (ERO) as may be required for carrying out his functions under the 1983 Act (section 52(4) of the 1983 Act, as substituted by Schedule 4 to the 1985 Act).

Assistance for Returning Officers

- 3.10 Section 28(5) of the 1983 Act (as amended by paragraph 6(b) of Schedule 4 to the Act of 1985 and Schedule 16 to the 1994 Act) permits district councils and London borough councils in England to assign officers of the council to assist the RO/ARO in carrying out all or any of his duties at an election.

- 3.11 The posts of Returning Officer and Electoral Registration Officer have been held by the Chief Executive, Sue Smith since May 2011, which is the arrangement at the majority of local authorities. From 13 March 2017 the Councils will not have a permanent Chief Executive, pending the recruitment and appointment of a new Chief Executive.
- 3.12 In consultation with the Leaders of the Council, the current Chief Executive has approached Paul Sutton and asked him to take up these positions until the a new Chief Executive is appointed. The job description for the Chief Executive designates the Chief Executive as the Electoral Registration Officer and Returning Officer for both Councils and both Councils will need to make these appointments at the appropriate time.
- 3.13 Paul Sutton has been involved in the delivery of previous elections at Cherwell, South Northamptonshire and previously Kettering Borough Council. He has previously acted as a polling station inspector and as count manager last year and is experienced with regards to election counts. What is more, all elections run by this Council are now delivered on a corporate basis by an elections project board and it is felt that Paul Sutton's experience in corporate working will be an asset in continuing to deliver elections in this way. Paul Sutton will attend a training course for new Returning Officers prior to taking up this post.
- 3.14 The Returning Officer when appointed will appoint a Deputy Returning Officer. The appointee is currently James Doble, Assistant Director – Transformational Governance.
- 3.15 The position of Deputy Electoral Registration Officer is separately appointed by Council and the current appointee is James Doble, Assistant Director – Transformational Governance.

4.0 Conclusion and Reasons for Recommendations

- 4.1 It is believed that the recommendations set out above provide a pragmatic solution for the Councils, which will help to ensure that the Head of Paid Service, Returning Officer and Electoral Registration Officer roles are delivered consistently and to a high standard pending the recruitment and appointment of a new shared Chief Executive.

5.0 Consultation

- 5.1 Consultation has taken place with the Leaders of both councils. Both Ian Davies and Paul Sutton have confirmed that should council wish to appoint them to they would carry out these roles.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

To make alternative appointments as Interim Head of Paid Service, Returning Officer and Electoral Registration Officer from either the staff of the Council or from outside the Council. It is believed that the proposed appointees present the best solution for the council at this time.

7.0 Implications

7.1 Financial and Resource Implications

There is no remuneration for the roles of Head of Paid Service or Electoral Registration Officer. The election fees for the Returning Officer are met from existing council budgets, external funders such as the County Council and external government grant.

Comments checked by:

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7.2 Legal Implications

Local authorities have a duty under the Local Government and Housing Act 1989 to designate one of their officers as the head of their paid service. This post is one of three statutory appointments (the others being the section 151 officer and the monitoring officer) that every local authority is required to make. The Council must therefore ensure that such appointment is made so that a Head of Paid Service is in place for the period from the departure of the Chief Executive until a new permanent Chief Executive and Head of Paid Service is in post.

It is a legal requirement that the council appoints a Returning Officer and Electoral Registration Officer. The recommendations set out in this report meet this requirement.

Pursuant to section 113 of the Local Government Act and their associated agreement between the Cherwell District and South Northamptonshire Councils (as varied) it is permissible for an individual to be an officer of both the employing Council and the other Council for the purposes of these shared appointments.

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7.3 Risk Implications

The principal risks associated with these appointments are all on the Officer who holds them. The risks to the Councils are that without making adequate provision to remunerate, train and indemnify that Officer it may fail to identify a person prepared to undertake these statutory tasks or, having made such an appointment, run the reputational risk associated with a successful legal challenge that exposes the Officer to significant financial loss as a result of a failure of the Councils to do what is lawful and appropriate

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8.0 Decision Information

Wards Affected

None directly

Links to Corporate Plan and Policy Framework

Not applicable

Lead Councillor

None

Document Information

Appendix No	Title
None	
Background Papers	
None	
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