

Law and Democratic Services
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To: All Members of the Council

Please ask Shaun Banks (Telephone
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Dear Councillor,

Council – Thursday, 8 November 2018

I refer to the agenda for the above meeting and enclose the report in relation to the following Agenda Item:

8. Appointment of Statutory Officers (Pages 3 - 6)

Yours faithfully,

Shaun Banks (Telephone 01793 463606)
for Interim Director of Law



Stephen P. Taylor M.A (Oxon), Solicitor
Director of Law and Democratic Services

Appointment of Statutory Posts

Council

Date: 8th November 2018

Author: Leader of the Council and Chief Executive

Wards: All

Parishes Affected: All

1. Purpose and Reasons

- 1.1 To appoint officers to the posts of Returning Officer, Electoral Registration Officer and Monitoring Officer.
- 1.2 These positions were occupied by the Council's Director of Law and Democratic Services, which post was made redundant with effect from 31 October 2018.
- 1.3 To authorise the Chief Executive to nominate appropriate officers to fill any other statutory and/or non-statutory positions left vacant following the redundancy of the former Director of Law and Democratic Services.

2. Recommendations

- 2.1 That the following appointments be confirmed:
 - 2.1.1 The Chief Executive to be appointed as the Council's Returning Officer and Electoral Registration Officer for Parliamentary elections, local elections and referendums.
 - 2.1.2 The interim Director of Law to be appointed as the Council's Monitoring Officer until such a time as a full time Head of Legal Services (Monitoring Officer) is appointed.
- 2.2 That, also for the period until a full time Head of Legal Services (Monitoring Officer) is appointed, the Chief Executive be authorised to nominate appropriate officers to fill any vacant statutory and/or non-statutory positions that are identified as being previously occupied by the former Director of Law and Democratic Services.

3. Detail

- 3.1 The role of Director of Law and Democratic Services was made redundant on 31 October 2018. This post also held the statutory roles of Returning Officer, Electoral Registration Officer and Monitoring Officer.

Returning Officer and Electoral Registration Officer

- 3.2 Section 35(1) of the Representation of the People Act 1983 requires the Council to appoint an officer to be the Returning Officer (RO) for Parliamentary elections, local elections and referendums.

Further information on the subject of this report can be obtained from Steve Jones, 01793 463602, stevejones@swindon.gov.uk.

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- 3.3 It is the Returning Officer's general duty at elections to do all such acts and things as may be necessary for effectively conducting the election for example:
- 3.3.1 the nomination process for candidates and political parties;
 - 3.3.2 provision, administration, security and notification of polling stations;
 - 3.3.3 appointment of staff such as presiding officers and count staff;
 - 3.3.4 preparation and issue of all ballot papers; issue, receipt and counting of postal ballot papers;
 - 3.3.5 organising and delivering the count and declaration of results;
 - 3.3.6 receipt of all candidates' election expenses returns.
 - 3.3.7 presentation of final account and claiming appropriate funding from central government as prescribed.
 - 3.3.8 retention of election documents.
- 3.4 The Electoral Registration Officer (ERO) is the person with statutory responsibility for the creation and maintenance of the register of electors and the absent voters list. This person takes responsibility for publishing a revised electoral register and issuing monthly alterations notices. The role of the Electoral Registration Officer is a personal responsibility, independent and separate from their duties as an employee of the council.
- 3.5 At an election the Electoral Registration Officer has a statutory obligation to provide registers and absent voters lists for each polling station as well as to candidates at the election and to the Returning Officer.
- 3.6 For members' information, the roles of Returning Officer and Electoral Registration Officer are typically combined and performed by a single person. In most authorities, the Returning Officer post is undertaken by the authority's Chief Executive.
- 3.7 Council is recommended that the Chief Executive be appointed as the Council's Returning Officer and Electoral Registration Officer for Parliamentary elections, local elections and referendums.

Monitoring Officer

- 3.8 Under Section 5 of the Local Government and Housing Act 1989 (as amended), the Council has a duty to appoint a Monitoring Officer.
- 3.9 Neither the Head of Paid Service (Chief Executive) nor the Chief Finance Officer (Director of Finance and Resources) can hold the position of Monitoring Officer. Although many councils appoint their most senior legal officer as their Monitoring
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Officer this is not a specific requirement. Whoever is appointed must though ensure that the council receives correct and appropriate advice on the lawfulness of its decision making

- 3.10 The Monitoring Officer has a number of statutory duties and responsibilities relating to the council's constitution and its arrangements for effective governance. These duties are contained in section 12.03 of the Council's constitution and include:

3.10.1 Maintaining the Constitution

3.10.2 Ensuring the lawfulness and fairness of decision-making.

3.10.3 Supporting the Standards Committee.

3.10.4 Receiving Reports and conducting investigations.

3.10.5 Proper Officer for Access to Information.

3.10.6 Advising whether Cabinet decisions are within the budget and policy framework.

3.10.7 Contributing to Corporate Management

3.10.8 Providing advice.

- 3.11 Council is recommended that the interim Director of Law be appointed as the Council's Monitoring Officer until such a time as a permanent Head of Legal Services (Monitoring Officer) is appointed.

4. Alternative Options

- 4.1 The council is legally required to appoint to the posts of Returning Officer and Monitoring Officer and failure to do so would leave the Council in breach of its statutory duties to appoint such officers. Officers other than those referred to in the report might be considered for appointment but, traditionally, these posts are occupied by the Chief Executive and/or legal services officers.

5. Implications, Diversity Impact Assessment and Risk Management

Financial and Procurement Implications

- 5.1 There is no change to the existing budget and charging arrangements in place as a result of this report

Legal and Human Rights Implications

- 5.2 The Representation of the People Act 1983 Section 35 requires the council to appoint an officer of the council to be the Returning Officer in local elections.

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- 5.3 Section 5 of the Local Government and Housing Act 1989 (as amended), requires the Council to appoint a Monitoring Officer.

All Other Implications (including Staff, Sustainability, Health, Rural, Crime and Disorder)

- 5.4 There are no direct impacts on sustainability, health and safety, community safety or privacy aspects as a result of these proposals.

Diversity Impact Assessment

- 5.5 The Council's duty under Section 149 of the Equality Act 2010 is to have "due regard" to the matters set out in relation to equalities when considering and making decisions on the provision of services. There are no direct impacts of these recommendations on the provision of services.

Risk Management

- 5.6 There are no identified unmitigated risks.

6. Consultees

- 6.1 The interim Director of Law, the Director of Performance, Organisational Improvement and Communications and the Chief Executive have been consulted in preparing this report.

7. Background Papers

- 7.1 None

8. Appendices

- 8.1 None