

Report To:	COUNCIL	Date:	5 SEPTEMBER 2019
Heading:	ELECTORAL REGISTRATION OFFICER AND RETURNING OFFICER		
Portfolio Holder:	NOT APPLICABLE		
Ward/s:	NOT APPLICABLE		
Key Decision:	NO		
Subject to Call-In:	NO		

Purpose of Report

To consider the requirement to appoint an Electoral Registration Officer (ERO) and Returning Officer (RO) and to deal with consequential issues including fees, insurance and indemnities for the interim period following the departure of the current ERO/RO.

Recommendation(s)

1. With effect from 23 September 2019 to appoint or authorise Ruth Dennis, Director of Legal and Governance (Monitoring Officer) :
 - (a) As the Electoral Registration Officer (ERO) for the Council pursuant to Section 8(2)(a) of the Representation of the People Act 1983;
 - (b) As the Returning Officer (RO) pursuant to Section 35(1) of the Representation of the People Act 1983 with authority to act in that capacity for elections to the Council and all or any Parish Councils within the Council's administrative area; and
 - (c) To act in respect of all related electoral, poll or referendum duties, including elections to the County Council, European Parliament and for national and regional polls or referenda.
2. With effect from 23 September 2019 to appoint or authorise Ian Dobson, Service Manager Electoral Services as, Deputy Electoral Registration Officer pursuant to Section 52(2) of the 1983 Act.
3. With effect from 23 September 2019 to confirm that the appointment of Robert Mitchell as ERO/RO is no longer operable.
4. That, in relation to the duties of Returning Officer (RO), or any other electoral referendum or polling duties arising from such appointment, the Returning Officer (RO) shall:
 - (a) Be entitled to be remunerated in accordance with the scale of fees approved from time to time in respect of the District, Parish and Nottinghamshire County Council for local elections; and
 - (b) Be entitled to be remunerated in accordance with the relevant scale of fees prescribed by a Fees Order in respect of national, regional or European Parliament elections, polls or referenda; and
 - (c) In all cases where it is a legal requirement or normal practice to do so, fees paid to the Returning Officer (RO) shall 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.
5. 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 Council is entitled by law to do so, the Council shall take out, and maintain in force, insurance indemnifying the Council and the Returning Officer (RO) against:
 - (a) legal expenses reasonably incurred in connection with the defence of any proceedings brought against the Council, or the Returning Officer (RO); and/or
 - (b) 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 accidental contravention of the Representation of the People Acts, or other legislation governing the electoral process, or accidental breach of any ministerial, or other duty, by the Returning Officer (RO), or any other person employed by, or officially acting for her in connection

with the election or poll). Also, that, in the event of such insurance carrying an 'excess' clause by which an initial portion of risk is not insured, the Council, through its internal insurance fund or otherwise, will indemnify the Returning Officer (RO) up to the value of such excess.

Reasons for Recommendation(s)

Robert Mitchell, CEO, was appointed as RO/ERO with effect from 1 January 2016. The Council is required by legislation to appoint an Officer of the Council to be the ERO and RO. When the current RO/ERO leaves the Council on 22 September 2019, the Council needs to appoint an officer in accordance with statutory requirements pending the new Chief Executive coming into post.

Alternative Options Considered

Members may suggest an alternative Officer for the appointments and may suggest alternative arrangements regarding payment of fees, insurance and/or indemnity.

Detailed Information

Statutory Requirements

Section 8(2)(a) of the Representation of the People Act 1983 (the 1983 Act) requires that every district council should appoint an officer of the Council to be the Electoral Registration Officer (ERO) for its district. In accordance with Section 52(2) of the 1983 Act, a Deputy ERO may be appointed by the Council. The ERO may appoint officers to assist him/her.

Section 35(1) of the 1983 Act requires that every district council should appoint an officer of the Council to be the Returning Officer (RO) for the elections of councillors of the district and councillors of the parishes within the district. In accordance with Section 35(4) a Deputy RO may be appointed by the RO.

For Parliamentary Constituency elections, the Sheriff of the County is designated by statute/order as the RO. However, these duties are discharged by an Acting Returning Officer (ARO) as prescribed by Section 28 of the Representation of the People Act 1983. This provides that the ARO duties should be carried out by the ERO appointed by the Council. The ARO is given all powers, obligations, rights and liabilities of the RO together with the power to appoint deputies.

For European Parliamentary elections, a Regional Returning Officer is appointed with the poll itself being conducted by Local Returning Officers (LRO) who is the ARO (Regulation 6, European Parliamentary Regulations 2004). The LRO may appoint a deputy.

The County Council is responsible for appointing a RO for County elections and that Authority will appoint Deputy Returning Officers to act in each district.

Legislation does not dictate that a particular level of officer or a particular post holder must be appointed to these roles. However, guidance suggests it should be a senior officer and in practice is often the CEO.

Robert Mitchell, CEO, was appointed as RO/ERO with effect from 1 January 2016.

Responsibilities and Accountability

The duties of an ERO/RO/ARO/LRO are separate from his/her duties as a local government officer. The officer is personally liable for the Electoral Register and the conduct of elections. The ERO/RO/ARO/LRO acts independently of the Council and is only accountable to the courts. The Council does not provide direction or exercise control whilst the officer is undertaking these duties.

So for instance, the ERO would personally face a fine of up to £5,000 for an act or omission (Section 63(1) of the 1983 Act) whilst undertaking that role. Furthermore, claims relating to damage to buildings used during elections or for injuries to election staff are the responsibility of the RO/ARO/LRO. For this reason, the RO/ARO/LRO will carry his/her own insurance. The Council's insurance policies indemnify the RO/ARO/LRO against legal expenses reasonably incurred in connection with the defence of any proceedings, brought against the RO/ARO/LRO and for the costs of holding another election in the event of the original election being declared invalid. In relevant elections, the Secretary of State may indemnify the officer. Where a policy carries an excess, it appears to be common practice, for the avoidance of doubt, for the Council to pass a formal resolution to indemnify the RO/ARO up to the value of the excess.

Fees and Expenditure

Fees for local government elections (District and Parish) are determined by an amalgamation of local authorities within Nottinghamshire to ensure consistency. The District Council is responsible for paying the RO fees and expenditure for local government elections.

The ARO/LRO is entitled to reasonable charges for specified services and expenses as laid down by the Secretary of State. For Parliamentary and European elections the Secretary of State is responsible for meeting election expenditure and fees are set by Order.

All fees payable to the RO are superannuable.

Appointment of ERO/RO/ARO/LRO

Robert Mitchell, the current ERO/RO is due to leave the Authority on 22 September 2019 and in accordance with other items on the agenda, an Interim CEO/Head of Paid Service is due to be recommended for appointment by Council. To ensure the Council remains compliant with statutory responsibilities, the Council must appoint an ERO/RO to cover the interim period before a permanent appointment to the role of CEO/Head of Paid Service is made.

The proposed Interim CEO/Head of Paid Service has no electoral registration or elections experience, therefore it is recommended Ruth Dennis, Director of Legal and Governance (Monitoring Officer) is appointed to the role of ERO/RO (on an interim basis) as she has strategically managed Electoral Services for a number of years and has experience of carrying out the Deputy ERO and Deputy RO roles across the full remit of elections during that time.

It is proposed to appoint Ian Dobson, Service Manager, Electoral Services to act as Deputy ERO.

There is no specific statutory requirement for the Council to actually revoke an appointment of ERO/RO. However, it seems that any new appointment to those posts has the effect of overriding earlier appointments. For the avoidance of doubt, it is suggested that if the Council resolves to change the appointments, a resolution is also passed to clarify that the earlier appointment is no longer operable.

Implications

Corporate Plan:

The management and delivery of lawful elections and the publication of the Register of Electors is outside the remit of the Corporate Plan.

Legal:

It is a statutory requirement for the Council to appoint an Electoral Registration Officer and a Returning Officer. Legal issues are contained within the report.

Finance:

The proposed change has no impact on existing budgets. Fees will be met by the relevant bodies identified in the report. The Returning Officer is responsible for making appropriate arrangements for tax and superannuation obligations.

Budget Area	Implication
General Fund – Revenue Budget	N/A
General Fund – Capital Programme	N/A
Housing Revenue Account – Revenue Budget	N/A
Housing Revenue Account – Capital Programme	N/A

Risk:

Risk	Mitigation
Failure to appoint an appropriately experienced officer to act as ERO/RO following the departure of the current ERO/RO would firstly see the Council in breach of its statutory duties and secondly jeopardise the Council's ability to carry out its electoral registration and election duties satisfactorily and in accordance with legislation.	Appointment of an ERO/RO as recommended mitigates these risks.

Human Resources:

There are no contractual changes arising from the proposed appointments.

Equalities:

No direct implications.

Other Implications:

None

Report Author and Contact Officer

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