

Open Report on behalf of David Coleman, Chief Legal Officer and Monitoring Officer

Report to:	County Council
Date:	14 December 2018
Subject:	Interim Arrangements relating to the role of Chief Executive and Head of Paid Service

Summary:

This Report seeks approval for changes to the Council's designated Head of Paid Service and Returning Officer and changes to the Constitution to transfer delegations from the post of Chief Executive to the Executive Director of Children's Services

Recommendation(s):

That the Council with immediate effect:-

1. Designates the Executive Director of Children's Services as the Council's Head of Paid Service;
2. Appoints Debbie Barnes, the Executive Director of Children's Services as the Returning Officer for County Council elections; and
3. Approves the amendments to the Constitution attached at Appendix A

1. Background

On 26 November 2018, it was announced that Keith Ireland was leaving the employment of the Council as the Council's Chief Executive and Head of Paid Service.

The position of Chief Executive is a post within the Council's officer structure. This is not a position that the Council is under any obligation to have or immediately to recruit to. The post of Chief Executive may therefore remain vacant until a permanent replacement chief executive is appointed.

The role of Head of Paid Service is not a separate post within the structure. The Council has a statutory obligation under section 4 of the Local Government and Housing Act 1989 to designate one of its officers as the Head of Paid Service. At present the post of Chief Executive is designated as also being the Council's Head of Paid Service. The role of the Head of Paid Service is to determine the size,

structure and organisation of the officer paid service and to manage that paid service including taking responsibility for the employment rights and responsibilities of the Council including recruitment and dismissal.

Therefore although the post of Chief Executive can remain vacant the Council must, in the absence of a Chief Executive, take steps to designate one of its other officers as the Head of Paid Service. It is proposed that Debbie Barnes, the Executive Director of Children's Services is designated as the Head of Paid Service with immediate effect.

Section 35 of the Representation of the People Act 1983 requires the Council to appoint one of its officers as the Returning Officer for County Council elections including by-elections. At its meeting on 11 May 2018 the Council appointed Keith Ireland, the Chief Executive, as the Returning Officer for County Council by-elections.

This decision now needs to be revisited and it is proposed that Debbie Barnes, Executive Director of Children's Services is appointed as Returning Officer for County Council elections.

The County Council's Constitution contains a number of provisions that relate to the designation of the Head of Paid Service and there are a number of Constitutional delegations, processes and procedures that are exercisable or require action to be taken by the Chief Executive. As a result of the Council's decision on 14 September 2018, these include all those delegations previously exercised by the Executive Director for Environment and Economy.

Whilst the Chief Executive post remains vacant it is necessary to ensure the smooth operation of the Council's business that these delegations and actions are allocated to other Chief Officers.

Appendix A therefore sets out a number of amendments to the Constitution to give effect to such re-allocations. The main substantive change is in Part 3 of the Constitution. The general strategic management delegations allocated in the Constitution to the Chief Executive have been allocated to the Executive Director of Children's Services to support her designation as the Head of Paid Service together with all those delegations previously transferred to the Chief Executive from the Executive Director for Environment and Economy. Some of the Proper Officer provisions have also been amended to reflect the fact that the Executive Director for Environment and Economy is no longer the Monitoring Officer.

The Constitution allows for Chief Officers to authorise in writing any other named Officer or Officers of the Council, either generally or specifically for the purpose, to exercise any or all of the powers authorised to be exercised by them. Chief Officers remain accountable for any action or decisions taken under such authority.

In order to make the presentation of the changes manageable Appendix A consists only of the pages to which amendments have been made and those surrounding pages that are reasonably necessary to understand the context of the changes.

The recommendations in this Report are proposed to ensure the continued smooth running of the Council and to comply with the Council's legal obligations. It is intended that any new permanent Chief Executive will also be the Head of Paid Service and Returning Officer.

At that point a further report will be brought to Council to give effect to any changes.

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- * Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- * Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- * Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
- * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
- * Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding

Compliance with the duties in section 149 may involve treating some persons more favourably than others

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

There are not considered to be any equalities implications of the recommendations set out in the Report.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision

There are not considered to be any JSNA or JHWS implications of the recommendations set out in the Report.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

There are not considered to be any crime and disorder implications of the recommendations set out in the Report.

3. Conclusion

This Report sets out proposals to ensure compliance with the Council's legal obligations in terms of designating one of its officers to the statutory post of Head of Paid Service and appointing one of its officers as Returning Officer as well as changes to delegations to ensure the continued smooth operation of the Council's business.

4. Legal Comments:

The Council is required to designate one of its officers as Head of Paid Service. The Council must also appoint one of its officers as Returning Officer.

This Report enables the Council to comply with these legal obligations.

The decisions set out in the recommendations are all reserved to the full Council and are within the remit of the full Council

5. Resource Comments:

The proposals within this report can be met from within the existing budgets of the Council.

6. Consultation

a) Has Local Member Been Consulted?

N/A

b) Has Executive Councillor Been Consulted?

N/A

c) Scrutiny Comments

The proposals in the Report have not been considered by a Scrutiny Committee

d) Have Risks and Impact Analysis been carried out?

Yes

e) Risks and Impact Analysis

See the body of the Report

7. Appendices

These are listed below and attached at the back of the report

Appendix A	Amendments to the Constitution
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8. Background Papers

The following Background Papers within the meaning of section 100D of the Local Government Act 1972 were used in the preparation of this Report

Description of document	Where it can be found
Council report - Designation of Monitoring Officer and changes to officer delegations – 14 September 2018	Democratic Services; Council's website
Council report - Appointment to the Post of Chief Executive – 11 May 2018	Democratic Services; Council's website
Council's Constitution	Democratic Services; Council's website

This report was written by David Coleman, Chief Legal Officer, who can be contacted on 01522 552134 or david.coleman@lincolnshire.gov.uk.

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