

<b>24 May 2023</b>	<b>ITEM: 9</b>
<b>Annual Council</b>	
<b>Update from Best Value Commissioners on the appointment of Head of Paid Service</b>	
<b>Wards and communities affected:</b> All	<b>Key Decision:</b> N/A
<b>Report of:</b> Gavin Jones, ECC Best Value Commissioner	
<b>Accountable Assistant Director:</b> N/A	
<b>Accountable Director:</b> N/A	
<b>This report is</b> Public	

## Executive Summary

This report gives the background and details of the decision taken by Commissioners to appoint Dr Dave Smith as Head of Paid Service in line with the powers given to them by the Secretary of State for Levelling up, Housing and Communities. As set out in the letter to the Leader of the Council advising of this decision, this report has been brought at the earliest opportunity for Members to endorse this decision.

In accordance with the roles he will be fulfilling, Dr Dave Smith will use the title Chief Executive & Managing Director Commissioner.

## Commissioner Commentary

N/A – report from Commissioners.

### 1. Recommendation(s)

**1.1 That Full Council note and endorse the decision of the Best Value Commissioners to appoint Dr Dave Smith as Head of Paid Service.**

### 2. Introduction and Background

2.1 In July 2022, the Council was made aware of concerns around the valuation of specific investments. A review process commenced, and the initial findings highlighted significant concern with three investments and the position was shared informally with the Department of Levelling Up, Housing and Communities (DLUHC). On the 2 September 2022 DLUHC announced directions to implement an intervention package at the Council.

- 2.2 The then Secretary of State exercised his powers under section 15(11) of the Local Government Act 1999 to give a Direction without complying with the requirement at section 15(9) to give Thurrock an opportunity to make representations about the Directions, as he considered the failures of the Council's compliance with its Best Value duty in respect of the functions specified in the Directions sufficiently urgent. This was because of the following:
1. The scale of the financial and commercial risks potentially facing the Authority, which were compounded by the Authority's approach to financial management and the seriousness of the allegations that were made by third parties about the processes applied to the operation of the Authority's commercial strategy, and;
  2. The failure of the Authority to provide assurance to Ministers and the Department on the adequacy of the actions that they were taking to address the issues, taking account of the scale and pace of the response required.
- 2.3 The Secretary of State nominated Essex County Council to the role of Best Value Commissioner.
- 2.4 On 19 December 2022, the Council's Acting Director of Finance & Section 151 Officer issued a report under Section 114 of the Local Government Finance Act 1988. This advises Councillors that the Council faces 'a financial situation of an extremely serious nature'.

### **3. Issues, Options and Analysis of Options**

- 3.1 The Ministerial announcement on 16 March expanded the breadth of the intervention further and granted additional powers with Commissioners. The Secretary of State's Directions pursuant to his powers under section 15(5) and (6) of the Local Government Act 1999 issued on the same day, Commissioners now have powers to exercise the functions of the Council relating to the appointment and designation of persons as statutory officers.
- 3.2 Dr Dave Smith was appointed Managing Director Commissioner by the Secretary of State to fulfil the role of a Chief Executive for the Council and be responsible for day-to-day operations. Essex County Council (ECC) as Commissioner have used their powers to appoint Dr Smith as Head of Paid Service, in accordance with Section 4(1) of the Local Government and Housing Act 1989 and the Local Authorities (Standing Orders) (England) Regulations 2001 (SI 2001/3384). These Regulations set out the process for such appointments, which must be incorporated in to an authority's Standing Orders.
- 3.3 Those Regulations, at Schedule 1 Pt 2 para 4(1), require such an appointment to be approved by the authority. This would normally be done by

Full Council. However, given the time between the announcement and an appropriate meeting, ECC as Commissioner have exercised their power to do so on behalf of the Authority, as provided by the Directions.

- 3.4 This decision was communicated in a letter to the Leader of the Council on 27 April 2023 and can be found at annex 1. This report has been brought to Full Council to provide Members with an opportunity to endorse this decision.

#### **4. Reasons for Recommendation**

- 4.1 Members are asked to note and endorse the decision taken by Commissioners to appoint Dr Dave Smith as Head of Paid Service.

#### **5. Consultation (including Overview and Scrutiny, if applicable)**

- 5.1 No applicable.

#### **6. Impact on corporate policies, priorities, performance and community impact**

- 6.1 As Head of Paid Service and in fulfilling the role of Chief Executive, Dr Dave Smith will have responsibilities for all related matters as set out in the Constitution. However, as this report is to note and endorse, there are no material impacts as a direct result of recommendation 1.1.

#### **7. Implications**

##### **7.1 Financial**

Implications verified by: **Rosie Hurst**  
**Interim Senior Management Accountant**

As an appointed Commissioner, Thurrock is instructed by the Secretary of State to pay a day rate of £1,100 per day. This payments attracts Employer's National Insurance contributions of 20.8%. The cost for 2022/23 will be dependent upon the number of days worked. There is an existing budget for the substantive Chief Executive position of £257,000 which can contribute to the costs. The remainder of the cost forms part of the wider capitalisation directive request to Government.

##### **7.2 Legal**

Implications verified by: **Asmat Hussain**  
**Interim Director of Legal and Governance and Monitoring Officer**

The designation of a Head of Paid Service is a statutory duty under Section 4 of the Local Government and Housing Act 1989. The Council has the right to

designate and appoint the Head of Paid Service. Appointment of a Head of Paid Service would normally be a decision reserved to elected members in accordance with the Council's Constitution. However, under a statutory direction made by the Secretary of State for the Department of Levelling-Up, Housing and Communities, certain functions are to be exercised by the appointed commissioners, either acting alone or jointly. This includes the function to appoint to the position of Head of Paid Service and to determine the terms and conditions of employment of such an officer.

### 7.3 Diversity and Equality

Implications verified by: **Roxanne Scanlon**  
**Community Engagement and Project  
Monitoring Officer**

The statutory post holder should take due regard of the Public Sector Equality Duty. The Council as a whole is bound by the requirements of the Equality Act 2010 as well as our own Equality, Diversity and Inclusion Policy and Strategic Plan.

All information regarding Community Equality Impact Assessments can be found here: <https://intranet.thurrock.gov.uk/services/diversity-and-equality/ceia/>

### 7.4 Other implications (where significant) – i.e., Staff, Health Inequalities, Sustainability, Crime and Disorder, and Impact on Looked After Children

N/A

### 8. Background papers used in preparing the report (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Directions made under the Local Government Act 1999 (16 March 2023) - <https://www.gov.uk/government/publications/thurrock-council-directions-made-under-the-local-government-act-1999-16-march-2023>
- Letter of appointment to Managing Director Commissioner (16 March 2023) - <https://www.gov.uk/government/publications/thurrock-council-letter-of-appointment-to-the-managing-director-commissioner>
- Intervention into Thurrock Borough Council: ECC's Role - [https://cmis.essex.gov.uk/essexcmis5/Decisions/tabid/78/ctl/ViewCMIS\\_DecisionDetails/mid/422/Id/9336/Default.aspx](https://cmis.essex.gov.uk/essexcmis5/Decisions/tabid/78/ctl/ViewCMIS_DecisionDetails/mid/422/Id/9336/Default.aspx)

### 9. Appendices to the report

- Appendix 1 – letter from Gavin Jones to Leader of Thurrock Council