

The Council as Employer

Parish and Town (Local) Councils in England, will, in most circumstances, employ a clerk.

It is generally understood that the clerk is an “employee” of the council rather than self-employed. **Her Majesty’s Revenue & Customs (HMRC)** definitions of employee and self-employment indicate this:

- The clerk does not choose whether or not to accept certain tasks
- The clerk does not send one of their own employees or another person to carry out tasks
- The clerk acts upon instruction from the council, carrying out tasks on its behalf
- The clerk does not set the fee for the job they do

In addition, the role of the clerk is defined in law as the “proper officer of the council”, which would indicate that the position is an employee.

Not all workers are necessarily employees. The council may appoint contractors to carry out other work, such as maintenance or grass cutting. This guidance sheet is predominantly concerned with the employment of the clerk.

Why employ a clerk?

In law, the clerk is the proper officer of the council. The role exists to provide an independent person to implement the council’s decisions. Having an independent, separate officer to advise the council, to action resolutions and to be a point of contact allows councillors to concentrate on collaboratively making decisions for the benefit of the area.

There are circumstances where a member of the council may be appointed to be an officer but they may not be paid for it. An unpaid office should be specifically created if this is to be the case. It is not usually a long-term solution as there is the potential for it to interfere with a councillor’s role as member and decision maker. By keeping the individual roles of clerk and councillor apart, councils can keep the debate and decision making completely separate from the advice, administration and actioning of those decisions.

A local council is a local authority, spending public money. The role of the clerk is a professional one. There are many responsibilities which come with

Looking Further

More information on the clerk can be found in guidance sheet 2 on the roles and responsibilities of the clerk.

this role and the clerk is required to have a working knowledge of a variety of subjects and a diversity of skills.

What should be in place?

PAYE and Contract

Guidance from HMRC in February 2011 stated that in the majority of cases a local council needs to be registered with HMRC as an employer and operate PAYE on the clerk's earnings.

There may be circumstances where the clerk's (combined if they do more than one job) earnings fall below what is known as the **Lower Earnings Limit** which could result in no need to register. Councils should check this out at <http://www.hmrc.gov.uk/pay/intro/register.htm> to be sure they are acting within the law.

Where there is the employment of staff, a person specification, job description and contract should be in place. Both employer and employee should have an agreement of what is expected of them. The job description can be referenced at regular supervision sessions.

Rights and Equality

In addition an employee has a number of rights, which include*:

- Equal pay
- Not to be discriminated against
- Maternity rights and paternity leave
- Statutory sick pay
- Minimum wage
- A safe system of work

The Equality Act 2010 protects individuals from being discriminated against because of:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Sex (gender)
- Pregnancy and maternity
- Race
- Religion and belief
- Sexual Orientation

Looking Further

*This list is not exhaustive. More information on employment rights can be found at <http://www.acas.org.uk>

All employers should be aware of these **protected characteristics** outlined in this act.

The council must not pay less than the statutory minimum wage. There are recommended salary scales for clerks issued by the National Association of Local Councils and the Society of Local Clerks. Councils should bear in mind the amount of hours a clerk is asked to work. Is it enough? If the clerk is working for twice as many hours as they are being paid for, it could equate to them being paid less than minimum wage per hour.

Procedures and Policies

The council should have grievance and disciplinary procedures in place. These procedures protect each party and provide guidance should action need to be taken. If something happens it can be a difficult time for both employee and employer, having adopted such procedures from the outset will prevent added complications.

Councils should also be considering the provision of equality and diversity, health & safety, home-working and retirement policies.

Clerk as Employee

The clerk is the employed manager of the council. S/he takes instruction from the council. In all but the smallest council it helps to have a staffing committee in place to deal with the management of the clerk. Individual councillors, including the chairman, cannot be delegated decisions about the clerk's employment.

If there are any discussions or decisions on a council or committee agenda, it should be resolved that the public and press leave for this agenda item. The clerk has a right for discussions about his or her employment to be confidential. In additions, any of the clerk's personal data held by the council should be available for the clerk to access but not available to anyone else under the Data Protection Act 1998.

Many clerks work from their own home. This can sometimes be an isolating role and it is important that the council as the clerk's employer is mindful of this. In addition, setting aside a budget each year for the clerk's training and development will keep the council up to date and working to the law.

When the clerk works from home, it can also be helpful if members of the public are made aware of when and how they may contact the clerk. If there are set hours, it helps if the council publishes these for the benefit of residents. If the telephone number is the clerk's home number, rather than a dedicated council one, residents may wish to consider when it is appropriate to call if no hours are published.

Looking Further

*More information on the Data Protection Act 1998 can be found in guidance sheet 6 on local council information.