

Warwick District Council
14 November 2018
Addendum Item 6 Notices of Motion

Following notification of the Notice of Motion in respect of a poll for the HQ proposal advice as Returning Officer (Chris Elliott) I have taken advice from officers in the Electoral Services Team, the Electoral Commission and Warwickshire County Council Legal Services.

The response and guidance from the Electoral Commission is attached as Appendix A below.

The advice from Warwickshire Legal Services confirmed that a decision to hold such a poll under Section 116 of the Local Government Act 2003 is an Executive decision to be taken. In addition, the referendum result would not be binding on the Executive or Council in terms of any decisions it wished to take in respect of the HQ proposal.

The Elections in May 2019 are made up of two elections, those for the District Council and for the Town and Parish Councils. These must have priority over any local referendum poll which can only be non-statutory. It perhaps goes without saying but the costs of administering the District Council elections falls only to the District Council and those for the Town/Parish Councils can only fall to those Councils. The additional cost of a poll can only fall to the District Council and not to any Town/Parish Council which may or may not in any case be holding an election (many parishes often do not get enough candidates to cause an election).

In respect of estimating costs of administering a poll, regard has been had to the most recent elections of a comparable nature and to the 2 possible scenarios of holding an election at the same time as the other elections and separately. However, as the current budget only allows £250,000 for the District Council election in May 2019 additional financial resources will be required regardless of the scenario.

Even so whilst there may be a cost issue my duty as Returning Officer is to ensure that free, fair effective and efficient elections are held and that the result is not "clouded" in anyway by issues with the electoral process. In this respect the sanctity of the statutory elections must in my view take precedence. The advice of the Electoral Commission is of particular relevance in this respect.

Poll at the same time as the other elections:

The advice from the Electoral Commission suggests that it will be necessary to have separate poll cards and postal votes. There is also a real operational restriction in that the Hall currently booked must be vacated by 5pm on 3rd May as there is another event booked. Based on past experience (2015 elections) this gives rise to the risk that as the Council would need significantly more staff to complete all three elections and it might not be able to attract the volunteers to do so. It should be noted it is increasingly difficult to persuade people to undertake the count. Given also past experiences it may not be possible to complete the process in time. This would mean having to halt the count

probably until the following week and for it to be held in another location with the additional cost that that would involve let alone the impact on the Council's reputation.

The Electoral Commission advice highlights the issues/risks of holding the poll at the same time as the two statutory elections.

Officers have undertaken an estimation process to hold the poll on the same day this would increase the cost to the District Council of £130,000. A contingency of £20,000 would be advisable making a total of £150,000.

Poll at a separate date:

The issues/risks raised by the Electoral Commission would be avoided by holding the poll on a separate date to the 2 statutory elections.

The cost of Warwick District administering the 2016 UK Euro Referendum was £226,000 and of the WCC 2017 elections was £225,000. Therefore, to hold a standalone poll it would be prudent to allow for £225,000 plus a 10% contingency making a total of £250,000.

Conclusion:

As Returning Officer I have considered all of the issues and advise that if the Poll were to be approved by the Executive I would set a date on a different day to the District Council and Town/Parish Council Elections. The date chosen would be either before 12 March (before purdah) or after 15 May 2018 (after the installation of a new Council).

This is because

- (1) The Electoral Commission has recommended this approach;
- (2) There could be voter confusion;
- (3) The date chosen should avoid the purdah period for the local elections to ensure clarity for local electors;
- (4) Holding the poll on the same day would require a significant additional number of counting staff, for the reasons set out above, and, based on recent experience, I cannot guarantee they could be successfully recruited; and,
- (5) Ensuring the effective and efficient election process outweighs the cost implication.

Chris Elliott
Returning Officer

Appendix A

From: Chris Hinde]
Sent: 08 November 2018 14:51
To: Gillian Friar
Subject: RE: Warwick DC Referendum on Local Issue

Hi Gill,

Thanks for your e-mail.

Section 116 of the Local Government Act 2003 provides a specific power for principal local authorities in England and Wales to hold polls in order to ascertain elector's views on any matter relating to their services, expenditure on those services, or their power to promote wellbeing in their areas. There is no obligation on a local authority to hold a poll, nor is it bound by the result. The Act also does not provide for local electors to be able to demand a poll.

The explanatory notes to the Act made it clear that this power is broadly drawn and allows the local authority to hold a poll on any matter relating to the services for which it is responsible or the finance that it commits to those services, or any other matter that is one relating to the authority's power under section 2 of the Local Government Act 2000 (authority's power to promote well-being of its area). The section also provides express freedom to a local authority in determining, for any poll it proposes to hold, who to poll and how the poll is to be conducted. The section also provides for the Secretary of State is able to issue guidance, to which local authorities must have regard, on facilitating participation by disabled people in a local poll. We have assumed that the Council has satisfied itself that the poll which is being proposed falls within the ambit of this section.

As far as we are aware no Guidance has been issued by the Government as to how these polls are to be conducted and, unlike other elections/referendums, there are no formal rules setting out how they must be conducted. In the absence of such rules that means there are no provisions which would allow combination of the advisory poll with the local elections. They can be held on the same day but they must be treated as separate polls with separate ballot boxes, postal packs etc.

Our general view is that holding an advisory poll on the same day as a scheduled election poses a real risk of confusing electors especially where candidates in the local elections are likely to be campaigning on the same issue which is the subject of the advisory poll. Added to this is the potential problem of accounting for candidate's election expenditure expenses. Presumably material will be produced for electors to take a view on the subject of the advisory poll and candidates in the local elections are likely to be taking positions on the issue. Splitting expenditure between campaigns may cause problems. We have also assumed that the Council would want the franchise for the advisory poll to be the same as for the local elections but if for any reason they wished it to be different we would not advocate holding the poll on the same day as the scheduled election.

We would also suggest that any publicity for the advisory poll would need to make it clear that the local authority is not bound by the result and so there is no question of

winning or losing The turnout, even if the poll takes place on the same day as the elections, may not be all that high and the advisory poll may not produce a clear result.

Hope the above is helpful and, in summary, our answers to the questions are as follows:

1. Can this poll be held on the same day as the District and Town/Parish Council elections or do the Commission recommend a separate Day for the poll? **It can but we would not recommend it.**
2. If it can be on the same day can we combine the poll card and postal pack? **No there is no provision for combination**
3. Or does there need to be a separate poll card and postal pack from the District and Town/Parish elections? **As there is no provision for combination separate poll cards/postal packs will be necessary**
4. Could there be a conflict of interest with the Councillors in keeping their roles separate? i.e. Campaigning to be re-elected as a Councillor and on the Yes or No vote **Yes this is very likely**
5. Election Expenses and Referendum Expenses? They will need to be kept separate? Can they be shared? **Yes they must be kept separate**
6. With a District wide Referendum being held on the same day as the D&TP elections – we would spend all the Thursday evening after close of poll verifying ballot papers and would not be able to start counting until Friday/Saturday. Can we concentrate on the District &TP Counts first i.e. Friday and then the Referendum? We may need to Count the Town/Parishes & Referendum on the Saturday - depending when we start counting the District on Friday. **Agreed. As the principal poll we would expect the RO to prioritise the District election results and then the Town/Parish Council results. The Advisory poll would be the last poll to be counted.**

Regards

Chris Hinde
Regional Manager (Midlands)