

REPORT FROM: HEAD OF LEGAL AND DEMOCRATIC SERVICES

TO: EXECUTIVE

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RETURNING OFFICER INDEMNITY

PURPOSE OF REPORT

This report discusses the potential liability of the Chief Executive, in his/her capacity as Registration Officer and Returning Officer in relation to local elections, for costs incurred in proceedings arising from the conduct of those posts and recommends appropriate action.

RECOMMENDATIONS

- (1) That the authority provides an indemnity to cover the legal costs of the Chief Executive in his/her capacity as Registration Officer and Returning Officer in any proceedings arising from the conduct of these posts, to the extent that liability falls upon him/her because the scope of the authority's own insurance does not extend to cover such liability
- (2) That for this purpose the authority approves the Indemnity Resolution set out in Appendix One to this report;

REASONS FOR RECOMMENDATIONS

- (1) Officers of the authority acting as such are usually immune from action. The Registration Officer and Returning Officer however, have no such immunity. While the Chief Executive is appointed to his/her offices by virtue of his/her employment by the authority he/she will incur personal liability for, for example, the costs of defending any election petition in relation to proceedings in respect of an issue with the election. It is in relation to local elections only that this is of relevance.
- (2) An authority is able to indemnify an officer in relation to an action or omission to act which either (a) is authorised by the authority or (b) forms part of, or arises from, duties placed upon that officer as a consequence of any function being exercised by that officer (whether or not as an officer of the authority) (i) at the request (or with the approval of), or (ii) for the purposes of the authority.
- (3) The proposed indemnity is worded in such a way as to ensure the Officer is protected where he/she has undertaken his/her tasks properly and in accordance with his/her

duties.

- (4) The indemnity is needed now because there is an ongoing electoral petition following the local elections held in May 2023 which is almost certain to result in a court order for the payment of the Petitioner's costs by the Returning Officer.

ISSUE

1. By the Council's Constitution the Chief Executive is appointed as Registration Officer and Returning Officer, posts in which he/she discharges official duties but not strictly as officer of the authority. He/she is exposed to personal liability in respect both of his/her conduct of elections and of the registration of electors; in particular, the legal costs of election petitions which can run to tens of thousands of pounds. The statutory immunity afforded to Council officers acting as such does not protect him/her in his/her capacity as Registration Officer or Returning Officer.
2. Part of the risk of claims arising out of the running of elections has been covered under the general arrangements made for insurance cover, however this only extends to the costs associated with the legal fees of the Returning Officer's own legal team. It does not cover the costs of the party bringing the petition against the Returning Officer hence the need for an indemnity to cover that eventuality.
3. The Council has the power to indemnify the Returning Officer; such indemnity would extend to actions taken in good faith but exclude covering liability for any deliberate or reckless wrongdoing.
4. It is commonplace for authorities to exercise this power of indemnity.
5. The form of indemnity at Appendix 1 to this report gives assurance to the Council's Returning Officer and Registration Officer that they will not suffer personal financial liability and loss where something goes wrong unintentionally at a local election. It is important that this assurance is given to the Returning Officer in this form because the potential for exposure ought to be removed as a matter of fairness and because the Council ought to support the officer who carries out this statutory function.

IMPLICATIONS

Policy: None arising from the report.

Financial: To pay a costs award in favour of a successful petitioner.

Legal: The council is required to appoint a Returning Officer to conduct local elections and a Registration Officer in connection with the maintenance of the electoral register for all purposes.

The Registration Officer also discharges the duties of the Acting Returning Officer for Parliamentary elections and is responsible for the entire conduct of the election. The Mayor, as Returning Officer, is responsible only for receiving the writ, announcing the result, and returning the result to the clerk of Parliament.

Risk Management: It is essential that there is no deterrent to the council being able to recruit a Returning and Registration Officer.

Health and Safety: None arising from the report.

Sustainability: None arising from the report.

Community Safety: None arising from the report.

Equality and Diversity: None arising from the report.

APPENDICES – Appendix One Indemnity

LIST OF BACKGROUND PAPERS

Indemnity

Appendix One

1. The authority will indemnify its officer acting in his/her capacity as Registration Officer and Returning Officer in relation to local, or such other elections as falls within his/her function; the reasonable costs which he/she may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings to which he/she is subject and; any costs awarded against him/her by any court following the presentation of an election petition
2. This indemnity shall extend only so far as the officer's liability arises as a result either of the authority or any other body not holding insurance indemnifying the officer in his capacity as Registration officer or Returning Officer in relation to the particular events or elections in question, or of any such policy being subject to a deductible or excess.
3. For the purpose of these indemnities, costs shall be deemed to have arisen to the officer "in his/her capacity as Electoral Registration Officer and Returning Officer" where the act or failure to act was outside the powers of the authority, or outside the powers of the officer, but the officer reasonably believed that the act or failure to act was within the powers of the authority and within the powers of the officer at the time that he/she acted or failed to act, as the case may be.

Recovery of Sums from Members and Officers

4. The authority undertakes not to seek to recover from any officer any loss which it has suffered as a consequence of any act or omission of that officer in his/her capacity as Electoral Registration Officer and Returning Officer, subject to the following exceptions:
 - 4.1 Where the loss has resulted from a criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the officer; or
 - 4.2 Any action or omission by the member or officer otherwise than in his/her capacity as Electoral Registration Officer and Returning Officer in relation to the elections identified at Clause 1 of this Resolution.

General

5. These indemnities and undertaking will not apply if a member or officer, without the express permission of the authority or of the appropriate officer of the authority, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this resolution.
6. These indemnities and undertaking are without prejudice to the rights of the authority to take disciplinary action against an officer in respect of any action or omission.
7. These indemnities and undertaking shall apply retrospectively to any act or failure to act which may have occurred before this date and shall continue to apply after the member or officer has ceased to be a member or officer of the authority or to act as Electoral Registration Officer and Returning Officer, as well as during his/her membership of or employment by the authority.