

ED2. EXECUTIVE DECISIONS BY A CABINET MEMBER OR AN OFFICER

A. Report Title: FORM OF INDEMNITY TO ACTING RETURNING OFFICER / DEPUTY ACTING RETURNING OFFICER FOR THE CONDUCT OF PARLIAMENTARY ELECTIONS	
B. Report Author(s): DAVID LAWSON, INTERIM DEPUTY HEAD OF LEGAL SERVICES & DEPUTY MONITORING OFFICER	Tel: 01375 652087 E-mail: dlawson@thurrock.gov.uk
C. Decision Maker: CLLR G HAGUE	
D. Position held: LEADER	
E. Key decision: YES/NO YES	F. Delegation ref: PART B - THE LEADERS – DELEGATED POWERS – URGENT DECISIONS a)
G. Is the decision urgent? YES/NO YES	
H. If yes, state why. <p>The Head of Legal Services has been appointed by the authority under s35 Representation of the People Act 1983 as Returning Officer for the local election and as well as the Electoral Registration Officer. The Mayor is the Returning Officer for the Parliamentary Election. In a Parliamentary Election the Acting Returning Officer is the Electoral Registration Officer, which is the Head of Legal Services.</p> <p>These posts are independent of the authority and carry personal liability. By virtue of this appointment the Head of Legal Services is also appointed as Local Returning Officer for the European Parliamentary elections under the European Parliamentary Election Act 2002. The Returning Officer at any election may appoint one or more persons as Deputy Returning Officer/s to discharge all or any functions.</p> <p>It is recommended practice that such post holders are covered by a form of indemnity in addition to any relevant insurance policies in order to address any issues of insurance excess and disputes as to insurance coverage. Please see attached report for background information.</p> <p>The matter is urgent and cannot await the next Cabinet meeting which is more than 15 days after the election. The reason this report was not ready for Cabinet in March is because firstly, the insurance cover was being investigated, which revealed an excess of nearly £30,000. Secondly, external independent legal advice was sought. That advice was received in the week commencing 15 March 2010, which needed further consideration.</p>	

I. **DECISION** (strike out whichever does not apply) :

1. I agree the recommendations in the attached report for the reasons given in the report; **OR**

2. *My decision is:

*The reason for my decision is:

* Continue overleaf or on an additional sheet if necessary.

Signed: Councillor G Hague

Date: 20 April 2010

URGENCY

Democratic Services will arrange for the completion of the following:

J. I confirm that in my opinion a decision on this matter is urgent and cannot reasonably be delayed:

Signed:

Date:

To be completed by Democratic Services

Date decision received by Dem. Services:	Date decision published:
Implementation date:	
Relevant O & S Committee: Councillor D Revell	21 April 2010

		ITEM
LEADER		
FORM OF INDEMNITY TO ACTING RETURNING OFFICER / DEPUTY ACTING RETURNING OFFICER FOR THE CONDUCT OF PARLIAMENTARY ELECTIONS		
Portfolio Holder: Councillor Gary Hague - Leader		
Wards and communities affected: ALL	Key Decision: No	
Accountable Head of Service: Tasnim Shawkat, Head Of Legal Services And Monitoring Officer		
Accountable Director: Bob Coomber, Interim Chief Executive		
This report is PUBLIC		
Purpose of Report: To report on urgent need to agree a form of indemnity to Returning Officer, Acting Returning Officer, Deputy Acting Returning Officer for the conduct of parliamentary elections and Returning Officer and Deputy Returning Officer/s for the local election.		

EXECUTIVE SUMMARY

The Head of Legal Services has been appointed by the authority under section 35 Representation of the People Act 1983 as Returning Officer for the local election and as well as the Electoral Registration Officer. The Mayor is the Returning Officer for the Parliamentary Election. In a Parliamentary Election the Acting Returning Officer is the Electoral Registration Officer, which is the Head of Legal Services.

These posts are independent of the authority and carry personal liability. By virtue of this appointment the Head of Legal Services is also appointed as Local Returning Officer for the European Parliamentary elections under the European Parliamentary Election Act 2002. The Returning Officer at any election may appoint one or more persons as Deputy Returning Officer/s to discharge all or any functions.

It is recommended practice that such post holders are covered by a form of indemnity in addition to any relevant insurance policies in order to address any issues of insurance excess and disputes as to insurance coverage.

The matter is urgent and cannot await the next Cabinet meeting which is more than 15 days after the election. The reason this report was not ready for Cabinet in March is because firstly, the insurance cover was being investigated, which revealed an excess of nearly £30,000. Secondly, external independent legal advice was sought. That advice was received in the week commencing 15 March 2010, which needed further consideration.

1. RECOMMENDATIONS:

- 1.1 That pursuant to section 101 of the Local Government Act 2000 and the Local Authorities (Indemnities for Members and Officers) Order 2004, and section 265 of the Public Health Act 1875 as extended by section 39 and section 44(1) the Local Government (Miscellaneous Provisions) Act 1976 the form of indemnity in Appendix 1 to this report is approved for the Returning / Acting Returning Officer and any Deputy Returning Officer/s in their conduct of elections.**

2. INTRODUCTION AND BACKGROUND:

- 1.1 The Mayor of Thurrock is the Returning Officer for the Parliamentary Election in one constituency and Tasnim Shawkat, Head of Legal, is designated Acting Returning Officer. This is provided for in the Representation of the People Act 1983 section 24 — (1) In England and Wales, the returning officer for a parliamentary election is in the case of a borough constituency which is coterminous with or wholly contained in a district, the chairman of the council.
- 1.2 The duties of the Returning Officer are to be discharged by the Acting Returning Officer section 28 RPA 1983 (1) In England and Wales the duties of the returning officer for a parliamentary election (except those mentioned in subsection (2) below) shall be discharged, as Acting Returning Officer in the case of a constituency for which the chairman of a council is returning officer by the (electoral) registration officer appointed by that council.
- 1.3 It will be seen then that by virtue of its responsibility to decide who registration officer is, the Council decides who is to be Acting Returning Officer, in this case Tasnim Shawkat, Head of Legal Services and Monitoring Officer.
- 1.4 An Acting Returning Officer has power to appoint deputies to discharge all or any of the duties of the appointment, the Head of Legal Services has appointed Elaine Sherdian, Electoral Services Manager to be her deputy.
- 1.5 The Acting Returning Officer is by virtue of the European Parliamentary Elections Act 2002 the Local Returning Officer for European Parliamentary Elections and by virtue of section 35 of the Representation of the People Act 1983 authority has also appointed the Head of Legal Services to be the Returning Officer for the Local Government elections. The Returning Officer at any local government election may appoint one or more persons to discharge all or any functions.

- 1.6 Returning Officers / Acting Returning Officers are as a matter of law personally responsible for the effective running of the election in the constituency. If a member of staff or a contractor makes a mistake or carries out work in a way that is not compliant with the law, the responsibility is the Returning Officer / Acting Returning Officer's and possibly the deputy Acting Returning Officer who could face a legal challenge and personal liability.

3. ISSUES AND/OR OPTIONS:

- 3.1 The Local Authorities (Indemnities for Members and Officers) Order 2004 was made and came into effect on 23 November 2004. The Order sets out the circumstances in which indemnities may be provided.
- 3.2 The Order contains some restrictions on the provision indemnities. Importantly an indemnity is not available to cover any cases in which individuals act fraudulently or recklessly or as a result of deliberate wrongdoing.
- 3.3 The Returning Officer / Acting Returning Officer is personally accountable for conduct of the election. In the circumstances it may be appropriate to require the Returning Officer / Acting Returning Officer to secure insurance cover for his/her role so that the potential risk is minimised. The authority has such a policy – which carries an excess, which is currently £29,950.
- 3.4 Where the actions of Returning Officer / (Acting) Returning Officer are covered by the authority's insurance policy, the first claim against the Returning Officer / (Acting) Returning Officer and / or deputy in respect of personal injury, third party, fire and theft will be made to that insurer. In a case where the insurer refuses to meet the claim, or where the incident in question is not covered by the insurance it is good practice for an authority to have in place a form of indemnity.
- 3.5 As stated the form of indemnity cannot cover incidents of fraud or recklessness or deliberate wrong doing but given the limitations of any insurance cover, the imminent need to commence these duties in preparation for elections it is recommended that the Leader under his urgency powers consider adopting the indemnity in relation to the Returning Officer / Acting Returning Officer and any Deputy Acting Returning Officer(s) in the form set out in the Appendix 1.

4. CONSULTATION (including Overview and Scrutiny, if applicable)

- 4.1 Consultation has taken place with Cabinet Members, Deputy Leader, Portfolio Holder and the relevant Overview and Scrutiny Chair.

5. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

- 5.1 The recommendations are conducive to efficient management of the authority's duties in managing elections.

6. IMPLICATIONS

6.1 Financial

Implications verified by: **Meinir Hall**
 Telephone and email: **01375 652147**
mhall@thurrock.gov.uk

The indemnity that is provided as part of the insurance cover with Zurich Insurance has no excess and no additional premium. This report also asks for the Council to provide indemnity for anything that is not covered by the insurance policy. The risk of the insurance not covering any issues arising is minimal and this will not cover the exclusions relating to individuals acting fraudulently, deliberate wrong doing and recklessness. Any costs of the Council providing additional indemnity would not be known until the situation occurs, but may include the costs of re-running the elections. As stated the risk of this happening is minimal.

6.2 *Legal*

Implications verified by: **David Lawson**
 Telephone and email: **dlawson@thurrock.gov.uk**
01375 652087

The legal implications are incorporated in the body of the report.

6.3 Diversity and Equality

Implications verified by: **Samson DeAlyn**
 Telephone and email: **01375 652472**
sdealyn@thurrock.gov.uk

There are no direct diversity implications noted in this report.

6.4 Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental

None.

7. CONCLUSION

7.1 The recommendations are essential to allow the officers concerned sufficient and appropriate security to carry out these duties of public importance in conducting the forthcoming Parliamentary and Local Elections.

BACKGROUND PAPERS USED IN PREPARING THIS REPORT:

- None

APPENDICES TO THIS REPORT:

- Appendix 1 – Form of Draft Indemnity.

Report Author Contact Details:

Name: David Lawson

Telephone: 01375 652087

E-mail: dlawson@thurrock.gov.uk

DRAFT

THURROCK BOROUGH COUNCIL

FORM OF INDEMNITY TO ACTING RETURNING OFFICER / DEPUTY

ACTING RETURNING OFFICER

This indemnity is made under S.101 of the Local Government Act 2000 and the Local Authorities (Indemnities for Members and Officers) Order 2004, and is supplementary to the provisions of S.265 of the Public Health Act 1875 as extended by S.39 and S.44(1) the Local Government (Miscellaneous Provisions) Act 1976. The Council must appoint a Returning Officer / Acting Returning Officer for the elections pursuant to Section 35(4) of the Representation of the People Act.

The Returning Officer / Acting Returning Officer is the person who has the overall responsibility for the conduct of elections and Parliamentary elections. The Returning Officer / Acting Returning Officer is an officer of the Council, although the role of the Acting Returning Officer is one of a personal nature and distinct and separate from his/her duties as an employee of the council.

The Returning Officer / Acting Returning Officer is responsible for: the nomination process for candidates and political parties; provision and notification of polling stations; appointment of presiding officers and polling clerks; appropriate administration and security of polling stations; preparation of all ballot papers; the actual count and declaration of results; and issue, receipt and counting of postal ballot papers.

Thurrock Borough Council indemnifies the Returning Officer / Acting Returning Officer, Tasnim Shawkat and any Deputy (Acting) Returning Officer(s) appointed by her against any claim liability loss and/or damage in relation to any action or failure to act by the officer which:-

- (a) is authorised by the authority; or
- (b) forms part of or arises from any powers conferred, or duties placed upon that officer as a consequence of any function being exercised by that officer

(whether or not in exercising that function the officer does so in the capacity of officer of the authority)

c) forms part of or arises from any powers conferred or duties placed upon that officer as a consequence of any function as Returning Officer / Acting Returning Officer / Deputy (Acting) Returning Officer for all liabilities incurred in discharging the functions of those posts

- (i) at the request of or with the express approval of the authority; or
- (ii) for the purposes of the authority

Without prejudice to the generality of this indemnity (above) the indemnity extends to action:-

- (a) taken under delegated powers; and/or
- (b) taken personally under any specific statutory provision as Returning Officer / Acting Returning Officer.

Conditions and Limitations applying to the Indemnity

A. Good faith

The officer relying on the indemnity:-

(i) must believe that the action, or failure to act, in question was within the powers of the authority or the Returning Officer / Acting Returning Officer

or

(ii) where that action or failure to act comprises the issuing or authorising of any document containing any statement as to the powers of the relevant authority, or any statement that certain steps had been taken or requirements fulfilled, believed that the contents of that statement were true;

and

in either case that it was reasonable for the officer to hold that belief at the time when the officer acted or failed to act

the council will provide the indemnity in relation to an act or failure to act which is subsequently found to be beyond the power of that officer in question, or the Returning Officer / Acting Returning Officer's duties, but only to the extent that the officer reasonably believed that the act or failure to act in question was within that officer's powers at the time at which that officer acted or failed to act.

B. Repayment of cost

Where any indemnity is given to the officer in relation to the defence of criminal proceedings or proceedings alleging a breach of the code of conduct, then:-

(i) in relation to criminal proceedings if the officer is convicted of a criminal offence then the sums expended by the authority or its insurers in relation to those proceedings must be reimbursed to the authority or to the insurers.

General Principles

(i) The authority will provide the officer with reasonable and proportionate access to authority employees and authority resources and facilities to enable the individual officer to properly respond to allegations of personal liability being advanced;

(ii) The authority will allow legal representation for the officer separately from the authority's own legal advisers (and/or the authority's insurers' legal advisers) where the interests of the authority and the individual officer may conflict or in such other circumstances where it is agreed between the authority and the individual officer that separate legal representation is appropriate.

(iii) the authority will not seek to recover from the officer any losses incurred by the authority as a result of an action or failure to act by the officer concerned except:-

(a) where the officer involved did not reasonably believe that the act or omission in question was within his/her powers at the time when that act or omission took place, or

(b) where the action or failure to act constituted a criminal offence.