

ELECTION INDEMNITIES

Head of Service: Amardip Healy, Chief Legal Officer
Wards affected: (All Wards);
Urgent Decision?(yes/no) yes
If yes, reason urgent decision required: Elections in May 2021
Appendices (attached):

Summary

This report recommends election indemnities for the Mayor as the Returning Officer for Parliamentary Elections and for the Chief Executive and her deputies, in her capacities as Electoral Registration Officer and Returning Officer or acting for the Returning Officer for a range of elections.

Recommendation (s)

The Council is asked to:

- (1) provide an indemnity to cover the legal costs of the Mayor as Returning Officer for Parliamentary elections in any proceedings arising from the conduct of this position, to the extent that liability falls upon the Mayor or on those the Mayor appoints, either:**
 - (i) because the scope of the authority's own insurance does not extend to cover such liability; or**
 - (ii) to the extent that such liability falls within the deductible applying to the authority's own insurance;**
- (2) provide an indemnity to cover the legal costs of the Chief Executive (including her deputies) in her capacity as Registration Officer and Returning Officer in any proceedings arising from the conduct of these or related posts, to the extent that liability falls upon her, or on those she appoints, either:**
 - (i) because the scope of the authority's own insurance does not extend to cover such liability; or**
 - (ii) to the extent that such liability falls within the deductible applying to the authority's own insurance;**
- (3) that for this purpose the authority approve the Indemnity set out in para 2.7 to this report;**

(4) that the decision as to whether to insure any potential liability arising out of the Indemnity should rest with the Chief Finance Officer.

1 Reason for Recommendation

1.1 Following confirmation that the delayed elections for the Police Crime Commissioner and the Surrey County, will now take place in May 2021, the Council needs to put in place relevant election indemnities.

2 Background

2.1 The Council's Mayor is the Returning Officer for Parliamentary Elections, however, this role is ceremonial where the Mayor will read out the results of the Election. However, the reading out of results is important and there have been several cases where the incorrect declaration of results of an election could lead to legal action.

2.2 The Council's Chief Executive is appointed as the Returning Officer and the Electoral Registration Officer for the Council. She is also the Acting Returning Officer for Parliamentary Elections, the Deputy Returning Officer for the Surrey County Council Elections and also the Local Returning Officer for the Police Crime Commissioner elections.

2.3 The Table below summaries the various different functions and current appointments:

Type of Election	Returning Officer	Acting Returning Officer	Local Returning Officer	Deputy Returning Officer	Deputy/Deputy Acting Returning Officer/ Local DRO
Parliamentary	Mayor	Chief Executive	-	-	Electoral Services Manager & Chief Legal Officer
Surrey County Council	Surrey County Council Chief Executive	-	-	Chief Executive	Electoral Services Manager & Chief Legal Officer
Local Borough	Chief Executive	-	-	Electoral Services Manager & Chief Legal Officer	-
Police Crime Commissioner	-	Police Area Returning Officer (PARO) for Police Area: Surrey is now being filled by	Chief Executive	-	Electoral Services Manager & Chief Legal Officer (DLRO)

Council
16 February 2021

		Runnymede Borough Council Chief Executive			
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- 2.4 The Chief Executive in her relevant capacity appropriate to the election taking place, normally appoints the Electoral Services Manager and the Chief Legal Officer as her deputies with full powers. This means they have all the powers of the type of returning officer for that election.
- 2.5 The risk of claims arising out of the running of elections has been covered under the general arrangements made for insurance cover, for which there is an excess. These arrangements can change over time. To ensure the Mayor and the Chief Executive is not exposed in any way for events arising out of the running of elections, an indemnity from the Council would be appropriate.
- 2.6 The Council has power to indemnify the Returning Officer and the Electoral Registration Officer. Such indemnity would extend to actions taken in good faith, but exclude covering liability for any deliberate or reckless wrongdoing; and to take insurance cover to cover any liability arising from that indemnity.

Indemnity

- 2.7 The form of indemnity to be:
1. Epsom and Ewell Borough Council will indemnify its officer acting in their capacity as Electoral Registration Officer and Returning Officer in relation to local, or such other elections as falls within their function as the Acting Returning Officer, the Deputy Returning Officer or as a Local Returning Officer including appointed deputies, the reasonable costs which they may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings to which they are subject.
 2. This indemnity shall extend only so far as the officer's liability (including all appointed deputies) arises as a result either of the Council or any other body not holding insurance indemnifying the officer in their capacity as Electoral Registration Officer or Returning Officer/ Acting Returning Officer/ Deputy Returning Officer or as a Local 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 this indemnity, costs shall be deemed to have arisen to the officer "in their capacity as Electoral Registration Officer and Returning Officer" (including all appointed deputies) where the act or failure to act was outside the powers of the

Council

16 February 2021

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.

4. The Council 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 their capacity as Electoral Registration Officer and Returning Officer / Acting Returning Officer/ Deputy Returning Officer or as a Local Returning Officer, subject to the following exceptions:
 - i. Where the loss has resulted from a criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the officer; or
 - ii. Any action or omission by the member or officer otherwise than in their capacity as Electoral Registration Officer and Returning Office / Acting Returning Officer/ Deputy Returning Officer or as a Local Returning Officer.
5. 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 their employment by the authority.
6. The same indemnity will apply to the Mayor when acting as the Returning Officer for the Parliamentary elections.

3 Risk Assessment

Legal or other duties

3.1 Impact Assessment

3.1.1 None for the purposes of this report.

3.2 Crime & Disorder

3.2.1 None for the purposes of this report.

3.3 Safeguarding

3.3.1 None for the purposes of this report.

3.4 Dependencies

3.4.1 None for the purposes of this report.

Council

16 February 2021

3.5 Other

3.5.1 None for the purposes of this report.

4 Financial Implications

4.1 The cost of insurance to provide the indemnity is expected to be funded from existing insurance budgets.

4.2 **Section 151 Officer's comments:** The Council's financial exposure will be mitigated by taking out appropriate indemnity insurance.

5 Legal Implications

5.1 The Council is required to appoint a Returning Officer to conduct local elections and an Electoral Registration Officer in connection with maintenance of the electoral register for all purposes.

5.2 The Mayor is the Returning Officer, for Parliamentary elections, but it is the Acting Returning Officer (the Chief Executive) who is responsible for receiving the writ and returning the result to the clerk of Parliament and running the election.

5.3 The Constitution (para 7.20, Part 3) provides officers of the Council with a general immunity for any action, costs, claim, or liability incurred by them in form contained in Schedule 6, Part 3 of the Constitution. However, both the various role of Returning Officer and Electoral Registration Officer are not covered by this indemnity. This is because they are appointed to these 'offices' by virtue of their employment by the Council.

5.4 The proposed indemnity is worded to ensure the Mayor and those Officers appointed to the specified roles, is protected where they have undertaken their tasks properly and in accordance with their duties.

5.3 **Monitoring Officer's comments:** None for the purposes of this report.

6 Policies, Plans & Partnerships

6.1 **Council's Key Priorities:** The following Key Priorities are engaged: Effective Council.

6.2 **Service Plans:** The matter is not included within the current Service Delivery Plan.

6.3 **Climate & Environmental Impact of recommendations:** None for the purposes of this report.

6.4 **Sustainability Policy & Community Safety Implications:** None for the purposes of this report.

6.5 **Partnerships:** None for the purposes of this report.

Council
16 February 2021

7 Background papers

7.1 The documents referred to in compiling this report are as follows:

Previous reports:

- None

Other papers:

- None