



General Purposes Committee
23 February 2010

**Report from the
Interim Borough Solicitor**

For Action

Wards Affected: ALL

Returning Officer Indemnity

1.0 Summary

- 1.1 This report discusses the potential liability of the Chief Executive, in his capacities as Registration Officer and Returning Officer in relation to local, London, Parliamentary and European elections, for significant costs incurred in proceedings arising from his conduct of those posts and recommends appropriate action.

2.0 Recommendations

- 2.1 that the authority provide an indemnity to cover the legal costs of the Chief Executive in his 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 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;
- 2.2 that for this purpose the authority approve the Indemnity Resolution set out in Appendix One to this report;
- 2.3 that the decision as to whether to insure any potential liability arising out of the Indemnity Resolution should rest with the Chief Finance Officer.

3.0 Detail

- 3.1 By Brent's Constitution the Chief Executive is appointed as Registration Officer and Returning Officer, posts in which he discharges official duties but not strictly as officer of the authority. He is exposed to personal liability in respect both of his conduct of elections and of 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 in his capacity as Registration Officer or Returning Officer.

- 3.2 Historically the risk of claims arising out of the running of elections has been covered under the general arrangements made for insurance cover, however there is a £307k excess across the board but insurers are now prepared to remove this excess in respect of this particular cover, as the risk exposure is minimal. This cover relates to Local Elections and there is a contingent cover for all other elections such as Parliamentary and GLA. Although all the gaps appear to be covered to be totally sure 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.
- 3.3 For both London (both GLA and Mayoral) and European Parliamentary elections insurance has been arranged centrally – by the GLA Returning Officer in the one case, and by the Ministry of Justice in the other.
- 3.4 The Council has 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; and to take insurance cover to cover any liability arising from that indemnity.

4.0 Financial Implications

- 4.1 As described in paragraph 3.2, the cover provided by insurers does not carry an excess, however, there may be a period in future where cover is with another insurer and similar terms will not be enjoyed. The indemnity would provide cover for the Returning Officer until the appropriate cover could be arranged. The risk of the indemnity being called in on a scale from 1 to 10 is less than one, therefore, the financial exposure is negligible.

5.0 Legal Implications

The statutory background

- 5.1 The authority is required to appoint a Returning Officer to conduct local elections and a Registration Officer in connection with maintenance of the electoral register for all purposes.
- 5.2 The Returning Officer is also appointed as the constituency Returning Officer for London elections.
- 5.3 The Registration Officer also discharges the duties of the Acting Returning Officer for Parliamentary elections; and is responsible for 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.
- 5.4 The Returning Officer in relation to Parliamentary elections also acts as the local Returning Officer for European Parliamentary elections.

Statutory immunity

5.6 Officers of the authority acting as such are usually immune from action

5.7 The Registration Officer and Returning Officer however, have no such immunity. While he is appointed to his offices by virtue of his employment by the authority s/he will incur personal liability for, for example, the costs of defence of 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

5.8 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, and 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.

5.9 The proposed indemnity is worded in such a way as to ensure the Officer is protected where he has undertaken his/her tasks properly and in accordance to his duties.

6.0 Diversity implications

6.1 The proposals in this report have been subject to screening and officers believe that there are no diversity implications.

Fiona Ledden
Interim Borough Solicitor

Appendix One

Indemnity

- 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.
- 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 this 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.