

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

CABINET

4th December 2024

REPORT OF HEAD OF LEGAL AND DEMOCRATIC SERVICES – Mr Craig Griffiths

MATTER FOR DECISION

WARDS AFFECTED – ALL

Returning Office and Acting Returning Officer Indemnity

Purpose of Report

1. To approve an indemnity to the Chief Executive in respect of her carrying out the duties of Returning Officer at elections.

Background

2. In accordance with the provisions contained in the Representation of the People Act 1983 (as amended) the Council's Chief Executive (Frances O'Brien) has been designated (by virtue of the Neath Port Talbot Council Constitution) to act as the Returning Officer for the County Borough and Town/Community Council Elections taking place within the County Borough.
3. In addition, by virtue of the provisions contained in the above referred to Act and the Constitution, the Chief Executive is also designated as the Acting Returning Officer for any Parliamentary Elections and Senedd Elections taking place within the County Borough.
4. The Council already retains insurances to cover the liability of the Returning Officer/Acting Returning Officer. It has power also to provide an indemnity to cover any risks not covered by any insurance policies.

5. Section 101 of the Local Government Act 2000, the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006 and Section 111 of the Local Government Act 1972 grants local authorities the power to grant indemnities to officers where such personal liability may arise.
6. To ensure that appropriate safeguards are in place for this officer, given it is a Council appointed function, it would be appropriate for a suitable indemnity to be granted so that in the event of any action against the named individual, any costs incurred by the officer will be met by the Council.
7. It should be noted however that the indemnity will not extend to actions taken by the officer which
 - a. constitute a criminal offence
 - b. stem from fraud or deliberate wrongdoing or recklessness by the officer
 - c. relate to alleged defamation of the officer

Legal Implications

8. Section 101 of the Local Government Act 2000, the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006 and Section 111 of the Local Government Act 1972 grants local authorities the power to grant indemnities to officers where such personal liability may arise

Financial Implications

9. None at this stage. In the event that the indemnity is required to be implemented the financial obligations are as set out in the indemnity.

Consultation

10. There is no requirement for external consultation on this item.

Integrated Impact Assessment

11. There is no requirement for an integrated impact assessment for this recommendation

Workforce Impact

12. None.

Recommendations

13. It is recommended that Cabinet approve the entering into of an appropriate indemnity under The Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006 to Frances O'Brien in relation to her carrying out her duties as Returning Officer and/or Acting Returning Officer for all Elections and Referenda taking place within the County Borough.

Reason for Proposed Decision

14. To ensure appropriate indemnities are in place for officers who are accepting personal responsibility for such matters

Implementation of Decision

15. Implementation is proposed after the three-day call-in period.

Appendices

16. Appendix 1 - Draft Officer Indemnity

Background Documents

None

Officer Contacts

Craig Griffiths - Head of Legal and Democratic Services
Tel: 01639 763368 Email: c.griffiths2@npt.gov.uk

Appendix 1

DATED

2024

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

- and -

FRANCES O'BRIEN

**DEED OF INDEMNITY to OFFICER
RE: RETURNING OFFICER
AND ACTING RETURNING OFFICER DUTIES**

Mr. Craig Griffiths
Head of Legal and
Democratic Services
Neath Port Talbot County
Borough Council
Civic Centre
Port Talbot

DATED

2024

PARTIES

1. Neath Port Talbot County Borough Council of Port Talbot Civic Centre
Port Talbot SA13 1PJ (“the Council”)

2. Frances O’Brien of _____ (“the Officer”)

RECITALS

- (1) In accordance with the provisions contained in the Representation of the People Act 1983 (as amended) the Council’s Chief Executive (Francis O’Brien) has been designed by the Council to act as the Returning Officer for County Borough and Community Council Elections taking place within the County Borough.

- (2) In addition, by virtue of the provisions contained in the above referred to Act, the Chief Executive is also designated as the Acting Returning Office for any Parliamentary or Senedd Elections taking place within the County Borough.

- (3) The Council may in order to cover any possible liability of the Returning Officer / Acting Returning Officer provide an indemnity to her to cover any risks not covered by any insurance policies.

- (4) It has been agreed that subject to the terms appearing hereafter the Council shall indemnify the Officer acting in her capacity as Returning

Officer and/or Acting Returning Officer for all Elections and Referenda taking place within the County Borough

- (5) By virtue of a decision of the Council's Cabinet on 4th December 2024 the Council agreed to provide the indemnity to the officer in this form.

This **DEED OF INDEMNITY** is made under section 101 of the Local Government Act 2000 and the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, section 111 of the Local Government Act 1972 and all other enabling provisions as follows:

1. Indemnity

- 1.1 Subject to clauses 2 and 3 the Council shall (to the fullest extent permitted by the laws of England and Wales) indemnify and keep indemnified the Officer on demand against all actions, claims, liabilities, charges, demands, proceedings, investigations and judgments which may be made against her or which she may suffer or incur as a consequence of, or which relate to or arise from, directly or indirectly, her powers, duties, responsibility as a Returning Officer and/or Acting Returning officer for all Elections and Referenda (including legal and professional fees) and tax incurred in relation thereto from the date of the appointment as the named officer under the Permit.
- 1.2 All sums payable by the Council hereunder shall be paid free of, and without any rights of, counterclaim or set-off and without deduction and withholding on any ground whatsoever.

2. Exclusions and Limitations

2.1 Without prejudice to the generality of this indemnity but subject to the provisions of clauses 2.2 below this indemnity shall extend to:

- (a) the defence of criminal proceedings brought against the Officer;
and
- (b) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence

PROVIDED THAT:

the Council shall not be liable to make any payment to the Officer or any other party under the terms of this Deed of Indemnity nor in relation to any action or failure to act by the Officer that:

- (a) constitutes a criminal offence; or
- (b) is the result of fraud or other deliberate wrongdoing or recklessness on the part of the Officer; or
- (c) relates to alleged defamation of the Officer.

2.2 Where the Officer is convicted of a criminal offence and that conviction is not overturned following an appeal the Officer will reimburse the Council for any and all sums expended by the Council pursuant to this Indemnity in relation to those criminal proceedings.

3. Matters that exceed the powers of the Council and/or the Officer

3.1 This Indemnity extends to matters which exceed the powers of the Council and or the power vested in the Officer only to the extent that:

(a) Where the act or failure to act exceeded the powers of the Council the Officer reasonably believed at the time of the action or failure to act that the action or failure to act in question was within the powers of the Council;

or

(b) Where the action or failure to act comprised the issue or authorisation of a document containing a statement as to the powers of the Council or any statement that certain steps had been taken or requirements fulfilled, the Officer reasonably believed the contents of that statement to be true;

or

(c) Where the action or failure to act exceeded the powers vested in the Officer by the Council the Officer reasonably believed at the time of the act or failure to act that it was within his powers.

4. Reimbursement

4.1 Where the Officer is obliged to reimburse the Council pursuant to clause 2 of this Indemnity those sums shall be recoverable by the Council as a civil debt.

5. Conduct of claims

5.1 If the Officer becomes aware of any circumstances which may lead to the Council being required to make any payment under clause 1, the Officer shall:

5.1.1 as soon as practicable give written notice of such circumstances to the Council;

5.1.2 not make any admission of liability, agreement or compromise with any person in relation to any such circumstances without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed; and

5.1.3 consult the Council regarding the conduct of any claim arising in connection with such circumstances and provide the Council with such information and copies of such documents relating to any such claim as the Council may reasonably request.

5.2 In the event of any payment under this Deed being made, the Council shall be subrogated to the extent of such payment to all of the Officer's rights of recovery against third parties (including any claim under any applicable director's insurance policy) in respect of the payment and the Officer shall execute all papers required and shall do everything that may be necessary to secure any rights, including:

(a) the execution of any documents necessary to enable the Council effectively to bring an action in the name of the Officer; and

(b) the provision of assistance as a witness.

6. Jurisdiction

6.1 This Deed shall be governed by and construed in accordance with the law of England and Wales as they apply in Wales. The parties agree to submit to the exclusive jurisdiction of the courts of England and Wales in respect of any disputes or differences arising under this Deed.

THE COMMON SEAL OF)
NEATH PORT TALBOT COUNTY)
BOROUGH COUNCIL was affixed)
to this **DEED** in the presence of:)

Proper Officer

EXECUTED as a **DEED**)
by **FRANCES O'BRIEN**)
in the presence of:)

Witness signature:

Witness name:

Witness address: NPTCBC, Civic Centre Port Talbot, SA13 1PJ