

## WRITTEN STATEMENT OF DECISION BY CHIEF EXECUTIVE

### SECTION A

**DATE OF DECISION:**

18<sup>th</sup> March 2020

**PORTFOLIO AREA:**

Leader's Portfolio

**SUBJECT TITLE:**

Indemnity for Returning Officer

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972 (as amended) and can be made public.

### SECTION B – IDENTITY OF THE “DECISION-MAKER”

**Name of Officer:**

Roger Tetstall

**Title:**

Chief Executive

Pursuant to Delegated Powers as set out in paragraph (2) of “Delegations to Chief Executive” in Part 3 of the Constitution, namely

“To do anything, in consultation with the Leader, which is calculated to facilitate, or is conducive or incidental to the discharge of the Council’s functions subject to:

- (i) the matter being regarded as an emergency or urgent situation; and
- (ii) a report back to the Council, Cabinet or Committee concerned. “

### SECTION C – SUMMARY

#### Background

Polls in a Borough Council by election in the ward of Chilworth, Nursling and Rownhams and a Parish Council by election in Nursling and Rownhams were due to be held on 19th March 2020.

It was at the time of the rapid escalation of the coronavirus pandemic. Concerns were raised by many people that holding the election at that time was inappropriate for various reasons including those relating to public health and democratic legitimacy.

The Government had been silent on the matter until the evening of 18<sup>th</sup> March 2020 when the Cabinet Office issued the following statement (explicitly referencing “those [polls] due to take place tomorrow, Thursday 19th March”):

- *The Government will give its full support to Returning Officers who make the decision to suspend their polls. The Crown Prosecution Service (CPS) have provided assurance that criminal prosecution in these circumstances is highly unlikely.*
- *We will shortly be bringing forward measures within the Covid-19 Bill to postpone the scheduled local and mayoral elections due to take place in England and the scheduled Police and Crime Commissioner elections*

due to take place in England and Wales on 7 May this year until the next ordinary day of election on 6 May 2021.

- However, we recognise that there will be a small number of polls between now and the date of Royal Assent which will not be covered by these provisions.
- The delivery of polls rightly sits with Returning Officers who are statutorily independent and responsible to the Courts.
- Running a poll in present times is likely to come with significant concerns about the wellbeing of those involved, which may be thought to be unfair to both staff and the public.
- It would be both reasonable and consistent with the national position for a Returning Officer to suspend any poll scheduled within this period, including those due to take place tomorrow, Thursday 19th March.
- The hard work of Returning Officers is appreciated during these difficult and challenging circumstances.

Against this background, the Returning Officer took the view that there were, in the exceptional circumstances pertaining during a pandemic, grounds (including ones relating to public health and democratic legitimacy) which justified suspending the polls.

The liability of the Returning Officer is a personal one and so he discussed the matter with the Council's Section 151 Officer who advised that it would be appropriate in the circumstances for the Council to indemnify the Returning Officer in respect of any financial losses that he incurred as a consequence of his decision to suspend the polls.

Thereafter, the Returning Officer consulted with the Leader of the Council who agreed that the Council should grant such an indemnity.

#### **SECTION D – THE DECISION**

"That the Council will indemnify the Returning Officer in respect of any financial losses that he incurs as a consequence of his decision to suspend the polls in the Borough Council by election in the ward of Chilworth, Nursling and Rownhams and in the Parish Council by election in Nursling and Rownhams due to be held on 19th March 2020 (including any losses incurred as a result of any insurance cover being invalidated or otherwise not available)."

#### **SECTION E – REASONS FOR THE DECISION**

##### **The decision-maker's reasons for making the decision recorded in Section D:**

The decision maker believed that the public interest was best served by suspending the polls in question but that, given the uncertainty surrounding such a decision made in truly exceptional circumstances, it was appropriate and reasonable to seek personal indemnity in respect of the consequences thereof. The urgency of the situation was self-evident given the timescales noted in section C above.

**SECTION F – DETAILS OF ANY ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

The decision was binary – either the indemnity was granted or not.

**SECTION G – OTHER RELEVANT MATTERS CONCERNING THE DECISION**

None

**SECTION H – BACKGROUND PAPERS**

The following background papers were taken into consideration when making the decision:

Statement from the Cabinet Office dated 18<sup>th</sup> March 2020

**SECTION I – Any Conflict of Interest Declared and Dispensation Granted**

There was a potential conflict of interest arising from the same person holding the offices of Chief Executive and Returning Officer. The Section 151 Officer was satisfied that any such conflict was resolved by the application of his own independent judgement and by the requirement to consult with the Leader of the Council.

We certify that the decision this document records was made Pursuant to Delegated Powers as set out in paragraph (2) of "Delegations to Chief Executive" in Part 3 of the Constitution and is a true and accurate record or minute of that decision.

Chief Executive: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

The Leader of the Council \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

