

WRITTEN STATEMENT OF DECISION BY CHIEF EXECUTIVE

SECTION A

DATE OF DECISION:

31st 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

This decision was taken during the rapid escalation of the coronavirus pandemic.

The Office of a Borough Councillor for the Andover St Mary's Ward was declared vacant by the Council on 18th March 2020 with the consequence that the Returning Officer must set a date for election to that Office and publish Notice of that Election no later than midnight on 31st March 2020.

As a result of the public health emergency presented by the pandemic, on the 23rd March 2020 Government directed the public to stay at home and only to go outside for food, health reasons (one period of exercise per day) or work (but only where that work cannot be done from home) and to stay 2 metres away from other people at all times in the event that they did leave their homes. Gatherings of over two people are prohibited (except for funerals).

If Notice of Election was published, a process would be set in train whereby nominations would be sought, requiring candidates and/or agents to have direct contact with the public, one another and elections staff in contravention of government social distancing direction and public health advice and would result in an election being scheduled which could not take place due to Government prohibition on gatherings and imposition of social distancing.

On 18th March 2020 the Cabinet Office issued the following statement relating to polls prior to the 7th May 2020:

- *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.*

The Coronavirus Act 2020 ("The Act") has subsequently been enacted and makes some provision for polls due to take place in the period 16th March - 24th April (30 days after the date the Act was passed) but didn't (i.e. where the RO postponed them). The poll for the St Mary's Ward vacancy was 'due to take place' in that period as declaration of vacancy triggered the requirement for the Returning Officer to schedule a poll within 35 days.

For polls due to take place during the prescribed timescale, the Act dis-applies s63 of the Representation of the People Act 1983- it is section 63 which renders breach of official duty a criminal offence. However Regulations (which the Act gives the Secretary of State/Minister for the Cabinet officer power to make) giving more detailed provision as to how polls during this period are to be dealt with are yet to be passed.

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 not publishing notice of election.

The liability of the Returning Officer is a personal one and the Council's Monitoring officer consulted with 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 not to publish Notice of Election.

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 not to publish Notice of Election to the Office of Borough Councillor for the Andover St Mary's Ward"

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 not publishing Notice of Election but that, notwithstanding the provisions of section 59 of the Coronavirus Act 2020, given the lack of absolute certainty 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 is illustrated by the timescale. The last day on which Notice could be published is today, 31st March 2020. It was hoped that secondary legislation by way of Regulations giving specific provision for polls affected by the Coronavirus pandemic would have been available by today but that legislation is still awaited.

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 18th March 2020

Coronavirus Act 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 Council's Monitoring Officer has discussed the decision with the Section 151 Officer both of whom are satisfied that any such conflict was resolved by the application of the Returning Officer's 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: 31.3.2020