

INDEMNITY POLICY

A. Introduction

This Policy applies to all officers and elected members of the Council whilst they are carrying out their responsibilities and obligations forming part of their employment or political duties. These must be authorised by the Council or form part of the duties or powers placed on the officer or member.

Members and officers of local authorities can incur personal, civil and criminal liability as a result of their actions, inactions or decisions, both within the Council and as members of a range of external organisations to which they may be appointed.

The Council will indemnify members and officers against any claim, liability, loss or damage subject to the restrictions and requirements set out below.

B. The indemnity which is available

1. Criminal Offences and Fraud etc.

1.1 This indemnity shall not apply in relation to any action by or failure to act by any member or officer which constitutes a criminal offence, but an indemnity may be provided in relation to:

- a) the defence of criminal proceedings brought against the officer or member, subject to part 4. below;
- b) Any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

1.2 This indemnity shall not apply in relation to any action by, or failure to act by, any member or officer which is the result of fraud, or other deliberate wrongdoing or recklessness* on the part of that member or officer.

1.3 This indemnity shall not apply to;

- a) fines and penalties imposed on a member or officer;
- b) costs in respect of which the member or officer has effected a more specific legal expenses protection or insurance.

1.4 This indemnity shall not apply to motoring offences.

2. Obligation to believe action to be within powers or that statements made were true

2.1 A member or officer relying on an indemnity must:

- a) have believed that the action, or failure to act, in question was within the powers of the Council; or
- b) where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the Council, or any statement that certain steps have been taken or requirements fulfilled, believe that the contents of that statement were true; and
- c) prove that it was reasonable for that member or officer to hold that belief at the time when they acted or failed to act.

2.2 For the avoidance of doubt, it is acknowledged that this indemnity may apply to an act or omission which is subsequently found to be beyond the powers of the member or officer in question, but only to the extent that the member or officer reasonably believed that the act or omission in question was within their powers at the time when they acted.

2.3 No indemnity is available to any member or officer who voluntarily joins any external organisation. In such a situation the officer or member must seek the prior authority of the Council to be covered by insurance.

3. Defamation

3.1 This indemnity may apply to the defence by a member or officer of any allegation of defamation made against them, but does not extend to the making by a member or officer of any claim in relation to an alleged defamation of that member or officer.

4. Repayment of and Approval of costs of legal representation upon criminal conviction and/or finding of breach of the Code of Conduct.

4.1 Where a member or officer relies upon this indemnity in relation to the defence of either any criminal proceedings, or an investigation pursuant to Chapter 7 of the Localism Act 2011, this indemnity shall be subject to the terms that:

- a) in the case of criminal proceedings if the member or officer in question is convicted of a criminal offence and that conviction is not overturned following an appeal; or
- b) in the case of an investigation under the Localism Act 2011;
 - (i) if a finding is made following an investigation that the member in question has failed to comply with the Members' Code of Conduct, and that finding is not overturned on appeal, or;
 - (ii) if the member admits that they have failed to comply with the Code of Conduct;

4.2 That member or officer shall **reimburse** the Council in relation to those proceedings pursuant to this indemnity.

4.3 Where a member or officer is obliged to reimburse the Council pursuant to the terms of this indemnity, those sums shall be recoverable by the Council as a civil debt.

4.4 The Council will immediately notify any member or officer in this situation of any changes which will affect them.

5. Working on outside bodies

5.1 This indemnity shall not apply to the extent that the external body in respect of which the member or officer is carrying out any function at the request, or with the approval, of the Council, indemnifies or insures such member or officer itself.

C. What officers and members must do.

1. In order to comply with the requirements of the Council's insurers, any officer or member who becomes aware of criminal proceedings or a civil claim being made against them arising out of any Council matter **must** notify the Council as soon as reasonably practicable.
2. Such notice **must** be given to the officer's line manager or the lead member of the appropriate party in the case of a member. Notification **must** also be given to the Council's Insurance Officer and the officer or member shall use all reasonable endeavours to abide by any requirements of the insurer and assist the Council in claiming and securing payment(s) under the policy.
3. Any officer or member wishing to take advantage of this indemnity shall also:
 - a) Take reasonable steps to mitigate the amount that might otherwise be claimed under the indemnity;
 - b) Permit the Council reasonable access to any information or advice, such as legal advice, relevant to the matter and comply with all other reasonable requests of the Council in the conduct of the matter;
 - c) Not be entitled to any indemnity from the Council for any sum(s) which are discharged by insurance cover or would have been so discharged but for the unreasonable actions or omission of the member or officer; and
 - d) Not incur expenditure without the approval of the Council, which approval shall not be unreasonably delayed, and the Council shall be entitled to limit the amount it is liable to reimburse such member or officer if the proposed expenditure reasonably appears to the Council to be greater than is necessary in the circumstances.

Note: *a person acts recklessly when they are utterly unconcerned about the consequences of their action. It is not a momentary lapse of concentration.

INDEMNITY POLICY.doc AMW 29 Oct. 2014 amended 1 December 2014