

TITLE OF REPORT : MEMBER AND OFFICER INDEMNITY

REPORT OF THE HEAD OF FINANCE, PERFORMANCE & ASSET MANAGEMENT
PORTFOLIO HOLDER: COUNCILLOR MRS L.A NEEDHAM

1. SUMMARY

- 1.1 To obtain Cabinet's endorsement of an updated Member and Officer Indemnity agreement (the Agreement).

2. RECOMMENDATIONS

- 2.1 Cabinet to endorse the Member and Officer Indemnity agreement in Appendix B and recommend its adoption to Council.

3. REASONS FOR RECOMMENDATIONS

- 3.1 For the Council to have a formally adopted, updated, policy to indemnify Members and Officers in the event of legal action that arises out of carrying out official council duties.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 There is an option of not offering indemnity.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 Consultation has been undertaken with the Senior Management Team.

6. FORWARD PLAN

- 6.1 This report contains a recommendation on a key decision that was first notified to the public in the Forward Plan on the 20 May 2013.

7. BACKGROUND

- 7.1 The Council arranges the following types of liability insurance:

- Public Liability (limit £25 million – excess £5,000)
- Employers Liability (limit £25 million – excess £10,000)
- Officials Indemnity (limit £ 5 million in the aggregate – excess £5,000)
- Professional Indemnity (run off cover for legal services provided to NHH – limit £2 million – excess £5,000)
- Land Charges (limit £5 million in the aggregate – excess £5,000)
- Libel and Slander (limit £1 million – 10% excess for Members)

- 7.2 Following the recently concluded insurance tender, liability insurance is arranged with Zurich Municipal from 1 April 2013. In the event of a claim, policy excesses are charged back to the relevant service area. The 10% policy excess that member's have

to pay in the event of a libel and slander claim is a condition of insurers and has been in place since 1979.

- 7.3 To keep increased premiums to a minimum, excesses now apply to the Officials Indemnity and Land Charges policies as set out above. Public Health Act cover will be covered by the Insurance Fund.
- 7.4 These policies will, subject to authorisation by NHDC, indemnify individual Officers, Members and the Returning Officer should a claim be brought against them in person rather than the Council as a corporate entity.
- 7.5 In May 2001, Management Board agreed that the Professional Indemnity Resolution in Appendix A should be adopted. This was based on a policy recommended by the Local Government Association. The recommendation was to put in place a policy to indemnify Members and Officers against claims made against them for any neglect, act, error or omission occasioned by an Officer or Member if they acted in good faith whilst carrying out their duties on Council business. The policy was to support the existing insurance arrangements of the Council. It is not clear whether this was formally agreed by any Committee but staff were advised of its existence by an article in NHDC News and the Council has been operating on the basis that it was in force.
- 7.6 The re tendering of the insurance programme, highlighted the need to review the Member and Officer Indemnity agreement and provide Members with an update on the scope of insurance cover arranged by the Council.

8. ISSUES

- 8.1 All insurance policies contain policy terms, conditions and exclusions so not all claims submitted to insurers will be covered. One purpose of the proposed Agreement in Appendix B is to cover any "gaps" in insurance policy wordings. This can include breaches of policy conditions and failure to submit claims within the policy period.
- 8.2 In addition to the types of claims that are submitted to insurers, Members and Officers could be fined as individuals by the Health and Safety Executive or have allegations of a criminal offence made against them whilst acting on Council business. At present, despite the understanding in place in May 2001, it would appear that there is no formally authorised policy in place to provide the Officer or Member with reimbursement of the cost of a fine or for defending an allegation of a criminal action.
- 8.3 It is unlikely that this indemnity agreement will be invoked. This review has been generated following the review of our insurance arrangements and to ensure open and transparent governance arrangements for the Council.
- 8.4 It is suggested that with regard to criminal prosecutions the Council will pay for the Officer or Member with legal representation until such time as the officer or Member is found guilty of a criminal offence. If found guilty then the Officer or Member would have to repay the defence costs.
- 8.5 Fines can frequently be unlimited. There is therefore a potential risk to the Council of having to pay substantial sums by way of indemnity. In view of this it is suggested that a financial limit is set after which each case should be individually authorised if it is estimated that costs/ fines will be over that limit.
- 8.6 Insurance cover to Members appointed on outside bodies is restricted. Zurich Municipal cover the Council for their legal liability whilst any member is working on outside bodies. Any claim has to be made against the Council (or be capable of). This

distinction is made because Members should be operating on the advice of the Council's officers. Members are not covered for carrying out the business of the Outside body as distinct from that of the Council. It is recommended that the outside body has its own insurance cover, and that that cover includes indemnity for its members.

- 8.7 It is proposed that the Agreement does not include an indemnity to Members appointed on outside bodies for the same reasons provided by insurers in 8.6. Insurance should remain the responsibility of the outside body.

9. LEGAL IMPLICATIONS

- 9.1 Under Section 265 of the Public Health Act 1875 councillors and local authority officers, when acting in the course of their duties and in good faith, have statutory immunity and are not personally liable for the actions they take. The Act provides for an indemnity in relation to potential liabilities and also costs.
- 9.2 The Local Authorities (Indemnities for Members and Officers) Order 2004 gives a specific power for authorities to grant indemnities and/or take out insurance to cover the potential liability of councillors and officers in a wider range of circumstances than under the 1875 Act. Each local authority has the discretion to decide whether to use the powers, and to decide the extent of such indemnities and insurance.
- 9.3 Cabinet's terms of reference include "to advise in the formulation of those policies within the Council's terms of reference". Council's terms of reference include "Adopting and amending...other codes and protocols comprising the ethical framework".

10. FINANCIAL IMPLICATIONS

- 10.1 It is recommended that the financial limit that should apply to this Agreement is £100,000. Each case should be individually authorised if it is estimated that costs/ fines will be over that limit
- 10.2 This will be identified and included as a low financial risk in the Corporate Business Planning process.

11. RISK IMPLICATIONS

- 11.1 The formal adoption of this policy mitigates the risk of the Council being unable to indemnify individual Members and Officers in the event of a claim or allegation being made against them that falls outside the Council's insurance arrangements. It does, however, expose the Council to additional financial risks that will be covered by the General Fund. It should however be noted that the Agreement adopted in 2001 has not incurred any financial cost for the Council.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment,

victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

- 12.3 This Agreement will apply to all Officers and Members of the Council and provide suitable indemnity cover whilst carrying out official duties on behalf of the Council

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 There are no direct human resource implications arising from this report.

15. APPENDICES

- 15.1 Appendix A – “original” indemnity agreement
- 15.2 Appendix B – proposed indemnity agreement

16. CONTACT OFFICERS

- 16.1 Fiona Timms – Performance & Risk Manager – extension 4251
- 16.2 Anthony Roche- Acting Corporate Legal Manager – extension 4588
- 16.3 Liz Green - Head of Policy and Community Services – extn 4230

17. BACKGROUND PAPERS

- 17.1 Report to Management Board dated May 2001