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NORTH HERTFORDSHIRE DISTRICT COUNCIL

COUNCIL

THURSDAY, 24TH SEPTEMBER, 2020

SUPPLEMENTARY AGENDA

Please find attached supplementary papers relating to the above meeting, as follows:

Agenda No **Item**

8. **MEMBER AND OFFICER INDEMNITY (Pages 3 - 8)**

REPORT OF THE SERVICE DIRECTOR – LEGAL AND COMMUNITY

To obtain Council's endorsement of an updated Member and Officer Indemnity Policy.

Please find attached an addendum to the Member and Officer Indemnity Report.

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**COUNCIL
24 SEPTEMBER 2020**

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: MEMBER AND OFFICER INDEMNITY - ADDENDUM

REPORT OF: LEGAL REGULATORY TEAM MANAGER

EXECUTIVE MEMBER: FINANCE AND IT

COUNCIL PRIORITY: BE A MORE WELCOMING AND INCLUSIVE COUNCIL / BUILD THRIVING AND RESILIENT COMMUNITIES

1. EXECUTIVE SUMMARY

1.1 To obtain Council's endorsement of an updated Member and Officer Indemnity Agreement.

2. RECOMMENDATIONS

2.1. That Council authorise amendments to the adopted Officer/ Member Indemnity & Insurance Agreement, which are:

2.2. That the Returning Officer (RO) / Electoral Registration Officer (ERO) be granted an indemnity, under the provisions of the Local Authority (Indemnity for Members and Officers) Order 2004, to cover as far as the law allows, for any uninsured personal liability arising from the appointments.

2.3. That fines which exceed £100k in relation to the RO/ERO post are covered by the indemnity and are not subject to referral to Full Council for consideration (except for 7(1) of the Policy).

3. REASONS FOR RECOMMENDATIONS

3.1. The Council should have an up to date Agreement, in the event of legal action that arises when Officers and Members carry out official Council duties.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1. None considered appropriate.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1. The Executive Member for Finance and IT has been briefed on the matters set out above.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision

7. BACKGROUND

- 7.1. As indicated, the Agreement was reviewed and amendments approved in 2013 by Cabinet and then Council:
Cabinet page: <https://democracy.north-herts.gov.uk/CeListDocuments.aspx?Committeed=133&MeetingId=276&DF=18%2f06%2f2013&Ver=2>
Council page: <https://democracy.north-herts.gov.uk/CeListDocuments.aspx?Committeed=136&MeetingId=488&DF=18%2f07%2f2013&Ver=2>
- 7.2. The Agreement was further reviewed and updated under Delegated Decision on 12 October 2017.
- 7.3. The EU General Data Protection Regulation (GDPR) took effect on 25 May 2018. Together with the Data Protection Act 2018, which adopts the GDPR standards for all general data in the UK, it replaced the Data Protection Act 1998 (DPA 1998), and applies to the processing of **all** personal data. Electoral Registration Officers (EROs) and Returning Officers (ROs) are **personally responsible** for ensuring that they comply with the requirements of data protection legislation
- 7.4. Under the Data Protection Act 1998, the maximum fine the Information Commission Office is entitled to levy is £500,000. Under the GDPR, fines of up to €20m or 4% of turnover (whichever is greater) may be imposed for certain breaches or a maximum of €10 million (or 2% annual turnover) applies for other breaches.

8. RELEVANT CONSIDERATIONS

- 8.1. Currently the NHDC Agreement provides a general limit of £100,000 in respect of indemnity, unless agreed by Full Council.
- 8.2. When acting as the RO or ERO the officer concerned is clearly carrying out functions at the request of (or with the approval of) the authority and, as such, the council can indemnify the officer. There are certain situations where the law prescribes that an indemnity cannot be issued (eg) where any costs arise from a deliberate or intentional criminal act or omission by the officer.
- 8.3. As the officer is appointed to the roles of RO and ERO by virtue of their position at the council and, at all times, is acting at the request of (or with the approval of) the council, it is proposed that the officer be granted an indemnity, as far as the law allows, for any personal liability arising from their appointment.
- 8.4. The Council does have power to enter into an indemnity in respect of this potential liability under the Local Authorities (Indemnities for Members and Officers) Order 2004 and also under 111 of the Local Government Act 1972 as facilitating, or being conducive or incidental to, the discharge of the Council's functions and also under the general power of competence in s1 Localism Act 2011

- 8.5. The Council does not have a history of challenge to its elections and so the risk of a call on the indemnity is low but the impact of a claim would be significant on the individual. The giving of an indemnity to the RO and ERO is one which many authorities do give and it is recommended by the Association of Electoral Administrators. It is also consistent with the practice of central Government in relation to National elections.

9. LEGAL IMPLICATIONS

- 9.1. There are specific powers under various pieces of legislation to provide insurance and indemnity to Officers and Members (subject to certain limitations)
- i. Section 265 of the Public Health Act 1875 provides for an indemnity in relation to potential liabilities and also costs to Officers and Members when they are acting in the course of their duties and in good faith.
 - ii. Section 39 Local Government (Miscellaneous Provisions) Act 1976 allows Members and Officers to be indemnified from the general fund in relation to the performance of any of their functions, where they act bona fide for proper purposes without being negligent.
 - iii. Section 111 linked to section 112 Local Government Act 1972 also offers contractual indemnities to staff; and section 111 for Members in relation to exercising functions as appropriate for insurance/indemnity.
 - iv. The Local Authorities (Indemnities for Members and Officers) Order 2004 is an additional power to insure and indemnify in addition to the above.
 - v. The General Power of Competence under section 1 Localism Act 2011 can potentially provide additional powers, in relation to the above.
- 9.2. Following the previous decision to Council as referred from Cabinet in 2013 and given the financial implication of the appointments, this recommendation is a matter for determination by Council..

10. FINANCIAL IMPLICATIONS

- 10.1. The Agreement currently provides a financial limit on the Indemnity of £100,000, with any beyond that being referred to Full Council for approval. The proposal is that in the case of the RO/ERO that this £100,000 limit is not applied. In the event that this indemnity was called upon it would be an additional cost to the Council, being the excess of the fine levied on the RO/ERO above £100,000. Whilst it is possible to obtain insurance that purports to cover fines under GDPR, this is with the caveat that any pay-out would be legal. Fines are intended to be punitive and it is therefore likely that a pay-out would not be legal, and the Council would have paid for insurance that provided no benefits. As with all insurance the Council also has to consider the cost of insurance against the likelihood of a claim and the impact if there were to be a successful claim. Whilst it will be kept under review, it is currently not considered feasible to obtain insurance coverage.

11. RISK IMPLICATIONS

- 11.1 There has been no claim on the Indemnity Agreement, since it was adopted in 2001 and it is also subject to restrictions detailed in Appendix A. The extent to which the risk is insurable is covered in paragraph 10.1 above. The risk of a fine that has to be covered by the Council also has to be balanced against the risk of no one being willing to take on the role of RO/ERO due to the personal liability involved.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their 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.
- 12.2. The Agreement applies equally to Officers and Members; this or the amendments have no identifiable equalities implications and no other situation has been identified that would require a general exclusion to the £100,000 limit. If such a situation was identified then this would also be presented to Council for a change to the policy/ agreement.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and “go local” requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known Environmental impacts or requirements that apply to the Policy/this report.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 Whilst Officers will potentially be in a position to claim under the indemnity, there are no other direct human resource implications. Further consideration will, however, be given to whether a separate Deed of Indemnity can or needs to be provided to Officers. Should this be offered, however, then any such Deed will only reflect the adopted Agreement.

16. APPENDICES

- 16.1 Appendix A – Policy showing amendments made, as tracked changes

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

- 18.1 Paragraph 7.1 contains the links to the previous Cabinet, Council reports, appendices and decisions/ minutes
- 18.2 Delegated Decision dated 12 October 2017 (copy obtainable from Committee Services)
- 18.3 The Electoral Commission - EU General Data Protection Regulation (GDPR) and Data Protection Act 2018 (FACTSHEET) -
<https://www.electoralcommission.org.uk/search?search=EU+General+Data+Protection+Regulation+%28GDPR%29+and+Data+Protection+Act+2018>

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