

**COUNCIL
24 SEPTEMBER 2020**

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: MEMBER AND OFFICER INDEMNITY

REPORT OF THE SERVICE DIRECTOR – LEGAL AND COMMUNITY

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 Policy.

2. RECOMMENDATIONS

- 2.1. That Council be recommended to authorise amendments to the adopted Officer/ Member Indemnity & Insurance Policy.
- 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 in the case of fines which exceed £100k in relation to the RO/ERO post, which are not insurable, are not subject to referral to Full Council for consideration (except for 7(1) of the Policy).

3. REASONS FOR RECOMMENDATIONS

- 3.1. Under Delegated Decision on 12 October 2017, the Policy approved by Full Council on the 18th day of July 2013 was amended and approved. The Policy needed to be reviewed and amended slightly to reflect current insurance arrangements and the Council's requirements in compliance with the Data Protection Act 2018.
- 3.2. The Council should have an up to date Policy, 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 contains a recommendation on a key Executive decision that will be notified to the public on 14 September 2020 following consultation with the Leader of the Council. The Chairman of the Overview and Scrutiny Committee and the Executive Member for Finance and IT have been informed and notice of the recommendation has been available at the Council Offices in Gernon Road, Letchworth for three clear working days prior to the date of this meeting.

7. BACKGROUND

- 7.1. As indicated, the Policy was reviewed and amendments approved in 2013 by Cabinet and then Council:
Cabinet page: <http://web.north-herts.gov.uk/aksnherts/users/public/admin/kab12.pl?cmte=CAB&meet=29&arc=71>
Council page: <http://web.north-herts.gov.uk/aksnherts/users/public/admin/kab12.pl?cmte=COU&meet=32&arc=71>
- 7.2. The Policy was 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 impose 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 policy provides a limit of £100,000.
- 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 uninsured 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. Under the Terms of Reference for Council, paragraph 4.4.1 (dd) of the Constitution states that it is the function of the Council amongst other things to determine those financial matters reserved to Council by the Financial Regulations.

10. FINANCIAL IMPLICATIONS

- 10.1. The Policy currently provides a financial limit on the Indemnity of £100,000, with any beyond that being referred to Full Council for approval.

11. RISK IMPLICATIONS

- 11.1. There has been no claim on the Indemnity Policy, since it was adopted in 2001 and it is also subject to restrictions detailed in Appendix A. The Council's or the outside body's insurance should provide cover in the first instance. Whilst the Policy potentially exposes the Council to further risk, it is perceived to be low for the reasons set out.

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. However, the Policy applies equally to Officers and Members; this or the amendments have no identifiable equalities implications.

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 and insurance Policy, 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 Policy.

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>