

# APPENDIX A

## INDEMNITIES FOR MEMBERS AND OFFICERS

~~Under Delegated Decision on Full Council on 24 September 2020 amended and approved 16 October 2017, the Policy approved by Full Council on the 18 day of July 2013 was amended and approved as per~~ below.

1. This decision ~~applies retrospectively and~~ supersedes the previous indemnity provided for Members and ~~e~~Officers.

### 2. Interpretation

“Secure”, in relation to any indemnity provided by means of insurance, includes arranging for, and paying for, that insurance.

### 3. Insurance

The Council, in addition to itself providing an indemnity, shall also endeavour to provide an indemnity by securing the insurance of its members and officers, if considered to be practicable, in the cases mentioned in paragraph 4.

Whilst the Council has insurance to cover the Council for its legal liability whilst any Member is ~~appointed working onto an~~ outside body~~ies~~, any claim ~~would only be covered if it was capable of being~~ ~~has to be~~ made against the Council ~~(or be capable of)~~. Members are not covered for carrying out the business of the ~~outside~~ body as distinct from that of the Council. The outside body should have its own insurance cover. It is the responsibility of the Member appointed to the outside body to satisfy themselves that this is the case.

### 4. Cases in which an indemnity shall be provided

Subject to paragraph 5, an indemnity shall be provided in relation to any action of, or failure to act by, the Member or officer in question, which –

- (a) is authorised by the Council; or
- (b) forms part of, or arises from, any powers conferred, or duties placed upon that Member or officer, as a consequence of any function being exercised by that Member or officer (whether or not when exercising that function he or she does so in his or her capacity as a member or officer of the Council) –
  - (i) at the request of, or with the approval of the Council, or
  - (ii) for the purposes of the Council.

### 5. Restrictions on indemnities

- (1) No indemnity shall be provided in relation to any action by, or failure to act by, any Member or officer which –
  - (a) constitutes a criminal offence; or
  - (b) is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that Member or officer; or

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- (c) constitutes a breach of the Member Code of Conduct or officer terms and conditions of employment.
- (2) Notwithstanding the restriction in paragraph (1)(a), an indemnity shall be provided in relation to –
  - (a) subject to paragraph 7, the defence of any criminal proceedings brought against the Member or officer; and
  - (b) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.
- (3) No indemnity shall be provided in relation to the making by the Member or officer indemnified of any claim in relation to an alleged defamation of that Member or officer but shall be provided in relation to the defence by that Member or officer of any allegation of defamation made against him or her. ~~It is a condition of the Council's insurance arrangements for defending defamation proceedings that Members have to pay 10 % of any libel and slander claim. If a defence is successful there is no requirement to pay the 10% excess.~~

### 6. Indemnity in relation to matters that exceed the powers of the Council

- (1) Notwithstanding any limitation on the powers of the Council an indemnity shall be provided to the extent that the Member or officer in question –
  - (a) 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, believed that the contents of that statement were true,  
  
and it was reasonable for that Member or officer to hold that belief at the time when he or she acted or failed to act.
- (2) An indemnity shall be provided in relation 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 his or her powers at the time at which he or she acted.

### 7. Terms of indemnity or insurance

Any indemnity given, and any policy of insurance secured, shall be provided on the terms that -

- (1) Such indemnity, or insurance secured, shall not extend to any action, or failure to act, by any Member or officer outside the ~~ordinary~~ course of the Member's duties as a North Hertfordshire District Councillor (including where acting on a Council trading company or other such commercial ventures on behalf of the Council) or the officer's employment duties with the Council (including where seconded to act on a Council trading company or other such

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commercial ventures on behalf of the Council) or when acting in their duty as a Returning Officer or Electoral Registration Officer.

- (2) No Member or officer shall, without the authority of the Council, make any admission as to liability or negotiate, or attempt to negotiate, a settlement of any claim.
- (3) Where a claim is being handled by the Council's insurers, the insurer will have sole conduct and control of that claim.
- (4) Any indemnity given shall be without prejudice to any action which the Council may choose to bring, or be a party to, in relation to the indemnified Member or officer, or without prejudice to the separate right of any political group to take action against its own members.
- (5) The indemnity shall apply after the Member or officer in question has ceased to be a member or an employee of the Council, in respect of any act or omission during the Member's term or officer's employment with the Council.
- (6) 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 any appeal, and that Member or officer shall reimburse the Council or the insurer for any sums expended by the Council or insurer in relation to those proceedings pursuant to the indemnity or insurance.
- (7) Where a Member or officer is obliged to reimburse the Council or insurer pursuant to the terms mentioned in paragraph (6), those sums shall be recoverable by the Council or insurer as a civil debt.
- (8) Any indemnity given or insurance provided in relation to the costs of legal representation shall be limited to the amount of such costs which the Council or the insurer consider to have been reasonably incurred.

### 8. Exceptions

Any requests for exceptions to this policy, including potential cases above £100,000, will be referred to Full Council for consideration.