

**FULL COUNCIL
19 SEPTEMBER 2024**

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: MEMBER AND OFFICER INDEMNITY

REPORT OF: LEGAL MANAGER AND DEPUTY MONITORING OFFICER

EXECUTIVE MEMBER: FINANCE AND IT

COUNCIL PRIORITY: PEOPLE FIRST

1. EXECUTIVE SUMMARY

To obtain Council's endorsement of an updated Member and Officer Indemnity Policy, and to bring this issue to the attention of the membership (and Officers) in terms of limit to any insurance or indemnity that is provided.

2. RECOMMENDATIONS

- 2.1. That Council authorise amendments to the adopted Officer/ Member Indemnity & Insurance Policy as set out in Appendix 1 to this report.

3. REASONS FOR RECOMMENDATIONS

- 3.1. 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. The last update approved by Full Council was on the 24.09.2020.

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.
- 5.2. This has been reviewed with the Service Director: Legal & Community and the views of the Hertfordshire County Council's Risk and Insurance Manager have been sought on the Policy.

6. FORWARD PLAN

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

7. BACKGROUND

- 7.1. As indicated, the Policy was previously reviewed, and amendments approved on 24.09.2020 by Full Council.
- 7.2. Councillors and Officers of the Council enjoy statutory immunity from civil liability where they act within the Council's powers (intra-vires'), in good faith and without negligence. However, they can incur personal, civil and criminal liability whilst acting on behalf of the Council if they go beyond the powers of the Council or act in bad faith or negligently. The Government has introduced legal regulations to confer upon Local Authorities powers to grant indemnities and/or to take out insurance to cover the potential liability of Councillors and Officers in a wide range of circumstances.
- 7.3. It is up to each Council to decide whether to grant such indemnities, or take out insurance, and to decide (subject to restrictions set out in the regulations) the extent of such indemnities and insurance, although it would be highly unusual not to provide insurance cover and provide for a level of indemnity for intra-vires actions (so long as there is good faith).
- 7.4. This report sets out the legal position in relation to the Council's powers to indemnify Councillors and Officers for personal liability arising from actions or decisions taken by them in the course of their official duties and makes recommendations in respect of the terms of such indemnities where the Council's insurance does not cover the liability.

8. RELEVANT CONSIDERATIONS

- 8.1. Under Section 265 of the Public Health Act 1875 (the Act), Councillors and 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 in relation to certain public health and highways functions. The Act provides for an indemnity in relation to potential liabilities and also costs.
- 8.2. Section 111(1) of the Local Government Act 1972 provides ancillary powers to local authorities that may permit them to indemnify Members and Officers in relation to decisions or acts, if to do so would facilitate, or is incidental, or conducive, to the discharge of a function of the authority.
- 8.3. 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 above referenced 1875 Act.
- 8.4. Under the Order an indemnity can be granted to cover *“any act or omission by a councillor or officer which is authorised by the council, or forms part of, or arises from any powers conferred or duties placed, as a consequence of a function being exercised by the member or officer at the request of, or with the approval of, or for the purposes of the council”*.

For both Councillors and Officers, the 2004 Order restricts the provision of indemnities so that they cannot enjoy cover for any finding of criminal liability or liability arising from fraud, deliberate wrongdoing, recklessness, or the cost of pursuing a defamation claim.

In such cases, *if* an indemnity had been provided, any costs incurred under an indemnity would have to be repaid to the Council or insurer. Additionally, Members may be called upon to pay the first 10% of any claim made against the libel & slander insurance policy under a co-insurance clause under the insurance policy. Historically, claims under this insurance policy have been infrequent. In such cases, the council may, at its discretion, recover the 10% co-insurance cost from the member involved, although this is not an automatic requirement.

- 8.5. In accordance with sections 5(1)(f) and (g) of the indemnity policy, members are not covered for matters related to breaches of the Member Code of Conduct or Disclosable Pecuniary Interest (DPI) offences. This exclusion applies to legal proceedings or investigations concerning such breaches.
- 8.6. Where Councillors are acting on an outside body (be that nominee, member, Trustee or Director) they should ensure – even where the Council has nominated the Councillor to that body, that there is insurance and or indemnity in place to cover their actions on behalf of that body.
- 8.7. It has been clarified that nominations to outside bodies, including appointments of Officers or Members as Directors of Local Authority Trading Companies (LATCo) or Trustees of Council Charities, require clear coverage by the insurance and indemnity provisions of those bodies. In the event that these provisions are insufficient—specifically, if the LATCo or Trust lacks adequate insurance or assets to cover the first portion of any liability (as outlined in paragraph 5(3) of the policy)—the Council’s indemnity will provide additional coverage. This ensures that no Officer or Member in these circumstances is personally liable for any uncovered portion, subject to the same restrictions detailed under Section 7(3)-(9) of the policy. This amendment is crucial for safeguarding those acting on behalf of LATCos or Council Charities to which they have been nominated or appointed by the Council, and it emphasises the Council’s commitment to providing necessary indemnities under specific circumstances where external bodies’ protections fall short.
- 8.8. The changes to the 2020 Indemnity Policy are summarised below (and more specifically detailed as tracked changes in Appendix 1):
 - i. Terminology Changes: Consistent replacement of gender-specific pronouns (“he or she”, “his or her”) with gender-neutral pronouns (“they”, “their”) throughout the document.
 - ii. Whilst the Returning Officer/ Electoral Registrations Officer (or their deputies), were included when the Policy was last reviewed, this has been made more explicit¹.
 - iii. Introduction of a requirement that members would be expected to pay the first 10% of any claim made against the Council’s insurance under the relevant contract of insurance.
 - iv. Changes to the wording from “may” and “shall” to correspond with the legislative provision (where inconsistent) eg “shall be provided” in cases where a Member or Officer believed their actions were within the powers of the Council, ensuring

¹ following the recent Solace report ‘Play’ report – see pages 84-87 (albeit that this calls for Full Government indemnity).

indemnity is mandatory in these scenarios if it was reasonable to hold that belief at the time.

- v. A clarification was added under the terms of indemnity, stating that the indemnity applies even after the Member or Officer in question has ceased their role with the Council, as long as the act or omission occurred during their term or employment.
- vi. Additional language was included to specify that any request for exceptions to the policy, particularly in cases above £100,000, must be referred to Full Council for consideration.

9. LEGAL IMPLICATIONS

- 9.1. As outlined above, 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.

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. Additionally, as outlined at 8.5, Members may be required to pay the first 10% of any claim made against the libel & slander insurance policy.

11. RISK IMPLICATIONS

- 11.1 Providing indemnities under the proposed amended Policy will allow the members and officers to undertake their roles and responsibilities fully, and in the knowledge that they will not incur personal, civil and criminal liability whilst acting on behalf of the Council. The Policy provides comfort to both members and officers when undertaking their roles and responsibilities.

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 amendments as set out at section 8.7 and appendix A does not have direct equality implications. The replacement of gender specific pronouns with gender neutral ones acknowledges gender fluidity in society.

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.

16. APPENDICES

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

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18. BACKGROUND PAPERS

- 18.1 Other than the previous reports mentioned above and legislation, none.