

**NORTH HERTS COUNCIL**  
**INDEMNITIES FOR MEMBERS AND OFFICERS**

INDEMNITY PROVIDED UNDER THE LOCAL AUTHORITIES (INDEMNITIES FOR MEMBERS AND OFFICERS) ORDER 2004

1. Introduction

1.1 The Local Authorities (Indemnities for Member and Officers) Order 2004 'Order' gives a specific power for authorities to grant indemnities and/or take out insurance to cover the potential liability of Members and Officers in a wider range of circumstances, there are also powers to insure under the provisions of the Local Government Act 1972. Each local authority has discretion to decide whether to use the powers, and to decide the extent of such indemnities, other than when specifically precluded or restricted from doing so under the Order and / or Legislation. The Policy below sets out the approved provision in this regard.

This decision supersedes the previous indemnity provided for Members and Officers.

**2. Interpretation**

"Co-opted Member"- has the meaning in section 27(4) of the Localism Act 2011

"Independent Member" – means a person who is not a Councillor, appointed to a committee for their particular experience or expertise

"Independent Person" – has the meaning in section 28(7) of the Localism Act 2011

"Member" means an elected and Co-opted Member and for the purposes of this Policy, include Independent Members and Independent / Reserve Independent Persons

"Officer" includes any person appointed to act as the Council's Returning Officer/ or Electoral Registrations Officer (or their deputies), and any uninsurable personal liability that may arise in relation to undertaking such appointments or duties (including although not limited to any fines incurred, subject to the restrictions and terms set below).

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

To the extent required, this Policy covers situations where an Officer commences or defends proceeding (as a named party), as part of their role with the Council

**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, any claim would only be covered if it was capable of being made against the Council. 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 [their](#) 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, [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

(c) constitutes a breach of the Member Code of Conduct or Officer terms and conditions of employment.

[\(d\) arise from activities which are outside of the Council's powers, save as described in paragraph 6 below.](#)

[\(e\) Any activity carried out "outside" work, which is unconnected with the work of the Council.](#)

[\(f\) It should be noted that the Council's indemnity policy does not cover legal proceedings, or any investigations or proceedings related to Member Code of Conduct breaches.](#)

[\(g\) The indemnity shall not extend to cover criminal proceedings brought against a Member relating to Disclosable Pecuniary Interest \(DPI\) offences, or any equivalent provisions replacing the same as the case may be.](#)

(2) Notwithstanding the restriction in paragraph (1)(a), an indemnity shall be provided in relation to –

(a) [subject to paragraph 7 below] 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 or threatened claim in relation to an alleged defamation of that Member or Officer but [may shall](#) be provided in relation to the defence by that Member or Officer of any allegation of defamation made against [them, and in any event Members would be expected to pay the first 10% of any claim made against the Council's insurance, under the](#)

[relevant contract of insurance.](#)

## 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 [may](#) 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/their](#) 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) [Subject to 7\(2\),](#) such indemnity, or insurance secured, shall not extend to any action, or failure to act, by any Member or Officer outside the course of their Member's duties as a North Hertfordshire District Councillor [or Officer of North Hertfordshire District Council, respectively](#) ~~(including where acting on a Council trading company or other such commercial ventures on behalf of the Council) or the Officer's duties with the Council (including where seconded to act on a Council trading company or other such commercial ventures on behalf of the Council).~~

(2) [The indemnity provided by the Council shall if necessary \(but only in default\) apply to any actions or failures to act by any Officer or Member acting on behalf of a local authority trading company \(LATCo\) or Council Charity, to which they have been nominated/ appointed by the Council. This indemnity shall only apply to the extent that the LATCo's or Trust's insurance or indemnity provisions have not done so, however, is subject to the same restrictions detailed under 5 above, save in respect of 5\(3\). In circumstances where the LATCo or Trust has insufficient insurance or assets to cover the first portion of any liability \(e.g., the first 10%\) referred to in paragraph 5 \(3\), the Council shall provide coverage to ensure that no Officer or Member is personally liable for any such uncovered portion. With reference to 'within powers', this shall apply in respect of the powers of the LATCo itself \(as detailed in any memorandum, articles of association and relevant company law\) or powers of the Trust \(as detailed in any Trust objects and Charitable legislation\) as may be applicable. Such indemnity remains subject to 7\(3\)-\(9\) below.](#)

(3) 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.

- (4) Where a claim is being handled by the Council's insurers, the insurer will have sole conduct and control of that claim.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) Where a Member or Officer is obliged to reimburse the Council or insurer pursuant to the terms mentioned in paragraph [7\(7\)](#), those sums shall be recoverable by the Council or insurer as a civil debt.
- (9) 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.

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