

INDEMNITY SCHEME FOR COUNCILLORS AND OFFICERS

Head of Service: Andrew Bircher, Interim Director of Corporate Services

Wards affected: (All Wards);

Appendices (attached):

Summary

The indemnity scheme has been reviewed by the Constitution Working Group (CWG) and this report sets out the recommended changes to wording.

Recommendation (s)

The Committee is asked to:

- (1) Consider the updated wording for the indemnity scheme as set out in Appendix 2 below; and**
- (2) Recommend to Full Council that the revised indemnity scheme at Appendix 2, should be adopted as part of the council's operating framework.**

1 Reason for Recommendation

- 1.1 As part of reviewing the Constitution the CWG identified an omission from the wording of the council's indemnity scheme and has proposed changes to address this.

2 Background

- 2.1 When the new Constitution was adopted earlier this year the existing wording for the indemnity scheme was carried forward un-changed as part of the council's operating framework (annex 2.5 Indemnity scheme to Councillors and officers).
- 2.2 The indemnity scheme wording, although it refers to Councillors and employees in the heading of the item, only refers to employees in the text of the document.
- 2.3 The CWG asked for this to be looked into and to confirm with our insurance providers that both Councillors and officers are covered by the scheme.

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2.4 The insurance company has confirmed as follows:

If an officer or councillor is personally sued for actions taken whilst acting as a council representative, they will be covered under the Officials Indemnity policy (which our current insurer calls Casualty policy). The policy covers both legal costs and any potential settlement arising from the claim.

This policy is designed to cover pure financial losses directly caused by a negligent and accidental act or omission committed or alleged to have been committed by employees or members in the normal execution of their statutory duties.

2.5 As a result, the wording of the identity scheme has been amended and is shown at Appendix 2. (Appendix 1 is the current wording).

3 Risk Assessment

Legal or other duties

3.1 Equality Impact Assessment

3.1.1 There are no EIA implications that arise from this report.

3.2 Crime & Disorder

3.2.1 None that arise from this report.

3.3 Safeguarding

3.3.1 None.

3.4 Dependencies

3.4.1 None.

3.5 Other

3.5.1 None.

4 Financial Implications

4.1 There are no direct implications arising from this report.

4.2 **Section 151 Officer's comments:** None arising from the contents of this report.

5 Legal Implications

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- 5.1 The **Local Authorities (Indemnities for Members and Officers) Order 2004 (SI 2004/3082) [‘2004 Order’]** applies to this Council (as this Order provides for circumstances in which a relevant authority in England or a police authority in Wales may provide an indemnity to any of their members or officers). The explanatory note states:

Article 4 makes it clear that an indemnity may be provided by means of the authority securing the provision of an insurance policy for the member or officer.

Article 5 sets out the cases in which indemnities (including those provided by insurance) may be provided. This article restricts the power to cases in which the member or employee is carrying on any function at the request of, with the approval of, or for the purposes of, the authority. However, it does extend to cases in which when exercising the function in question the member or officer does so in a capacity other than that of a member or officer of the authority. This would permit an indemnity, for example, to cover a case where the member or officer acts as a director of a company at the request of his authority, and thus is acting in his capacity as a director.

Article 6 prevents the provision of an indemnity (or securing of insurance) in relation to criminal acts, any other intentional wrongdoing, fraud, recklessness, or in relation to the bringing of (but not the defence of) any action in defamation.

Article 7 gives a limited power to provide an indemnity (including any indemnity provided by insurance) where the action or inaction complained of is outside the powers of the authority itself or outside the powers of the member or officer who acts. It also covers cases in which a member or officer makes a statement that certain steps have been taken or requirements fulfilled but it later becomes clear that this is not the case. This power is limited to cases in which the person indemnified—

- reasonably believed that the matter in question was not outside those powers, or
- where a document has been issued containing an untrue statement as to the authority's powers, or as to the steps taken or requirements fulfilled, reasonably believed that the statement was true when it was issued or authorised.

Article 8 gives the authority freedom to negotiate such terms for any indemnity or policy of insurance as it thinks appropriate but requires that those terms include provision for re-payment of sums expended by the authority or the insurer in cases in which a member has been found to be in breach of the Code of Conduct applicable to him as a member of the authority, or a member or officer has been convicted of a criminal offence (if the indemnity or insurance policy would otherwise cover the proceedings leading to that finding or conviction). Any sums recoverable may be recovered as a civil debt.

- 5.2 **Legal Officer’s comments:** The amendments (as detailed in Appendix 2) have been reviewed by external Counsel to ensure compliance with the 2004 Order.

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6 Policies, Plans & Partnerships

6.1 **Council's Key Priorities:** The following Key Priorities are engaged:

- The review of the constitution was an annual plan objective from year 2022/2023 and this work follows on from that.

6.2 **Service Plans:** The matter is included within the current Service Delivery Plan for the relevant department.

6.3 **Climate & Environmental Impact of recommendations:** There are no implications.

6.4 **Sustainability Policy & Community Safety Implications:** None

6.5 **Partnerships:** None

7 Background papers

7.1 The documents referred to in compiling this report are as follows:

Previous reports:

- None

Other papers:

- None