

**STANDARDS COMMITTEE**

**9 June 2005**

**STAFFING POLICY COMMITTEE**

**COUNTY COUNCIL**

**12 July 2005**

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**Proposed Indemnity for Members and Officers**

**Purpose of Report**

1. (a) To inform members of the introduction of new legislation clarifying the Council's power to indemnify members and officers for personal liability arising from actions or decisions taken by them in the course of their official duties.  
  
(b) to ask members to consider granting an indemnity to members and officers of the Council in the terms proposed in the Appendix to this report.

**Background**

2. There has in the past been uncertainty about the extent to which authorities can provide indemnities, particularly where individuals incur personal liability for their actions on external bodies to which they have been appointed by the authority, and the scope to cover actions that are ultra vires i.e outside the powers of the Council or involve negligence.
3. Section 265 of the Public Health Act 1875, as amended by the Local Government (Miscellaneous Provisions) Act 1976 already provides members and officers with a limited exclusion of liability, if they are acting in pursuance of a statutory function or power of the authority and they are acting in good faith.

4. The Government has now introduced the Local Authorities (Indemnities for Members and Officers) Order 2004 (the Regulations), which came into force on 23 November 2004, to enable local authorities to add to the existing statutory protection by providing indemnities and/or arranging appropriate insurance cover for members and officers within the parameters set down in the Regulations.

### **Scope of the Regulations**

5. The Regulations give the Council discretion to determine whether and to what extent members and officers are indemnified for personal liability arising from their official duties, within the limits imposed. The Council may in addition, or alternatively, secure insurance to cover the potential liability of members and employees.

### **Cases in which an indemnity may be provided**

6. The Council may provide an indemnity where the member or officer is carrying on any function at the request of, with the approval of, or for the purposes of the Council. This extends to cases where the member or officer exercising the function does so in a capacity other than that of a member or officer of the authority. This would include, for example, the situation where the member or officer acts as a director of a company at the request of the Council, and is in such circumstances acting in the capacity of a director.
7. The Regulations give a limited power to provide an indemnity where the action or inaction in question is outside the powers of the Council or outside the powers of the member or officer concerned. An indemnity may only be given where it is clear that the member or officer reasonably believed that the matter was within their powers or within the powers of the Council.
8. Where 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 an indemnity may only be provided if the member or officer reasonably believed that the statement was true when it was issued or authorised.

## **Restrictions on Indemnities**

9. No indemnity may be provided in relation to any act or omission which constitutes a criminal offence or is the result of fraud, recklessness or other deliberate wrongdoing on the part of the member or officer. The Council may, however, provide an indemnity to enable a member or officer to defend any criminal proceedings, subject to the condition that the member or officer must reimburse the Council or the insurer (as the case may be) any sums paid out if he or she is convicted and the conviction is not overturned following any appeal.
10. The Council may indemnify a member or officer in respect of the legal costs of defending any allegation of defamation made against him or her (but not in respect of the award of any damages). This does not, however, cover the situation where an individual may wish to bring such a claim.
11. The Regulations enable a Council to grant an indemnity to its members in respect of the cost of legal representation regarding any investigation or proceedings for an alleged failure to comply with the Code of Conduct for Members. This is on condition that the member must reimburse the Council, or, as the case may be, the insurance company in the event that the member admits a breach of the Code or it is found that the member has failed to comply with the Code and that finding is not overturned following any appeal.

## **Proposed Indemnity for Consideration**

12. Members are asked to consider granting an indemnity for members and officers in the terms set out in Appendix 1.
13. The proposed indemnity reflects the provisions and restrictions of the Regulations as described above. Members will note in particular that the proposed indemnity:
  - a. does not extend to the costs of legal representation in connection with a complaint under the Code of Conduct which is referred for local investigation and / or determination by the Standards Committee. This is because local hearings of the Standards Committee should be as informal as possible and legal representation is not generally considered to be necessary. It would, however, appear reasonable to offer an indemnity where a member is the subject of an allegation which is to be determined by the Adjudications Panel for England, whose powers include the ability to impose a sanction of disqualification from the office of member for a maximum period of five years. This is subject to a requirement to pay back the costs to the Council if the member admits breaching the code or is found to have breached the Code.

b. covers the cost of any advice or representation in respect of any defamation claim against a member or employee. However, the costs in defamation actions are notoriously expensive and it is suggested that before any indemnity is actually offered in any particular case, it should be subject to review by the Chief Executive, Monitoring Officer and County Treasurer and the imposition of any conditions, as they see fit.

c. covers members and officers who represent the Council on outside bodies. The insurance and indemnity cover provided by the particular organisation in respect of any potential personal liability of the member or officer should, however, be checked before the appointment is confirmed.

d. includes an undertaking that the Council will not sue a member or employee in respect of any act or omission in his or her capacity as a member or employee of the Council, except where the person commits a criminal act, acts recklessly or otherwise in bad faith.

e. will not apply if a member or employee admits liability or negotiates or attempts to negotiate a settlement of any claim without the Council's agreement.

f. is without prejudice to the Council's right to take disciplinary action against an employee in respect of any act or omission.

g. applies retrospectively to any act or omission which may have occurred before the date on which the indemnity is granted and continues to apply after the member or employee ceases to be such.

## **Financial Implications**

14. The grant of an indemnity in the terms proposed will have direct financial implications in terms of the payment of any additional insurance premium (the amount which is to be determined) and to the extent that any potential liability arising under the indemnity is not covered by insurance. In view of the unforeseeable nature of claims which may involve payment under the terms of the indemnity the potential costs are not capable of precise or reliable quantification.

## **Risk assessment**

15. There is a risk that the Council may be called upon to make payments under the terms of the proposed indemnity which, for the reasons stated in paragraph 14, is not capable of accurate quantification. It is proposed that the risk will be mitigated by the Council taking out appropriate insurance cover, to the extent that it is financially prudent to do so.

## **Recommendation**

16. Members are asked to:

- a. note the scope and effect of the Regulations;
- b. consider the grant of an indemnity for members and officers in the terms set out in Appendix 1.
- c. ask the County Treasurer to secure insurance to cover the Council's liability under the proposed indemnity in so far as he considers this to be financially prudent.

**STEPHEN GERRARD**  
**MONITORING OFFICER**

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Report Author: Ian Gibbons, Head of Legal and Democratic Services

Unpublished documents relied upon in the preparation of this report: None

Environmental implications: None

## **APPENDIX**

### **TERMS OF INDEMNITY**

1 The Council will, subject to the exceptions set out below, indemnify each of its members and employees against any loss or damage suffered by the member or employee arising from his/her action or failure to act in his/her capacity as a member or employee of the Council.

This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:

1.1 any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the member or employee;

1.2 subject to clause 3.2 below, any act or failure to act by the member or employee otherwise than in his/her capacity as a member or employee of the Council; or

1.3 failure by the member to comply with the Council's Code of Conduct for Members.

2 The Council will, subject to the exceptions set out below, indemnify each of its members and employees against the reasonable costs which he/she may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings or Part 3 proceedings to which he/she is subject.

2.1 "Criminal proceedings" includes any interview or investigation by the police, and any proceedings before a criminal court, in the United Kingdom.

2.2 "Part 3 proceedings" means any investigation or hearing in respect of an alleged failure to comply with the Council's Code of Conduct for Members under Part 3 of the Local Government Act 2000.

2.3 This indemnity will not extend to Part 3 proceedings where the allegation has been referred to the Monitoring Officer for local investigation and/or determination by the Standards Committee.

2.4 Subject to the agreement of the Chief Executive, Monitoring Officer and County Treasurer in any case and any conditions they may consider it appropriate to impose, this indemnity shall extend to any advice or representation in respect of any claim or threatened claim in defamation against the member or employee.

2.5 Where any member or employee avails him/herself of this indemnity in respect of defending him/herself against any criminal proceedings or Part 3 proceedings, the indemnity is subject to a condition that if, in respect of the matter in relation to which the member or employee has made use of this indemnity -

2.5.1 the member or employee is convicted of a criminal offence in consequence of such proceedings, or

2.5.2 a Case Tribunal or Standards Committee determine that the member has failed to comply with the Code of Conduct for Members

and the conviction or determination is not overturned on appeal, the member or employee as the case may be, shall reimburse the Council for any sums expended by the Council pursuant to the indemnity.

2.6 Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in Paragraph 2.5 shall apply as if references to the Council were references to the insurer.

3 For the purposes of these indemnities, a loss or damage shall be deemed to have arisen to the member or employee "in his/her capacity as a member or employee of the authority" where:

3.1 The act or failure to act was outside the powers of the Council, or outside the powers of the member or employee, but the member or employee reasonably believed that the act or failure to act was within the powers of the Council or within the powers of the member or employee (as appropriate) at the time that he/she acted or failed to act, as the case may be;

3.2 The act or failure to act occurred not in the discharge of the functions of the member or employee as a member or employee of the Council but in their capacity as a member, director or representative of another organisation, where the member or employee is, at the time of the action or failure to act, a member, director or representative of that organisation either -

3.2.1 in consequence of his/her appointment as such member, director or representative of that organisation by the Council; or

3.2.2 in consequence of his/her nomination for appointment as such member, director or representative of that organisation by the Council; or

3.2.3 where the Council has specifically approved such appointment as such a member, director or representative of that organisation for the purpose of these indemnities.

4 The Council undertakes not to sue (or join in action as co-defendant) a member or employee of the Council in respect of any negligent act or failure to act by the member or employee in his/her capacity as a member or employee of the Council, subject to the following exceptions:

4.1 Any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the member or employee; or

4.2 Any act or failure to act by the member or employee otherwise than in his/her capacity as a member or employee of the Council.

5 These indemnities and undertaking will not apply if a member or employee, without the express permission of the Council or of the appropriate employee of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the resolution.

6 These indemnities and undertaking are without prejudice to the rights of the Council to take disciplinary action against an employee in respect of any act or failure to act.

7 These indemnities and undertaking shall apply retrospectively to any act or failure to act which may have occurred before this date and shall continue to apply after the member or employee has ceased to be a member or employee of the Council as well as during his/her membership of or employment by the Council.