

**KENNET DISTRICT COUNCIL**

**RESOURCES EXECUTIVE COMMITTEE**  
**to be held on 21<sup>st</sup> March**

Joint Report by Maria Memoli, Solicitor to the Council and Monitoring Officer, & Andrew Hart, Financial Services Manager

**Indemnities for Members and Officers**

**1. Purpose of Report**

The Local Authorities (Indemnities for Members and Officers) Order 2004 clarifies the powers of Local Authorities to indemnify Members and Officers for personal liability arising from actions/inactions in certain circumstances, or decisions taken by them during the course of their official duties, which extends to those duties carried out at the request of, with the approval of, or for the purpose of the Council (e.g. where a Member or Officer acts as a director of a company at the request of the Council).

These powers are discretionary and not mandatory, and should it be decided to provide such indemnity and/or insurance then the Council can determine the limit of that provision.

The purpose of this report therefore is to recommend to Full Council the adoption of the draft Indemnity Policy attached at Appendix A and to recommend the purchase of a Group Legal Protection Policy to cover legal expenses following a written allegation that the insured person has failed or may have failed to comply with the code of conduct of the insured.

**2. Financial, Legal, Staffing and Risk Implications**

There are no staffing implications. This new legislation is welcomed, particularly in the light of appointments to outside bodies. There has until now been some uncertainty in relation to members who authorise an act which is subsequently held to be unlawful.

There are financial implications involved if the Council is to adopt the proposed policy. These cannot be quantified; however, the cost will be outweighed by the strong message this Council gives in supporting its Members and Officers in their decision-making. The cost of the recommended legal expenses insurance can be quantified and will cost £31 per Member

### 3. Content

The Regulations set out the circumstances in which indemnities can be provided. There is limited power to provide indemnity in cases of:-

- Acting outside their legal powers but only where the Member or Officer reasonably believed they acted within their legal powers at the time.
- Statements that certain steps have been taken or requirements fulfilled and later it becomes clear this is not the case, but only where the member or officer reasonably believed the statement to be true at the time it was issued or authorised.

#### Restrictions

As expected, there are limitations. No indemnity may be provided in relation to any act or omission which constitutes a criminal offence, or any other intentional wrongdoing, fraud, recklessness or defamation. However, there are provisos. The Council may:

- Provide an indemnity which enables a member or officer to defend any criminal proceedings subject to the proviso that the member or officer must reimburse the Council (or the insurer, as the case may be) if he or she is convicted and the conviction is not overturned following an appeal.
- Indemnify a Member or Officer in respect of legal costs of defending an allegation of defamation made against him or her (but not in respect of the award of any damages). The provision does **not extend** to individuals wishing to bring such a claim.
- Grant an indemnity to its members in relation to the cost of legal representation regarding an investigation, or proceedings for an alleged failure to comply with the Code of Conduct **provided**, as with criminal liability, the member reimburses the Council (or the insurer, as the case may be) in the event that the member either admits a breach of the Code of Conduct or there is such a finding and the finding is not overturned on appeal.

It would be unlawful for the authority to have a blanket indemnity policy but it is prudent to have a policy indicating the circumstances where an indemnity would/ would not be considered. At its last meeting the Standards Committee considered the draft Indemnity Policy attached at Appendix A and recommended its formal adoption by the Resources Executive Committee and ultimately the Full Council

## **Insurance**

At the time that the draft Indemnity Policy was considered by the Standards Committee the insurance cover purchased by the Council was the widest available at that time. Not all the indemnities covered by the Council are insurable but one new policy that has recently been developed for this new legislation is Group Legal Protection Insurance specifically for Members where an allegation is made that the Member has failed or may have failed to comply with the Code of Conduct. The extent of the cover is attached at appendix B but again there are specific issues that are not covered under the policy and Members need to be aware of these.

The insurance policy also includes a free legal advice helpline that is available to Members 24 hours a day seven days a week. The cost of the insurance is £29.50 + 5% IPT per Member.

## **4. Conclusions**

New legislation has been specifically brought in to deal with the uncertainty of personal liability of Members and Officers in decision-making whilst on Council business. A draft policy (Appendix A) outlines when an indemnity will/will not be granted in certain situations, and will clarify the circumstances under which an indemnity will be given.

A new Insurance policy is now available to cover legal expenses incurred when responding to allegations of breaches of Code of Conduct by Members and the policy conditions are set out in Appendix B

## **5. Recommendations**

It is recommended that:

1. The draft Indemnity Policy at Appendix A is referred to Full Council for adoption and that Full Council be advised that the Standards Board also recommends the adoption of the policy.
2. Group Legal Protection Insurance is procured specifically for Members as set out in Appendix B at a total cost of £1330