

## **Part 5 – Codes and Protocols**

### **Chapter 8 – Indemnities for Councillors and Officers**

#### **1. Introduction**

- 1.1 Under Section 265 of the Public Health Act 1875 councillors and local authority 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. The Act provides for an indemnity in relation to potential liabilities and also costs.
- 1.2 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 1875 Act. Each local authority has the discretion to decide whether to use the powers, and to decide the extent of such indemnities and insurance.
- 1.3 At the present time councillors may incur personal liability, or have to defend themselves where allegations are made that:
  - (a) They acted outside the powers of the authority;
  - (b) They acted in bad faith, or fraudulently or out of malice;
  - (c) Their actions constitute a criminal offence;
  - (d) They made a defamatory statement.
- 1.4 They may also be liable, or attract allegations, for
  - (a) Activities where members are appointed to or working with outside bodies in their role as a councillor;
  - (b) Action taken for an alleged failure to comply with the Code of Conduct for Members. (The Order requires the member to reimburse the Council if there is a finding of breach of the Code or the member admits non-compliance with the Code).
- 1.5 In relation to officers, Councils have always been able to indemnify officers and take out insurance cover where an officer acts within his or her powers for the Council, in order to protect the Council in the event of an officer's actions or inactions giving rise to a claim. The 2004 Order allows Councils to indemnify officers where they have acted outside the powers of the authority but reasonably believe that the action was within the powers at the time they were taken, or where they are acting on outside bodies for the Council.
- 1.6 Given the wide range of Council activities, the complexity of issues councillors and officers' face, and the demands made on their time, it may be considered appropriate for the Council to provide an indemnity where a councillor/officer inadvertently acts outside the powers given whilst believing he/she is acting in the interests of the Council or other body. However for both councillors and officers, the 2004 Order restricts the provision of indemnities so that they cannot cover any finding of criminal liability or liability arising from fraud,

deliberate wrongdoing, or the cost of pursuing a defamation claim. In such cases any costs incurred under an indemnity would normally have to be repaid to the Council or insurer.

### **Terms of Indemnity**

- 1.7 Subject to the exceptions set out below, the Council will indemnify each of its members and employees against any loss or damage suffered by the member or officer arising from his/her action or failure to act in his/her capacity as a member or officer of the Council. “Member” means an elected Member of the Council, a co-opted Member of a committee of the Council and the Independent Person.
- 1.8 This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:
  - (a) any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the member or officer;
  - (b) Any act or failure to act by the member or employee otherwise than in his/her capacity as a member or officer of the Council, or
  - (c) failures by the member to comply with the Code of Conduct for Members.
- 1.9 Subject to the exceptions set out below, the Council will indemnify each of its members and officers 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 code of conduct proceedings to which he/she is subject.
  - (a) “Criminal proceedings” includes any interview or investigation by the Police, and any proceedings before a criminal court, in the United Kingdom
  - (b) “Code of Conduct proceedings” means any investigation or hearing in respect of an alleged failure to comply with the Code of Conduct for Members
- 1.10 This indemnity will not extend to any advice or representation in respect of any claim or threatened claim in defamation to be brought by a member or officer, but will extend to defending a claim for defamation.
- 1.11 Where any member or officer avails him/herself of this indemnity in respect of defending him/herself against any criminal proceedings or Code of Conduct proceedings, the indemnity is subject to a condition that if, in respect of the matter in relation to which the member or officer has made use of this indemnity, -
  - (a) The member or officer is convicted of a criminal offence in consequence of such proceedings, or

- (b) A Case Tribunal or Standards and Audit 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 officer shall reimburse any expenditure incurred by the Council under the indemnity.

- 1.12 Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in Paragraph 5 shall apply as if references to the Council were references to the insurer.
- 1.13 For the purpose of these indemnities, a loss or damage is deemed to have arisen to the member or officer “in his/her capacity as member or officer of the Council” where:
  - (a) the act or failure to act was outside the powers of the Council, or outside the powers of the member or officer, but the member or officer reasonably believed that the act or failure to act was within the powers of the Council or within the powers of the member or officer (as appropriate) at the time that he/she acted or failed to act, as the case may be;
  - (b) the act, or failure to act, occurred not in the discharge of the functions of the member or officer as a member or officer of the Council but in their capacity as a member or employee of another organisation, where the member or officer is, at the time of the action or failure to act, a member or employee of that organisation either –
    - (i) In consequence of his/her appointment as such member or officer of that organisation by the Council, or
    - (ii) In consequence of his/her nomination for appointment as such member or officer of that organisation by the Council; or
    - (iii) Where the Council has specifically approved the appointment of the member or employee of that organisation for the purpose of these indemnities.
- 1.14 The Council undertakes not to sue (or join in action as co-defendant) an officer in respect of any negligent act or failure to act by the officer in his/her capacity as an officer of the Council, subject to the following exceptions:
  - (a) any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the officer; or
  - (b) Any act or failure to act by the officer otherwise than in his/her capacity as a member or officer of the Council.
- 1.15 These indemnities and undertaking will not apply if a member or officer, without the express permission of the Council or of the appropriate officer of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the resolution.

- 1.16 These indemnities and undertakings are without prejudice to the rights of the Council to take disciplinary action against an officer in respect of any act or failure to act.
- 1.17 These indemnities and undertakings 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 officer has ceased to be a member or officer of the Council as well as during his/her membership of or employment by the Council.