

Bath & North East Somerset Council		
MEETING	Standards Committee	
MEETING	23 rd October 2014	
TITLE:	INDEMNITIES FOR MEMBERS AND OFFICERS	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix 1 – Proposed form of Indemnity for Members and Officers		

1 THE ISSUE

- 1.1 To consider and recommend for approval by the Cabinet and Council, a form of indemnity to be granted to members and officers of the Council.

2 RECOMMENDATION

- 2.1 The Standards Committee is asked to recommend to the Cabinet and to the Council that they grant an indemnity to members and officers of the Council in the terms set in the appendix to this report and instruct the Divisional Director; Business Support, to secure insurance to cover the Council's liability under this indemnity in so far as he is of the opinion that such insurance would be financially prudent.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 The cost implications of granting the proposed form of indemnity are unknown. The cost of individual cases will initially be borne by the Council's Contingency Fund. Ultimately it is likely that they will need to be recharged and absorbed from within existing Directorate and Members' budgets.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Local Authorities (Indemnities for Members and Officers) Order 2004 enables the Council to provide indemnities for Members and Officers in specified circumstances.
- 4.2 The granting of an indemnity would encourage Members and Officers to be proactive and to take prompt decisions and not be put off from taking necessary decisions by concerns that they may be put to considerable legal expense in justifying decisions taken in good faith.

5. THE REPORT

5.1 The Committee at its last meeting considered a version of this report and asked for the draft indemnity to be reconsidered in the light of its comments.

5.2 Research has been carried out into the practice of other Councils on this issue. The content of the Indemnity at Appendix 1 is consistent with arrangements made by Councils and is considered to strike the right balance between enabling members and officers to act in the best interests of the Council and protecting the Council and the public purse.

5.3 An indemnity/insurance can be provided to Members or Officers in respect of any action or failure to act which:

- (1) is authorised by the Council; or
- (2) forms part of or arises from powers or duties placed on the Member/Officer as a consequence of them exercising functions with the approval of the Council or for the purposes of the Council, for example, action taken as a director of an outside body.

5.4 An indemnity can be given for actions which are outside the powers of the Council or the Officer or Member in question in the following circumstances:

- (1) if the Member or Officer believed that the action, or failure to act was within their powers or the powers of the Council; or
- (2) where the action or failure to act consists of issuing or authorising a document containing a statement as to the powers of the Council or that requirements have been fulfilled and the Member or Officer believed the statement to be true;

and in either case it was reasonable for them to hold that belief at the time.

5.5 An indemnity can be provided in relation to:

- (1) the defence of criminal proceedings (subject to reimbursement of the Council or the insurer if the Member or Officer is convicted) and
- (2) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.
- (3) defending a claim for libel or slander (but not bringing such a claim).
- (4) defending allegations that a Member has breached the Members' Code of Conduct (subject to having to reimburse the Council or the insurer if the Member is found to have failed to comply or admits they failed to comply).

5.6 RESTRICTIONS ON THE POWER TO INDEMNIFY/INSURE

An indemnity may not be provided in relation to any action or inaction which:

- (1) constitutes a criminal offence; or
- (2) is the result of fraud, or other deliberate wrongdoing or recklessness.

As noted above, the Officer or Member has to reimburse the Council or the insurer if they are convicted of a criminal offence or found to be in breach of the Members' Code of Conduct.

5.7 Where the Council has a power to grant an indemnity, it may also provide insurance, either in place of or in addition to the indemnity. The only exception to this is that the regulations do not permit it to provide insurance in respect of any action which is beyond the powers of the Council or beyond the powers of the individual member or officer.

5.8 It would be appropriate to secure insurance to cover the Council's liability under this indemnity in so far as the Divisional Director, Business Support, is of the opinion that such insurance would be financially prudent. The cost of such cover is being researched and that information will be provided to the Cabinet and Council.

6 RATIONALE

6.1 The Council currently has in place a form of indemnity for officers and members and insurance arrangements in respect thereof. It is necessary to reconsider the arrangements in the light of legislative amendments to the Council's powers.

7 OTHER OPTIONS CONSIDERED

7.1 It would be possible for the Council not to put in place any arrangements but this is not considered to be a responsible approach to take.

8 RISK MANAGEMENT

8.1 Not applicable.

9 CONSULTATION

9.1 The Chief Executive, Divisional Director, Business Support and Head of HR have been consulted in the preparation of this report.

Contact person	<i>Vernon Hitchman, Monitoring Officer – 01225 395171</i>
Background papers	<i>None</i>
Please contact the report author if you need to access this report in an alternative format	

Appendix 2

FORM OF INDEMNITY FOR MEMBERS AND OFFICERS

1. Bath & North East Somerset ('the Council') will indemnify ('the indemnity') each Member and officer of the Council against any costs claim, liability, loss and/or damage in relation to any action of, or failure to act by a Member or officer which :-

(a) Is authorised by the Council.

(b) Forms part of, or arises from any powers or duties placed on that Member or officer, as a consequence of any function being exercised by him/her (whether or not when exercising that function he/she does so in the capacity of Member or officer of the Council) and the function is being exercised at the request of, or with the approval of the Council, or for the purposes of the Council.

2. The terms of the indemnity shall be incorporated into the contract of employment of all Council officers.

Restrictions on Indemnities

3. The indemnity shall not apply in relation to any action by, or failure to act by, any Member or officer which constitutes a criminal offence.

4. This indemnity shall not apply in relation to any action by, or failure to act by, any Member or officer which is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that Member or officer.

5. However the indemnity may be provided in relation to :-

(a) The Defence of criminal proceedings arising in relation to the undertaking of functions (excluding motoring offences) brought against the officer or Member, subject to paragraph 10 of this indemnity below.

(b) Any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

Within the terms of the indemnity policy, the Chief Executive, in consultation with the Leader of the Council, the Chief Financial Officer, and the Monitoring Officer is authorised to endorse the payment of indemnity to any Member or officer up to a maximum of £50,000 where such indemnity is not covered by insurance, and that any sums in excess of that figure must be referred to Council for approval.

6. No indemnity is provided in relation to the pursuit by a Member or officer of any claim for alleged defamation of that Member or officer. The indemnity may be provided in relation to the costs of defending a claim of defamation made against a Member or officer.
Council

Conditions of Indemnity

7. A Member or officer seeking the indemnity from the Council must :-

(a) Where the act or failure to act falls outside the powers of the Council, he/she must have believed that the action or failure to act in question was within the powers of the Council.

(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, believe that the contents of that statement were true.

and it must be reasonable for the Member of office to hold that belief at the time when he/she acted or failed to act.

8. The indemnity may apply 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 of officer reasonably believed that the act or omission in question was within his powers at the time when he/she acted.

Acting as Member or Officer

9. Where the Member or officer is acting on behalf of another organisation then the activities covered will be deemed to have arisen in the capacity as a "member or officer of the Authority" where :-

(a) The appointment to that outside body was made by the Authority; or

(b) The nomination to that outside body was made by the Authority; or

(c) Such appointment to that outside body was specifically approved for the purpose of these indemnities.

Repayment of and Approval of Costs of Legal Representation

10. Where a Member or officer seeks the indemnity in relation to :-

(a) The defence of any criminal proceedings; or

(b) The defence of an action for defamation; or

(c) The defence of any proceedings pursuant to Part 1 Chapter 7 of the Localism Act 2011 relating to alleged failure to comply with the Members' Code of Conduct ("Part 7 Proceedings").

the indemnity shall be subject to the terms that if :-

(a) In the case of criminal proceedings, the Member or officer in question is convicted of a criminal offence and that conviction is not overturned following any appeal.

(b) In the case of civil proceedings for defamation the Member or officer in question is

found to have acted out of malice.

(c) In the case of Part 7 proceedings :-

(i) A finding is made that the Member in question has failed to comply with the Code of Conduct, and that finding is not overturned following any appeal.

(ii) The Member admits that he has failed to comply with the Code of Conduct. The Member or officer shall reimburse the Council for any sums expended by the Council in relation to those proceedings pursuant to this indemnity.

11. Where a Member or officer is obliged to reimburse the Council pursuant to the terms of the indemnity, those sums shall be recoverable by the Council as a civil debt.

12. The level of fees which will be reimbursed will be those which are deemed reasonable.

13. The Monitoring Officer must be consulted prior to any legal advice being sought under the terms of the indemnity, with regard to the prevailing level of fees that are deemed acceptable.

Relationship with Other Insurances

14. The indemnity shall not apply to the extent that an external body in respect of which the Member or officer is carrying out any function at the request of, or with the approval, or for the purposes of the Council, indemnifies or insures such Member or officer itself.

15. The indemnity will not apply in respect of claims falling within the cover provided to Members and officers under any insurance policy taken out by the Council or otherwise, or any motor insurance taken out by the Member or officer.

Notification of a claim, approval of expenditure etc.

16. The indemnity will have no effect if the Member or officer fails to :-

(a) Notify the Monitoring Officer as soon as reasonably practicable after the Member or officer is aware that a claim might be made.

(b) Take reasonable steps to mitigate the amount that might otherwise be claimed under the indemnity.

(c) Permit appropriate Council officers access to any information or advice, such as legal advice, relevant to the matter and comply with all other requests of the Council in the code of the matter.

17. The indemnity will not apply if a Member or officer, without the express permission of the Council or the Monitoring Officer acting on behalf of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the indemnity.

18. The indemnity is without prejudice to the rights of the Council to take disciplinary action against an officer in respect of any act or failure to act.

Insurance

19. To assist in discharging the indemnity, the Council may at its discretion, arrange insurance.

20. In any case where insurance cover is available, any Member or officer claiming to be indemnified by the Council shall use all reasonable endeavours to abide by any requirements of the insurer and to assist the Council in claiming and securing payment(s) under the insurance policy.

Lawfulness

21. The indemnity shall not extend to any situation where it would be unlawful for the Council to give an indemnity.