

# Bath & North East Somerset Council

MEETING	<b>Standards Committee</b>	
MEETING	<b>6 February 2014</b>	
TITLE:	<b>INDEMNITIES FOR MEMBERS AND OFFICERS</b>	
WARD:	All	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report:</b>		
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 Local Authorities (Indemnities for Members and Officers) Order 2004 enables the Council to provide indemnities for members and officers in relation to any act or failure to act which is:-
  - 5.1.1 authorised by the Council; or
  - 5.1.2 in any case in which the member or officer is carrying out any function at the request of, with the approval of, or for the purposes of, the Council.
- 5.2. An indemnity may be provided by means of the Council securing the provision of an insurance policy for the member or officer.
- 5.3. There are some limitations to the cases in which indemnities may be provided. No indemnity may be provided under the order in relation to criminal acts, any other intentional wrongdoing, fraud, recklessness, or in relation to the bringing of (but not the defence of) defamation proceedings. However, subject to certain provisos, an indemnity may be provided in relation to the defence of any criminal proceedings brought against an officer or member. Indemnities can also be given in relation to any civil liability arising from an action, or failure to act, which also constitutes a criminal offence.
- 5.4. The order gives a limited power to provide an indemnity or insurance where the action or inaction complained of is outside the powers of the Council itself or outside the powers of the member or officer who acts. It also covers situations where a member or officer makes a statement that certain steps have been taken or requirements fulfilled when it later becomes clear that that is not the case. However, in these situations, the person indemnified must reasonably believe that the matter in question was not outside those powers. Furthermore, where a document has been issued containing a statement which later proves to be untrue, the person seeking indemnification must reasonably have believed that the statement was true when it was issued or authorised.
- 5.5. The order enables the Council to negotiate such terms for indemnities or insurance as it considers appropriate. However, those terms must include provision for repayment of sums expended by the Council, or by an insurer, where a member admits or is found to have been in breach of the Code of Conduct, or if the member or officer is convicted of a criminal offence.
- 5.6. The Council's approved forms of indemnity for members and officers which were approved in July 2001 have been reviewed and a revised form is set out in Appendix A to this report.
- 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.

- 5.9. It would be possible for the Council to effect insurance for all members of the Council against costs incurred by them in defending against them under the Localism Act 2011 (ie Code of Conduct complaint) which are subsequently dismissed.

## **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 None.

## **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.

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<b>Background papers</b>	<i>None</i>
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**PROPOSED FORM OF INDEMNITY FOR MEMBERS AND OFFICERS**

1. The Council will, subject to the exceptions set out below, indemnify each of its members and officers 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.

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 officer,
  - 1.2 any act or failure to act by the member or officer otherwise and in his/her capacity as a member or officer of the Council, or
  - 1.3 any 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 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 Standards 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 "Standards proceedings" means any investigation or hearing in respect of an alleged failure to comply with the Council's Code of Conduct for Members under the Localism Act 2011.
    - 2.3 This indemnity shall not extend to any advice or representation in respect of any claim or threatened claim in defamation by the member or officer.
    - 2.4 Where any member or officer avails him/herself of this indemnity in respect of defending him/herself against any criminal proceedings or Standards 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:-
      - 2.4.1 the member or officer is convicted of a criminal offence in consequence of such proceedings, or
      - 2.4.2 in the case of Standards' proceedings a finding is made that the member has failed to comply with the Code of Conduct for Members or if the member admits that he/she has failed to comply with the Code of Conduct for Members and the conviction or finding is not overturned on appeal, the member or officer shall reimburse the Council for any sums expended by the Council pursuant to the indemnity.

- 2.5 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 purpose of these indemnities, a loss or damage shall be deemed to have arisen to the member or officer "in his/her capacity as a member or officer of the Council" where:-
- 3.1 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 or 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 as the member or officer as a member or officer of the Council but in their capacity as a member or officer of another organisation, where the member or officer is, at the time of the action or failure to act, a member or officer of that organisation either:-
- 3.2.1 in consequence of his/her appointment as such member or officer of that organisation by the Council, or
- 3.2.2 in consequence of his/her nomination for appointment as such member or officer of that organisation by the Council, or
- 3.2.3 where the Council has specifically approved such appointment as such a member or officer of this organisation for the purpose of these indemnities.
4. The Council undertakes not to sue (or join in any action as co-defendant) an officer of the Council in respect of any negligent act or failure to act by the member or officer in his/her capacity as an officer 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 officer, or
- 4.2 any act or failure to act by the officer otherwise than in his/her capacity as a member or officer of the Council.
5. These indemnities and undertaking shall not apply if:-
- 5.1 in the case of a member, the member does not inform the Council's Monitoring officer and in the case of an officer, the officer does not inform his/her director and the Council's Monitoring Officer immediately he/she becomes aware of any circumstances likely to form the basis of any claim against the Council or likely to result in any financial loss to the Council and does not follow the advice of the Council's Monitoring Officer and Chief Finance Officer
- 5.2 if a member or officer without the express permission of the Council or of the Council's Monitoring Officer admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of these indemnities and undertaking

- 5.3 a member or officer does not co-operate with and assist the Council in the conduct of any legal proceedings to which the indemnity relates, including giving evidence.
6. These indemnities and undertaking 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.
7. These indemnities and undertakings 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 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.