

Officer and Member Indemnity Provisions

1. Interpretation

1.1 For the purpose of these indemnities and undertaking:

- (a) “Criminal proceedings” includes any interview or investigation by the Police, and any proceedings before a criminal court in the United Kingdom.
- (b) “Member” means an elected member of the Council at the time of any neglect, act, error or omission;
- (c) “Officer” means a person employed by the Council at the time of the neglect, act, error or omission, but does not include a person undertaking work for the Council through an agency or a person performing a service under a contract with the Council for the provision of that service other than a contract of employment directly with the Council; and
- (d) 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:
 - (i) 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 Council’s powers or within the powers of the Member or Officer at the time that he/she acted or failed to act; or
 - (ii) 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 his/her capacity as a Member or Officer of another organisation, where the Member or Officer was, at the time of the act or failure to act, a Member or Officer of that organisation as a result of:
 - (A) his/her appointment by the Council; or
 - (B) his/her nomination to that organisation by the Council, or
 - (C) the Council formally accepting an invitation for a Member or Officer to be appointed to that organisation,
 but only in cases where:
 - (1) such act or failure to act was within the power of that organisation; and/or
 - (2) that organisation has not itself secured adequate insurance for the benefit of the Member or Officer that is

available to and would cover the Member or Officer for the act or failure to act.

- 1.2 These indemnities and undertakings shall apply during a Member's term of office or an Officer's employment by the Council, to any act or failure to act and shall continue to apply after the Member or Officer has ceased to be a Member or Officer of the Council.

2. Indemnity for loss or damage

- 2.1 Subject to the exclusions set out in paragraph 4 and to the terms in paragraph 5, the Council will indemnify all its Members and Officers against any loss or damage (including any award of costs and/or damages against the Officer or Member), suffered by a Member or Officer arising from his/her act or failure to act in his/her capacity as a Member or Officer of the Council.

3. Indemnity for civil and criminal proceedings

- 3.1 The Council will, subject to paragraphs 3.2 and 3.3 and to the exclusions and terms in paragraphs 4 and 5, indemnify all its Members and Officers against the reasonable costs which s/he may incur in securing appropriate legal advice and representation in respect of any actual or prospective civil or criminal proceedings arising from his/her act or failure to act in his/her capacity as a Member or Officer of the Council.
- 3.2 The indemnity in paragraph 3.1 applies for the defence of defamation proceedings by Members and Officers subject to the alleged statement being made in the Member's capacity as a Member or the Officer's capacity as an Officer; but not for the bringing of defamation proceedings.
- 3.3 The indemnity in paragraph 3.1 is subject to a condition that if the Member or Officer is convicted of a criminal offence in consequence of such proceedings and the conviction is not overturned on appeal, the Member or Officer shall reimburse the Council for any sums expended by the Council under this indemnity and the Member or Officer shall, if required by the Council, sign an agreement confirming this before the release of any money by the Council.

4. Exclusions

- 4.1 These indemnities will not include loss or damage directly or indirectly caused by or arising from:
- (a) any criminal offence (to extent as provided for in paragraph 3.3 above), fraud or other deliberate wrongdoing or recklessness by the Member or Officer; and/or
 - (b) any act or failure to act by the Member or Officer otherwise than in his/her capacity as a Member or Officer (save where the Member or Officer is acting for another organisation as provided for above); and/or
 - (c) any motor vehicle claim in which an Officer or Member has used his or her own private vehicle on the Council's business; and/or

- (d) an Officer defending or resisting any potential or actual disciplinary action taken by the Council against that Officer; and/or
- (e) failure by the Member to comply with the Council's Code of Conduct for Members.

5. Terms

- 5.1 These indemnities will not apply if a Member or Officer, without the express permission of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim.
- 5.2 In the event that a Member or Officer is threatened with civil or criminal proceedings, the Member or Officer must immediately inform the Head of Paid Service and the Monitoring Officer and follow such reasonable instructions as may be given.
- 5.3 These indemnities shall not extend to any challenge or other claim against any decision of the Section 151 Officer and/or Monitoring Officer and/or the Council and/or the Council's insurers made pursuant to the provisions of these indemnities.
- 5.4 The indemnity will not automatically apply to any appeal or other challenge against the outcome of any claim or other proceedings unless in the opinion of the Monitoring Officer any such appeal or other challenge has a reasonable chance of success.
- 5.5 Where the Council arranges insurance to cover its liability under these indemnities references to the Council shall where appropriate include references to its insurer.
- 5.6 The Council or its insurers will be entitled to take over and conduct in the name of the Officer or Member the defence of any claim or other proceedings brought against the Officer or Member.
- 5.7 The Council undertakes not to sue (or join in action as co-defendant) an Officer or Member in respect of any negligent act or failure to act by the Officer or Member in his/her capacity as an Officer or Member subject to the following exceptions:
 - (a) any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the Officer or Member; or
 - (b) any act or failure by the Officer or Member otherwise than in his/her capacity as an Officer or Member of the Council.
- 5.7 The above indemnities and undertaking shall be without prejudice to the right of the Council:

- (a) to take action against the Member through the Audit and Governance Committee for a breach of the Code of Conduct for Members or the breach of a local protocol; or
- (b) to take disciplinary action against an Officer in respect of any neglect, act, error or omission.

6.0 Co-opted Member

- 6.1 The above indemnities and undertakings may be extended to apply to any co-opted Member on a case by case basis if the Council so determines.