

Report of:	Monitoring Officer
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Portfolio Leader:	Leader of the Council
Key Decision:	No
Report Track:	Council: 29/05/19

**ANNUAL COUNCIL
29 MAY 2019
INDEMNITIES TO MEMBERS AND OFFICERS**

1 Purpose of Report

- 1.1 To advise Members of the legal position in relation to potential personal liabilities of Members and Officers and to seek approval for an appropriate form of indemnity to protect against such risks.

2 Recommendation

- 2.1 That the Council provide an indemnity to all Members and Officers in the terms set out in Appendix 1 to this report.

3 Key Issues and Reasons for Recommendations

Key Issues

- 3.1 The Local Authorities (Indemnities for Members and Officers) Order 2004 gave Councils the power to provide indemnities to its Members and officers.
- 3.2 As participation in outside bodies and partnership working becomes increasingly important, so is the need to consider provision of adequate assurances to Members and Officers taking an active participation in outside bodies at the Councils request.
- 3.3 The Council (or external body's) insurance policy already provides quite comprehensive cover in this regard. However, there may be claims that insurance cover does not extend to and to which it would be reasonable to provide an indemnity.

Reasons for Recommendations

- 3.4 To ensure that Members and officers are not subject to unreasonable personal liabilities when acting in good faith on behalf of the Council.

4 Relationship to Corporate Priorities

- 4.1 The Council, through its democratic process, contributes to the Council's Corporate Priorities and promotes community engagement through the appointment of representatives to outside bodies.

5 Report Detail

- 5.1 The Council nominates Members and officers to a number of outside bodies. There will be occasions when, although a Member or officer is appointed to another body by the Council, the nature of their position in the outside body will mean there will be a potential for personal liability.
- 5.2 In particular, Council Members or officers appointed to act as directors, trustees or similar positions in outside bodies can be exposed to personal liabilities, with the extent of risk depending on their role and nature of the body in which they act. For example, in the case of a trust, they may be liable if they deliberately or recklessly take actions in breach of trust or without having taken appropriate advice; or in the case of a limited company, they may be personally liable for the company's business liabilities and be fined, prosecuted or disqualified as a company director if they do not discharge their director's responsibilities. Officers and Members are increasingly concerned about the personal liability that may be attached to them from performing their duties.
- 5.3 Section 39 of the Local Government (Miscellaneous Provisions) Act 1976 gives statutory protection to individual Members and officers in respect of claims by third parties for acts and omissions committed whilst the Member or officer is acting under Council authority in good faith. However, this does not afford protection where the Member is not acting under the authority of the Council.
- 5.4 The Local Authorities (Indemnities for Members and Officers) Order 2004 gives the Council the power to indemnify Members and officers in relation to any action, or failure to act, which is
- (a) authorised by the authority (i.e. as in paragraph 5.3 above), or
 - (b) forms part of, or arises from, any powers conferred, or duties placed, upon a member or officer, as a consequence of any function being exercised by that member or officer (i) at the request of, or with the approval of the authority or (ii) for the purposes of the authority.
- 5.5 This could, therefore cover situations where the Member or officer acts in good faith on an outside body in consequence of a Council appointment, but is not acting under the Council's direct authority.
- 5.6 The Council currently holds a comprehensive insurance policy covering the work of Members and officers acting on behalf of the Council, including where they sit on outside bodies on behalf of the Council. However, it does not cover matters that aren't related to the business of the Council. For example, if the Member

acted as a trustee or board-member of an outside body other than through appointment by the Council.

- 5.7 Furthermore, notwithstanding the existence of insurance cover, where a Member or officer is sued personally in respect of a matter in which they have been involved on behalf of the Council, they may still need to incur expense in defending the proceedings if for example insurers decline to take over conduct of the action because they believe it is frivolous.
- 5.8 The indemnity would not apply where the outside body already covers the risk through its own insurance.
- 5.9 The indemnity would not cover criminal acts, or any other intentional wrongdoing, fraud, recklessness, or the bringing of any action in defamation. The indemnity can cover the costs of defending criminal or defamation proceedings, but any costs in relation to defending criminal proceedings would need to be repaid if the Member or officer were convicted.
- 5.10 The indemnity can cover actions which are beyond the powers of the authority, provided that the member or officer in question believes that the action, or failure to act, is within the powers of the authority.

6 Implications

6.1 Financial

Members and officers already have the benefit of statutory protection from third party claims where they act under the Councils authority. The Council already insures against risks from members/officers acting on outside bodies on its behalf. The indemnity is designed to cover any gaps in such protection which may arise even though Members/officer act in good faith. Any such claims will be rare but could be substantial if they were to occur.

6.2 Legal

As set out in the report.

6.3 Human Resources

Details of implications or "None".

6.4 Section 17 (Crime Prevention)

None.

6.5 Human Rights Act

None.

6.6 Data Protection

None.

6.7 Risk Management

Providing an indemnity will give assurances to members and officers acting in good faith on outside bodies at the request of the Council. Failure to provide an indemnity could discourage members or officers from undertaking these roles and responsibilities.

6.8 Equality & Diversity

None.

6.9 Best Value

None.

7 Appendices to the Report

Appendix 1: Cannock Chase District Council – Indemnity to Members and Officers

Cannock Chase District Council - Indemnity to Members and Officers

- 1 The Cannock Chase District Council ("The Authority") will provide an indemnity to all of its Members (including independent Members serving on a Standards Committee) and Officers (that is, all employees of the Authority) on the terms set out in this document.
- 2 The Authority will indemnify all Members and Officers against all claims, liabilities, costs and expenses arising out of any action, or failure to act, by the Member or Officer in question which is authorised by the Authority or which forms part of, or arises from any powers conferred, or duties placed, upon that Member or Officer (whether or not, when exercising that function, he/she does so in his/her capacity as a Member or Officer of the Authority), so long as the action or failure to act is undertaken at the request of, with the approval of, or for the purposes of the Authority.
- 3 This indemnity does not cover any action, or failure to act, by any Member or Officer which constitutes a criminal offence, or is the result of fraud or other deliberate wrongdoing, or recklessness on the part of that Member or Officer. It does cover:
 - (a) subject to paragraph 6, the cost of defending any criminal proceedings against the Member or Officer; and
 - (b) subject to paragraph 7, costs incurred in relation to any investigation, report, reference, adjudication or other proceedings in relation to any allegation that a Member has failed to comply with the Authority's code of conduct for Members; and
 - (c) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.
- 4 This indemnity does not cover the making by any Member or Officer of any claim in relation to alleged defamation, but does cover the defence by a Member or Officer of any allegation of defamation made against him/her.
- 5 This indemnity covers any action or failure to act by any Member or Officer which is subsequently found to be beyond the powers of the Authority, or beyond the powers of the Member or Officer in question, but only to the extent that the Member or Officer reasonably believed, at the time in question, that the act or omission in question was within the powers of the Authority, and within his/her powers. Where the action taken comprises the issuing or authorisation of any document containing any statement as the powers of the Authority, or any statement that certain steps have been taken or requirements fulfilled, this indemnity applies only if the Member or Officer reasonably believed, at the time in question, that the contents of that statement was true.
- 6 In the case of criminal proceedings, if the Member or Officer is convicted of a criminal offence, and that conviction is not overturned following any appeal, the

Member or Officer shall reimburse the Authority (or any insurer who has made payments in this regard) for any sums expended in relation to the proceedings.

- 7 In the case of the proceedings referred to in paragraph 3b above, if the Member admits, or is found to have failed to comply with the code of conduct, and that finding is not overturned following any appeal, the Member shall reimburse the Authority (or any insurer who has made payments in this regard) for any sums expended in relation to the proceedings.
- 8 The Council may in its absolute discretion withdraw the indemnities if:
 - (a) the Member or Officer does not notify the Councils Monitoring Officer immediately he/she is notified of the claim;
 - (b) the Member or Officer makes any admission to or negotiates or agrees any settlement with a third party without the prior written consent of the Councils Monitoring Officer.
- 9 The indemnities shall not apply in respect of all claims falling within the cover provided to Members or Officers under any policy of insurance taken out by the Council (or any other body for which the Member or Officer was acting in respect of the claim).