INDEMNITY OF MEMBERS AND OFFICERS

INDEMNITY PROVIDED UNDER THE LOCAL AUTHORITIES (INDEMNITIES FOR MEMBERS AND OFFICERS) ORDER 2004

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 actions they take. The Act provides for indemnity in relation personal liabilities and also costs.

1.2. The Local Authorities (Indemnities for Member 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 discretion to decide whether to use the powers, and to decide the extent of such indemnities.

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. Councillors 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 members code of conduct.

1.5. In relation to officers, Councils have always been able to indemnify officers and take out insurance cover when 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 the council to indemnify officers where they have acted outside of the powers of the authority but reasonably believed 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. However, for both councillors and officers the 2004 order restricts the provisions of indemnities so that they cannot cover any findings 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 the indemnity would normally have to be repaid to the Council or insurer.
2. Terms of Indemnity

(1) The Council hereby indemnifies its employees, including the Returning Officer, Monitoring Officer, nominated deputies and Members, whether appointed or elected at the date of this resolution or at any time thereafter, 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 Authority the damages costs or expenses set out in paragraph (2) below, subject to the exceptions set out in paragraph (3) below, and on the terms set out in paragraph (4) below. It will not itself make any claim against them in relation to any damages costs or expenses for which they are hereby indemnified. “Member” means an elected Member of the Council, a co-opted Member of a committee or an Independent Member or an Independent Person.

Notwithstanding any limitation on the powers of the Council, the indemnity is effective to the extent that the employee or member in question –

(a) believed that the action, or failure to act, in question was within the powers of the Council; or

(b) where the 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, believed that the contents of that statement were true,

and it was reasonable for that employee or member to hold that belief at the time when he or she acted or failed to act.

The indemnity is also effective in relation to an act or omission which is subsequently found to be beyond the powers of the employee or member in question but only to the extent that he or she reasonably believed that the act or omission in question was within his or her powers at the time at which he or she acted.

(2) The costs, claims and expenses are those which arise from, or in connection with, any action of, or failure to act by, the employee or member in question, which:-

(a) is or has been authorised by the Council; or

(b) forms part of, or arises from, any powers conferred, or duties placed, upon that employee or member, as a consequence of any function being exercised by that employee or member (whether or not when exercising that function he or she does so in his or her capacity as an employee or member of the Council) –

   (i) at the request of, or with the approval of, the Council; or

   (ii) for the purposes of the Council.

(3) The exceptions are that:-
(a) No indemnity is given in relation to any action by, or failure to act by, any employee or member which –

(i) constitutes a criminal offence; or

(ii) is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that employee or member; or

(iii) failures by the member to comply with the Code of Conduct for Members

(b) Notwithstanding paragraph (3)(a)(i), the indemnity does relate to –

(i) (subject to paragraph 4) the defence of any criminal proceedings brought against the employee or member; and

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

(c) 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 an employee, but will extend to defending a claim for defamation.

(d) The indemnity will not cover any loss or expense for which the Member or employee can obtain re-imbursement from any other source, including insurance, whether taken out by the Council, Member or employee, or by any other person.

(4) The terms of the indemnity are as follows:-

(a) Where the indemnity has effect in relation to the defence of any criminal proceedings; or any Part 1 Chapter 7 of the Localism Act 2011 proceedings (meaning any investigation, report, reference, adjudication or any other proceeding).

(i) in the case of criminal proceedings, if the employee or member in question is convicted of a criminal offence and that conviction is not overturned following any appeal, and

(ii) in the case of Chapter 7 proceedings –

(1) if a finding is made in those proceedings that the member in question has failed to comply with the Code of Conduct and that finding is not overturned following any appeal, or

(2) if the member admits that he or she has failed to comply with the Code of Conduct that employee or member shall reimburse the Council for any sums expended by it in relation to those proceedings pursuant to the indemnity, and those sums shall be recoverable by the Council as a civil debt.

(b) The Head of Governance has delegated authority to make decisions on granting of indemnities.
(c) The indemnity is subject to the employee or member notifying the Head of Governance immediately of any claim being made or intimated against him or her, and of any circumstances arising which may give rise to a claim.

(d) The indemnity will only extend to cover actual loss and expense incurred and evidenced by the employee or member to the satisfaction of the Head of Governance.

(e) The indemnity will not automatically apply if the employee or member without the written authority of the Head of Governance and insurers, as appropriate, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this indemnity.

(f) The indemnity shall not extend to any loss or damage directly or indirectly arising from any motor vehicle claims in which an employee using his or her own private vehicle on the Council’s business has been involved in an accident.

(g) The Council or its insurers will be entitled to take over and conduct in the name of the employee or member the defence of any proceedings brought against the employee or member.

2. INDEMNITIES PROVIDED UNDER POWERS IN SECTION 111 OF THE LOCAL GOVERNMENT ACT 1972

Where an indemnity cannot be granted under the terms of section 1 above (indemnity provided under the Local Authorities (Indemnities for Members and Officers) Order 2004), the Council will indemnify all employees, including the Returning Officer and members of the Council against the whole or part of any damages costs or legal expenses which any such officer or member may have been ordered to pay, or may have incurred arising from duties performed by virtue of their being a member of, or being employed by, the Council, or by virtue of their being the Council’s nominated representative in whatever capacity of any incorporated or unincorporated body, where:

(a) the member or officer acted in good faith and

(b) where such damages, costs or expenses arise from a criminal offence under:

   (i) the Health and Safety at Work Act 1974 and related regulations; or


The provisions of paragraph (4) (b) to (f) of section 1 above apply in respect of indemnities provided under section 111 of the Local Government Act 1972.
3 OTHER

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.

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.