

Agenda Item 9

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Date	September 2017
Ward (s) affected	All
Subject	Indemnity for Officers and Members
Recommendation	
That a revised policy is adopted providing an indemnity for officers and members arising from errors or omissions (not covered by the Council's insurance policies or falling with the excess of such policies).	
Corporate Priorities	
To enable officers and Members to carry out their duties, functions and roles in furtherance of the Corporate Strategy	
The Council has the authority to determine the Recommendation	

1. Background

- 1.1 In 1978 the Council adopted the recommendation of the Policy and Finance Committee to indemnify officers for liability arising due to errors or omissions on their part. The report highlighted that problems could occur where Court action might be brought against employees for failure to observe statutory duties and obligations and for negligence, where such matters were not covered by the Council's insurance policies. Whilst all employees are expected to act in such a manner as to avoid such a situation arising, statutory requirements were becoming so complex, that whilst an employee acted with every diligence he or she might still have to face Court action on a technicality. The danger of such an occurrence was highlighted in the complex implications of the Health & Safety at Work etc Act 1974. Whilst the best possible insurance cover is obtained, it was considered that it may not be sufficient in all cases to afford adequate protection for employees. Therefore the Council approved the adoption of a policy where it would indemnify its employees and make provision, if necessary, for their legal representation.
- 1.2 Since 1978, legislation has continued to become increasingly more complex and, in addition, many bodies are empowered to take regulatory action against the Council and its employees, without recourse to Court proceedings. As the Council's former policy is now nearly 40 years old, it is considered prudent to ensure that this indemnity is renewed and updated to reflect modern working practices and to include Members:
- 1.3 **The Council agrees to adopt the following policy:**
 - (i) That the Council will, subject to the exceptions set out below, indemnify its employees and Members against all costs, claims and demands made against them (including costs awarded and any fees incurred on legal representation) and will not itself make a claim against them for any loss, damage or injury (other than claims falling within the cover provided to its employees or Members under any policy of insurance taken out by the Council) caused by neglect, act,

error or omission of the employee or member in or about the pursuit of his or her duties on behalf of the Council so long as that employee or member is: (a) acting within the scope of his/her authority or is otherwise authorised by the Council; or (b) the neglect, act, error or omission forms part of, or arises from, duties placed on that officer or member as a consequence of any function being exercised by that officer or member (whether or not as an officer or member of the authority, but being at the request or approval of the Council or for the purposes of the Council).

(ii) In the event of any of its employees being found guilty of an offence under the provisions of the Health & Safety at Work etc Act 1974 or relevant statutory provisions within the meaning of that Act, or where any of its employees or members are subject to some form of regulatory action including the imposition of a fine or financial penalty, for example, and without limitation, under the provisions of the Data Protection Act 1998 or similar legislation, the Council will give consideration, according to the circumstances of each case, to reimbursing any fine imposed and the costs incurred in responding to or defending such action.

1.4 This indemnity will not apply if an employee or member, without the written authority of the Council, admits liability or negotiates a settlement of any claim falling within the scope of this policy.

1.5 This indemnity applies retrospectively to any neglect, act, error or omission which may have occurred before this date and shall continue to apply after the officer or member has ceased to be an officer or member of the Council as well as during his or her employment by or membership of the Council.

1.6 Exceptions

This indemnity will not extend to loss, damage or injury directly or indirectly caused by or arising from:

(a) Fraud, dishonesty or a criminal offence on the part of the employee or member (except where the criminal offence is an offence under the Health and Safety at Work etc Act 1974 or relevant statutory provisions within the meaning of that Act, or other legislation giving rise to strict liability offences);

(b) Any neglect, act, error or omission otherwise than in the course of carrying out any of the functions and duties of the Council except in the circumstances mentioned in paragraph 1.3(i)(b) above ;

2. FINANCIAL IMPLICATIONS

There none arising as direct result of this report

3. LEGAL IMPLICATIONS

The purpose of the indemnity is to provide support and comfort to officers and members who, in carrying out their duties, may make a mistake or be at fault, which then gives rise to some form of legal action against the officer or member personally, whether in the form of criminal or civil proceedings or the imposition of a regulatory penalty. In most cases the officer or member will be covered by the Council's insurance policies, but where such matters are not covered or fall within the excess of the policy, the Council will meet those costs. The Council endeavours to ensure that the likelihood of an officer or member acting in a way so as to give rise to some form of legal action is kept to a minimum by identifying the risk areas of the Council's business and taking appropriate action to minimise such risks, for example, by ensuring that officers and members attend regular training.

4. CORPORATE IMPLICATIONS

Monitoring Officer commentary

The Monitoring Officer confirms that all relevant legal implications have been taken into account.

S151 Officer commentary

The S151 Officer confirms that all relevant financial risks and implications have been taken into account in this report.

Risk Implications

The risk of not agreeing to the recommendation in the report is that officers and members could be personally liable to pay the costs and other expenses involved in a claim being taken against them (including the imposition of any regulatory financial penalty) arising from any neglect, act, error or omission of the employee or member whilst carrying out their duties and functions or arising from any duty or function placed on them, where such costs, expenses or other penalties are not covered by the Council's insurance policies or they fall within the Council's excess under such policies.

Equalities Implications

None

Employment Issues

None

Sustainability Issues

None

Consultation

None

Communications

None

Background Papers

None

