

DEED OF INDEMNITY FOR MEMBERS AND OFFICERS – REVIEW

1. Summary

- 1.1. To consider the Deed of Indemnity for Members and Officers and to recommend accordingly.

2. RECOMMENDATION

- 2.1 That, the Deed of Indemnity for Members and Officers, at Appendix A to the report, be endorsed and recommended to the General Assembly of the Council for adoption.

3. Background and Discussion

- 3.1 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 wide range of circumstances. Local authorities have discretion to decide whether to use the powers and to decide the extent of such indemnities.

- 3.2 The Council's Indemnity for Members and Officers was originally adopted by the GAC on 23 April 2007 [Min.No.128].

- 3.3 Since the Indemnity was last considered by the Council, there has been an increasing propensity of parties to litigate in order to recover losses. Not surprisingly, individuals have become concerned about any personal liability that may be attached to them from performing their duties.

Further, in recent case law¹ a local authority was criticised by the court for not applying the correct interpretation of its indemnity policy. The local authority in question appeared to pre-judge the outcome of legal proceedings against its former mayor. The court redirected that local authority to reconsider its former mayor's request for an indemnity, applying the correct interpretation of its indemnities policy for members and officers.

- 3.4 It is not in the Council's interests if potentially suitable candidates are deterred from seeking election to the Council or seeking appointment to responsible posts supported by the Council because of concerns over possible personal liabilities. This report therefore recommends that the Council gives as wide an indemnity in respect of such risks as it lawfully may, to both Members and Officers and suggests practical steps designed to minimise the potential cost

¹R (Anderson) v Liverpool City Council [2021] EWHC 2205 (Admin)

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to the Council of meeting claims under the Deed of Indemnity, at Appendix A to the report.

- 3.5 Although there is a statutory indemnity under Section 39 of the Local Government (Miscellaneous Provisions) Act 1976 for individual Members and Officers in respect of claims from third parties for acts and omissions committed whilst they are conducting council business, this does not extend to liability for negligence, nor will it afford protection where other than Council business is being conducted.

The Council's **officials' indemnity policy** provides protection both to the Council and to individual Members and Officers in respect of actions for negligence, resulting from their undertaking Council business.

- 3.6 There are a number of **outside bodies** of varying descriptions to which the Council customarily nominates Members and Officers. In a few cases, the Council's representative merely acts as an 'observer' in order to represent the Council's interests and does not take part in the outside body's decision making. For the most part, such 'observers' will be covered by the Council's Deed of Indemnity and by the Council's public liability insurance.

In certain cases, however, Members and Officers act as directors, trustees, or members of the management committees of outside bodies or otherwise play an active role in the affairs of the body in question, often because the constitutions of such bodies stipulate that Council nominees must act in such capacities. Those who act as directors, trustees or members of the management committee owe a 'fiduciary duty' to the outside body. In certain very limited circumstances, Members and Officers may be personally liable for the debts of the bodies on which they serve, or in relation to third party claims brought against those bodies and may be personally liable (without limit) if they deliberately or recklessly take actions in breach of trust or without having taken appropriate advice.

The Deed of Indemnity at Appendix A, stipulates that in circumstances, where a Member or Officer has been nominated to and is clearly representing or acting solely on behalf of the outside body, such nomination is subject to the requirement that the outside body must satisfy the Council that appropriate insurance cover is maintained, so as to protect the Member or Officer against personal liability.

- 3.7 Although the risk is limited, the Deed of Indemnity should cover:
- **Independent Members** on committees i.e. individuals drawn from outside the Council for their particular experience or expertise;
 - **Independent Persons** appointed by the Council, who are consulted by the Monitoring Officer on matters relating to alleged Member misconduct and also to advise the GAC on disciplinary matters relating to the Head of Paid Service, the Monitoring Officer and the Section 151 Officer.

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3.8 Where a finding of culpability e.g. a criminal conviction against a Member or Officer is not overturned on appeal or the Member or Officer admits to breaching their respective codes, any sums expended by the Council or insurer pursuant to the indemnity or insurance will be recoverable by the Council or the insurer from the Member or Officer, as a civil debt.

4. Relationship to the Corporate Plan

The Council has an ongoing commitment to good corporate and ethical governance, which supports effective decision-making and an effective ethical governance framework.

5. Financial, legal, staffing and other administrative implications and risk assessments

Financial Implications	The Deed of Indemnity is supplemented by insurance cover, the cost of which is covered within the Council's existing insurance budgets
Legal Implications	As discussed in the body of the report
Staffing Implications	None
Administrative Implications	None
Risk Assessment	As detailed in the body of the report

6. Details of Exempt Information Category

Not applicable

7. Appendices

Appendix A – Deed of Indemnity for Members and Officers

BACKGROUND PAPERS

<u>Documents consulted</u>	<u>Date / File Ref</u>	<u>Report Author</u>	<u>Section and Directorate</u>	<u>Exempt Information Category</u>
		Marie Kelly-Stone Head of Legal Services & Monitoring Officer	Legal Services/ Corporate Services Directorate	N/A