

INDEMNITIES FOR MEMBERS AND OFFICERS

RECOMMENDATION

- 1.1 To approve the provision of indemnities to Members and officers on the basis set out in Appendix 2 of this report
- 1.2 To authorise the Director of Finance to secure insurance cover in respect of such indemnities as he considers appropriate.

REASONS FOR RECOMMENDATION

2. It is necessary to bring the existing arrangements for indemnities into line with the new provisions contained in the Local Authorities (Indemnities for Members and Officers) Order 2004.

SUPPORTING INFORMATION

- 3.1 Council passed a resolution some years ago to indemnify Members and officers in respect of claims arising out of the performance of their council duties other than where they are convicted of offences.
- 3.2 Although it has been accepted that councils generally have power to provide such indemnities, there has been some uncertainty on the issue and in certain situations concern as to whether the indemnity may be removed after the event in the light of a high profile case in the 1980s.
- 3.3 In that case two officers had been appointed by their council as directors of a company. The company went into liquidation and the creditors pursued directors personally for wrongful trading. The two officers claimed under their council's indemnity policy but the power to give such an indemnity was then challenged through the external auditor. The court ruled that the indemnity was invalid because the council did not have power to be involved in the company in that way. That left the two officers facing substantial claims against them personally.

- 3.4 Although there is a long history of the Council making appointments to outside bodies the greater emphasis in recent years on partnership and joint venture arrangements has increased the involvement of Members and officers in such bodies and ventures and with it an increased potential for claims.
- 3.5 These organisations cover the whole range of different types of bodies from unincorporated associations to statutory bodies to limited companies. In some cases the corporate body status of the body will provide some protection e.g. in the case of limited liability companies. However in all cases persons appointed to these organisations will owe a duty of care to them in the performance of their duties and any shortcomings can lead to personal claims. The risk is particularly high in unincorporated bodies where the liabilities of the body are those of its management committee and members personally.
- 3.6 These risks are in addition to any personal liabilities that could arise in relation to carrying out duties directly for the Council.
- 3.7 Section 101 of the Local Government Act 2000 took a step forward to help clarify the ability of local authorities to provide indemnities to Members and officers. It gave the Secretary of State power to introduce provisions setting out the extent and the circumstances in which such indemnities may be given. That power has now been exercised in the form of the Local Authorities (Indemnities for Members and Officers) Order 2004.
- 3.8 The order makes clear that the Council may provide indemnities in relation to any action of, or failure to act by, a Member or officer which
- is authorised by the Council, or
 - forms part of, or arises from, powers or duties placed on that Member or officer as a consequence of any function exercised by them either at the request of the Council or for the purposes of the Council.
- 3.9 The order also deals specifically with the situation that arose in the 1980's case described above. Where there are limitations on the Council's powers the indemnity may still be provided to the extent that the Member or officer
- believed that the action, or failure to act, was within the powers of the authority or
 - where it involved the issue of a statement as to the authority's powers or that certain steps have been taken or requirements fulfilled, they believed that the contents of the statement were true

and it was reasonable for them to hold that belief at that time.

Also an indemnity may still be provided if it is subsequently found to be beyond the powers of the Member or officer provided the Member or officer reasonably believed that the act or omission in question was within their powers at that time.

- 3.10 In addition to such indemnities, or as an alternative, the Council may also put in place insurance cover. Some organisations to which Members and officers are appointed may have their own indemnity arrangements or insurance to indemnify their Directors, trustees or management committee members. Those arrangements or insurance cover should be pursued in the first instance.
- 3.11 The power to provide an indemnity and / or insurance does not apply in relation to any act, or failure to act, by the Member or officer which
- constitutes a criminal offence (but note the exemptions below in relation to defence of proceedings and civil liability), or
 - is the result of fraud or other deliberate wrongdoing or recklessness on the part of that Member or officer.
- 3.12 Exceptions to the restrictions in the previous paragraph allow an indemnity to be provided in the following situations
- defence of any criminal proceedings subject to a requirement to repay if the Member or officer is convicted and the conviction is not overturned on appeal
 - any civil liability arising from an act or omission which is also a criminal offence
 - any investigation, report, reference, adjudication or any other proceeding under Part 3 Local Government Act 2000 subject to a requirement to repay if there is a finding that the Member has failed to comply with the Code of Conduct and that finding is not overturned on appeal or the Member admits failing to comply with the Code of Conduct.
- 3.13 No indemnity may be provided in relation to the making of a claim of defamation by a Member or officer but is available for the defence of any allegation of defamation against a Member or officer.

OTHER OPTIONS CONSIDERED

4. None.

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Background papers:	None
List of appendices:	Appendix 1 – Implications Appendix 2 – Terms of Indemnity to Members and Officers

IMPLICATIONS

Financial

1. The revised basis for providing indemnities to Members and officers is unlikely to have any significant impact on the current situation. Personal claims against individuals are rare and it is difficult to recall any occasion when a Member or officer has been left with personal civil liability when acting on behalf of the Council.

Legal

- 2.1 The Local Authorities (Indemnities for Members and Officers) Order 2004 made under the Local Government Act 2000 sets out the extent to which the Council is able to indemnify its Members and officers or provide insurance cover for their liability.
- 2.2 Whilst the scope of the indemnity is broadly drafted there are a number of important qualifications and exclusions which are set out in the body of the report. In particular it should be noted that the indemnity does not extend to criminal liability, fraud, deliberate wrongdoing, recklessness or liability under Part 3 Local Government Act 2000 (Code of Conduct).
- 2.3 The new provisions address the previous issue of indemnity being denied because acts are subsequently held to be beyond the Council's powers but there is the important qualification that the Member's or officer's belief in the sufficiency of the Council's powers must be a reasonable one. It is important that Members and officers give proper consideration as to the powers available to them and the Council and to seek advice.
- 2.4 The regulations allow the Council to provide an indemnity by way of securing insurance cover.
- 2.5 The terms of the indemnity in Appendix 2 have been drafted so as to follow the provisions of the Order.

Personnel

- 3 Although there is a long history of the Council making appointments to outside bodies the greater emphasis in recent years on partnership and joint venture arrangements has increased the involvement of Members and officers in such bodies and ventures and with it an increased potential for claims. The existence of explicit provisions for indemnity will reduce the risk of potential personal liability and facilitate such joint working arrangements.

Equalities impact

4. None directly arising.

Corporate objectives and priorities for change

5. The provision of the indemnity will contribute to the effective working of the Council, particularly in areas of joint working and partnership arrangements.

Terms of Indemnity to Members and Officers

To the extent permitted by Section 101 Local Government Act 2000 and any regulations made under that section, Derby City Council will indemnify any Member or officer of the Council from personal liability in respect of any action of, or failure to act by, that Member or officer which is

- authorised by the Council, or
- forms part of, or arises from, powers or duties placed on that Member or officer as a consequence of any function exercised by them (whether in their capacity as a Member or officer or otherwise) either at the request of the Council or for the purposes of the Council

subject to the following conditions, qualifications and exceptions.

1. Where there are any limitations on the powers of the Council the indemnity will be provided only to the extent that the Member or Officer
 - believed that the action, or failure to act, was within the powers of the Council, or
 - where it involved the issue of a statement as to the Council's powers or that certain steps have been taken or requirements fulfilled, they believed that the contents of the statement were trueand it was reasonable for them to hold that belief at that time.
2. An indemnity will be provided in relation to any act or omission which is subsequently found to be beyond the powers of the Member or officer but only to the extent that the Member or officer reasonably believed that the act or omission in question was within their powers at the time of the act or omission.
3. No indemnity will be provided in relation to any action of, or failure to act by, the Member or officer which
 - constitutes a criminal offence, subject to the exceptions below relating to the defence of proceedings and civil liability, or
 - is the result of fraud or other deliberate wrongdoing or recklessness on the part of that Member or officer.
4. The Council will provide an indemnity in respect of the defence of any criminal proceedings brought against a Member or officer subject to the condition that, if the Member or officer is convicted and the conviction not overturned on appeal, the Member or officer will reimburse the Council or the insurer (as the case may be) for any sums expended by the Council or insurer in relation to those proceedings.
5. The restriction on indemnity in relation to criminal proceedings does not extend to any civil liability arising from an act or omission which is also a criminal offence

6. In respect of any investigation, report, reference, adjudication or any other proceeding under Part 3 Local Government Act 2000 an indemnity will be provided to a Member subject to a requirement to repay if there is a finding that the Member has failed to comply with the Code of Conduct and that finding is not overturned on appeal or the Member admits failing to comply with the Code of Conduct.
7. No indemnity will be provided in relation to the making of a claim of defamation by a Member or officer but is available for the defence of any allegation of defamation against a Member or officer.
8. Where the liability of a Member or officer arises from their appointment as member, director, trustee or like position of another organisation (whether incorporated or otherwise) by or on behalf of the Council as the Council's representative, the Member or officer is required to seek indemnity from that other organisation, or its insurers, in the first instance. The Council will only provide an indemnity to the extent that any indemnity provided by the other organisation (or any insurance cover secured by it) is insufficient to meet the liability of the Member or officer acting as a member, director, trustee or like position of that other organisation.
- 9 The Council may at its discretion secure insurance cover in place of, or in addition to, any indemnity set out above. Such insurance shall not provide any wider basis of indemnity than set out above and any obligation to repay shall extend to be an obligation to repay sums expended by an insurer.
- 10 For the purpose of the above indemnity provisions,
 - "Member" includes any member of a committee or sub-committee of the Council or any person who is a member of, and represents the Council on, any joint committee or sub-committee.
 - "Officer" means any employee of the Council.