



<b>Title:</b>	<b>Constitution of the Council (Part 40: Indemnities for Officers and Councillors)</b>
<b>Owner:</b>	<b>John Teasdale</b>
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<b>Approved by Monitoring Officer:</b>	<b>John Teasdale</b>

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Adopted by Full Council on 12<sup>th</sup> December 2022

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# INDEMNITIES FOR OFFICERS AND COUNCILLORS

Section 111(1) of the Local Government Act 1972 provides ancillary powers to local authorities that may permit them to indemnify members and officers in relation to particular decisions or acts if to do so would facilitate; or is incidental, or conducive, to the discharge of a function of the authority.

The Local Authorities (Indemnities for Members 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.

Section 1 of the Localism Act 2011 also provides the Authority with a general power of competency, under which an indemnity could be granted.

**Each local authority has the discretion to decide whether to use these powers, and to decide the extent of such indemnities and insurance.**

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## 1 INDEMNITIES AGAINST LOSS OR DAMAGE

- 1.1 The Council will, subject to the exceptions set out below, indemnify each of its councillors and employees against any loss or damage suffered by the councillor or officer, acting in good faith, arising from their action or failure to act in their capacity as a councillor or officer of the authority.
- 1.2 This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:
  - 1.2.1 any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the councillor or officer,
  - 1.2.2 any act or failure to act by the councillor or employee otherwise than in their capacity as a councillor or officer of the authority, or

- 1.2.3 failure by the councillor to comply with the Council's Code of Conduct for Councillors.

## 2 INDEMNITIES AGAINST LEGAL COSTS

2.1 The Council will, subject to the exceptions set out below, indemnify each of its councillors and officers against the reasonable costs which they may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings to which they are subject ~~or otherwise, with the prior written consent of the Chief Executive, otherwise~~ in their capacity as a councillor or officer of the authority. Any further consideration as to whether or not this indemnity applies will be undertaken, and if applicable authorised, by the Chief Executive in consultation with the Chief Financial Officer and the Monitoring Officer.

2.2 "Criminal proceedings" includes any interview or investigation by the Police, and any proceedings before a criminal court, in the United Kingdom.

~~2.3 This indemnity shall extend to any advice or representation in pursuit of any claim or threatened claim in defamation by a councillor or officer only if Counsel's advice has been received supporting the initiation of such a claim and confirming that the Council may provide an indemnity in the particular circumstances; and only if the District Auditor has been notified of the officer or councillor's intention to bring a claim and has been given an opportunity to register an objection to the proposed indemnity.~~

2.42.3 Where any councillor or officer avails themselves of this indemnity in respect of defending themselves against any criminal proceedings, or breach of the Code of Conduct the indemnity is subject to a condition that if, in respect of the matter in relation to which the councillor or ~~r~~ officer has made use of this indemnity:

2.4.12.3.1 the councillor or officer is convicted of a criminal offence in consequence of such proceedings (which includes any criminal conviction as a result of breaching the Codes of Conduct), and; ~~and~~

2.3.2 the conviction or determination is not overturned on appeal,

2.4.22.3.3 a breach of the Code of Conduct is determined against a councillor or officer

the councillor or officer shall reimburse the Council for any sums expended by the Council pursuant to the indemnity.

2-52.4 Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in this section Paragraph 2 shall apply as if references to the Council were references to the insurer.

### 3 OTHER PROVISIONS

- 3.1 For the purpose of these indemnities, a loss or damage shall be deemed to have arisen to the councillor or officer “in their capacity as a councillor or officer of the authority” where:
- 3.1.1 The act or failure to act was outside the powers of the Council, or outside the powers of the councillor or officer, but the councillor or officer reasonably believed that the act or failure to act was within the powers of the Council or within the powers of the councillor or officer (as appropriate) at the time that they acted or failed to act, as the case may be;
  - 3.1.2 The act or failure to act occurred not in the discharge of the functions of the councillor or officer as a councillor or officer of the Council but in their capacity as a councillor or employee of another organisation, where the councillor or officer is, at the time of the action or failure to act, a councillor or employee of that organisation either:
    - 3.1.2.1 in consequence of their appointment as such councillor or officer of that organisation by the Council; or
    - 3.1.2.2 in consequence of their nomination for appointment as such councillor or officer of that organisation by the Council; or
    - 3.1.2.3 where the Council has specifically approved such appointment as such a councillor or employee of that organisation for the purpose of these indemnities.
- 3.2 The Council undertakes not to sue (or join in action as co-defendant) an officer of the council in respect of any negligent act or failure to act by the officer in their capacity as an officer of the Council, subject to the following exceptions:

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- 3.2.1 Any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the officer; or
- 3.2.2 Any act or failure to act by the officer otherwise than in their capacity as an officer of the authority.
- 3.3 These indemnities and undertaking will not apply if a councillor or officer, without the express permission of the Council or of the appropriate officer of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the indemnities.
- 3.4 These indemnities and undertaking 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.
- 3.5 These indemnities and undertaking shall apply retrospectively to any act or failure to act which may have occurred before this date and shall continue to apply after the councillor or officer has ceased to be a councillor or officer of the authority as well as during their councillorship or employment by the authority.