

## **SECTION 26 – INDEMNITIES FOR MEMBERS AND OFFICERS**

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26.1 **The following is the indemnity approved** and adopted by the then Board on 17<sup>th</sup> October, 2006 (in relation to Board Functions), and by the County Council on 26<sup>th</sup> October, 2006 (in relation to Council Functions). It has been amended to reflect the change to a Leader and Cabinet Executive model as from the Annual Meeting in May 2011.

26.2

### **FORM OF INDEMNITY TO MEMBERS AND OFFICERS**

1. This indemnity is made under S.101 of the Local Government Act 2000 and the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, and is supplementary to the provisions of S.265 of the Public Health Act 1875 as extended by S.39 and S.44(1) of the Local Government (Miscellaneous Provisions) Act 1976.
2. Subject to the limit of indemnity set out in rule 3G below, the Council indemnifies each Member and officer of the authority against any claim liability loss and/or damage in relation to any action or failure to act by any Member or officer which:-
  - (a) is authorised by the authority; or
  - (b) forms part of or arises from any powers conferred, or duties placed upon that Member or officer as a consequence of any function being exercised by that Member or officer (whether or not in exercising that function the Member or officer does so in the capacity of Member or officer of the authority)
    - (i) at the request of or with the express approval of the authority; or
    - (ii) for the purposes of the authority

Without prejudice to the generality of this indemnity (above) the indemnity extends to action:-

- (a) taken under delegated powers;
- (b) taken personally under any specific statutory provision such as Head of Paid Service, Chief Finance Officer, Monitoring Officer, Local Government (Contracts) Act 1997.
- (c) taken at Partnerships, informal joint working arrangements, charitable organisations companies (however constituted) when the Member or officer is serving as the Council's representative on these bodies.

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(For the purpose of this indemnity “Member” includes independent and co-opted persons who sit on the Council’s Committees).

### **3. Conditions and Limitations applying to the Indemnity**

#### **A. Good faith**

A Member or officer relying on the indemnity:-

- (i) must believe that the action, or failure to act, in question was within the powers of the authority

or

- (ii) where that action or failure to act comprises the issuing or authorising of any document containing any statement as to the powers of the relevant authority, or any statement that certain steps had been taken or requirements fulfilled, believed that the contents of that statement were true;

and

in either case that it was reasonable for that Member or officer to hold that belief at the time when that Member or officer acted or failed to act, in which case the council will provide the indemnity in relation to an act or failure to act which is subsequently found to be beyond the power of that Member or officer in question, but only to the extent that the Member or officer reasonably believed that the act or failure to act in question was within that Member or officer’s powers at the time at which that Member or officer acted or failed to act.

#### **B. Repayment of cost**

Where any indemnity is given to a Member or officer in relation to the defence of criminal proceedings or proceedings alleging a breach of the code of conduct, then:-

- (i) in relation to criminal proceedings if the Member or officer is convicted of a criminal offence then the sums expended by the authority or its insurers in relation to those proceedings must be reimbursed to the authority or to the insurers;
- (ii) where the proceedings relate to an allegation against a Member of a breach of the code of conduct:-

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- (a) if a finding is made that finds that the Member has failed to comply with the code of conduct (or the Member has admitted that failure) and as a consequence the Member is suspended, partially suspended or disqualified, then the sums expended by the authority or its insurer must be reimbursed to the authority or its insurers
- (b) in the case of an allegation of a breach of the code of conduct and there is a finding that the Member has failed to comply with the code of conduct (or the Member has admitted that failure) and as a result the Member is censured or has some penalty imposed other than suspension, partial suspension or disqualification then if the Council's Standards Committee deems it appropriate the sums expended by the authority or its insurers must be reimbursed to the authority or its insurers.

### **C. Level of representation**

In the case of professional representation of a Member or officer under the terms of this indemnity the Member or officer must obtain the prior approval of the authority through its Standards Committee of the nature and extent of that representation, provided always that the decision on the level or extent of representation will not unreasonably restrict the right of the individual Member or officer to properly defend those proceedings.

### **D. Defamation**

This indemnity does not extend to the **making** of any claim by a Member or officer in relation to an alleged defamation of that Member or officer.

### **E. Returning Officer**

The work and functions of the Returning Officer are not covered by this indemnity.

### **F. General Principles**

- (i) The authority will provide the Member or officer with reasonable and proportionate access to authority employees and authority resources and facilities to enable the individual officer to properly respond to allegations of

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personal liability being advanced;

- (ii) The authority will allow legal representation for a Member or officer separately from the authority's own legal advisers (and/or the authority's insurers' legal advisers) where the interests of the authority and the individual officer may conflict or in such other circumstances where it is agreed between the authority and the individual Member or officer that separate legal representation is appropriate.
- (iii) the authority will not seek to recover from an individual Member or officer any losses incurred by the authority as a result of an action or failure to act by the Member or officer concerned except:-
  - (a) where the Member or officer involved did not reasonably believe that the act or omission in question was within his powers at the time when that act or omission took place, or
  - (b) where the action or failure to act constituted a criminal offence.

### **G. Limit on Indemnity.**

The limit on the indemnity provided for under this Section is £50,000.<sup>1</sup>

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<sup>1</sup> County Council – 30<sup>th</sup> April, 2014.