



Report to Executive

Meeting Date – 19 March 2024
Key Decision – No
Public/Private – Public

Portfolio – Cllr Markus Dale Campbell-Savours, Governance and Thriving Communities
Directorate – Resources
Lead Officer – Clare Liddle, Chief Legal Officer/Monitoring Officer

Title – Member and Officer Indemnities

Summary:

To provide indemnities for officers and members when carrying out all of their duties for or on behalf of Cumberland Council.

Recommendations:

To approve the grant of an indemnity for officers and members at Appendix 1 of this report.

Tracking

Executive:	19 March 2024
Scrutiny:	
Council:	

1. Background

- 1.1. There is longstanding statutory protection afforded to both members and officers when carrying out their duties to ensure that they do not have a personal liability. This covers any civil liabilities and costs associated with such liabilities that may be incurred.
- 1.2. There was however a gap prior to 2004 as the existing law did not cover the situation where members and officers were acting outside of the Council's powers or where they were exercising their functions on an external body.
- 1.3 Cumberland Council has several outside bodies to which councillors and officers are appointed.
- 1.4 To enable extension of the indemnities for any personal liability, the Local Authorities (Indemnities for Members and Officers) Order 2004 ("the Order") was introduced and adopted by predecessor authorities. This Order clarifies and extends the existing law setting out the circumstances where local authorities are permitted (but not required to) provide an indemnity for personal liabilities incurred by members and officers when acting on behalf of their authority.
- 1.5 Councils have always been able to indemnify officers and members and take out insurance cover when an officer or member acts within his or her powers for the Council, in order to protect the Council in the event of an individual's actions or omissions giving rise to a claim. The Order extends this protection and allows the Council to indemnify officers and members where they have acted outside of the powers of the authority but reasonably believed that the action was within the powers at the time they were taken, or where they are acting on outside bodies for the Council.
- 1.6 The Order enables the Council to provide an indemnity to members and officers in relation to any personal financial liability arising from an action or a failure to act which:
 - is authorised by the Council or
 - forms part of any powers or duties as a consequence of any function being exercised by that members or officer either at the request of or with the approval of the Council or for the purposes of the Council
- 1.7 There are some restrictions placed on this power, an indemnity cannot cover:
 - an action which constitutes a criminal offence;
 - an offence which results from fraud or other deliberate wrongdoing or recklessness;
 - any claim brought which relates to an alleged defamation of a member or officer - an indemnity, however it can be provided to defend a defamation claim made against them.

2. Proposals

- 2.1 To approve the indemnity at Appendix 1 for Officers and Members.

3. Alternative options considered

3.1 Not to approve the indemnity. Failure to do so may result in individual officers and members not being covered for personal liabilities arising from their conduct or decisions when acting on behalf of or pursuant to any appoint agreed by the Council in circumstances where they would otherwise be covered by the indemnity, as set out in the report.

4. Conclusion and reasons for recommendations

4.1 Failure to indemnify Officers and members may result in individuals being reluctant to work for or with or be appointed to outside bodies or other external organisations if there is a potential associated personal liability.

Implications:

Contribution to the Cumberland Plan Priorities - The proposals seek to improve officer and member health and wellbeing to ensure that they are not subject to unjustified potential financial liabilities when carrying out their appointed duties. Having indemnities for council representatives on outside bodies helps to ensure the council's representation on local community groups and organisations which benefit local people.

Relevant Risks – Cumberland Council has procured Officials Indemnity and Professional Indemnity insurance as part of its suite of insurance policies.

Officials Indemnity insurance provides coverage for individuals who hold public or official positions, such as government officials, board members, directors, or trustees. It protects these individuals against claims made against them for wrongful acts or omissions committed in the course of their official duties. This policy is subject to an excess of £250k per claim with the exception of legal liability arising in connection with the conduct of running any elections where the excess is reduced to nil.

Professional Indemnity insurance provides coverage for professionals who provide services or advice to clients. It protects professionals against claims made against them for professional negligence, errors, or omissions in the performance of their professional duties. This policy is subject to an excess of £5k per claim with the exception of legal liability arising in connection with the conduct of running any elections where the excess is reduced to nil.

Where negligence is identified that is not covered by the policy or for any liability up to the value of the excess within the insurance policy, the Council would be liable for incurred expenses through the application of the proposed indemnity. The Council retains appropriate and prudent levels of specific reserves for self-insured risks that would be expected to cover such costs.

Consultation / Engagement - None

Legal

Where members and officers act within their own local authority, within their powers and acting in good faith, they have statutory immunity against personal liability under s.265 of the Public Health Act 1875. This immunity however does not apply where they act on outside bodies and in the circumstances set out in this report.

Under section 101 of the Local Government Act 2000, the Secretary of State can provide an indemnity to their members and officers. In relation to local authorities in England, the Secretary of State has made the Local Authorities (Indemnities for Members and Officers) Order 2004 .

This statutory power and the proposed indemnity at Appendix 1 seeks to remedy the injustice that would otherwise occur if a member or officer engaged in council business incurred personal liability for legal costs. The exemptions and areas not covered by the indemnity are set out in the body of this report.

Finance – Finance implications are set out in the ‘Relevant Risks’ section of the report.

Information Governance – None

Impact Assessments – None

Contact details:

Kate Turner, Senior Manager Legal and Democratic Services

Appendices attached to report:

- Appendix 1 – Indemnity for Officers and Members

Background papers:

Note: in compliance with section 100d of the Local Government Act 1972 the report has been prepared in part from the following papers:

None

APPENDIX 1 – INDEMNITY FOR OFFICERS AND MEMBERS OF CUMBERLAND COUNCIL

- 1) Cumberland Council (“The Council”) hereby indemnifies its employees (“Officers”) and elected members, co-opted members, independent members and independent persons (“Members”), against any costs, claims or expenses (“Costs”), subject to the conditions set out in this document, where such Costs arise from any action or omission when acting in the capacity of a Member or Officer of The Council.

- 2) The indemnity is effective to the extent that the Officer or Member in question –
 - (a) having not received advice from an officer to the contrary, believed that the action, or failure to act, was within the powers of The Council; or
 - (b) where the action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of The Council, or any statement that certain steps have been taken or requirements fulfilled, believed that the contents of that statement were true,And
 - (c) it was reasonable for that Officer or Member to hold that belief at the time when he or she acted or failed to act.

- 3) The costs, claims and expenses (“Costs”) are those which arise from, or in connection with, any action of, or failure to act by, the Officer or Member in question, which:
 - (a) is or has been authorised by The Council; or
 - (b) forms part of, or arises from, any powers conferred, or duties placed, upon that Officer or Member, as a consequence of any function being exercised by that Officer or Member (whether or not when exercising that function he or she does so in his or her capacity as an Officer or Member of The Council) –
 - (i) at the request of, or with the approval of, The Council; or
 - (ii) for the purposes of The Council.

- 4) The Council will not provide an indemnity in the following circumstances:-
 - (a) Where any action or failure to act on the part of any Officer or Member:
 - (i) constitutes a criminal offence; or
 - (ii) is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that Officer or Member; or
 - (iii) is a failure by the Member to comply with the Code of Conduct for Members or a failure by the Officer to comply with the Code of Conduct for Officers.

 - (b) This indemnity will not extend to any advice or representation in respect of any claim or threatened claim in defamation to be brought by a Member or an Officer, but will extend to defending a claim for defamation.

(c) The indemnity will not cover any loss or expense for which the Member or Officer can obtain re-imbursment from any other source, including insurance, whether taken out by The Council, Member or Officer, or by any other person.

5) Decisions on the granting of all indemnities:

(a) The Chief Legal Officer (Monitoring Officer) has delegated authority to make decisions on the granting of indemnities

(b) The indemnity is subject to the Officer or Member notifying the Chief Legal Officer (Monitoring Officer) immediately of any claim being made or intimated against him or her, and of any circumstances arising which may give rise to a claim

(c) The indemnity will only extend to cover actual loss and expense incurred and evidenced by the Officer or Member to the satisfaction of Chief Legal Officer (Monitoring Officer)

(d) The indemnity will not automatically apply if the Officer or Member without the written authority of the Chief Legal Officer (Monitoring Officer) and The Council's insurers, as appropriate, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this indemnity

(e) The indemnity shall not extend to any loss or damage directly or indirectly arising from any motor vehicle claims in which an Officer or Member using his or her own private vehicle on The Council's business has been involved in an accident

(f) The Council or its insurers will be entitled to take over and conduct in the name of the Officer or Member the defence of any proceedings brought against the Officer or Member

6) The indemnities granted by The Council is without prejudice to the rights of The Council to take disciplinary action against an officer in respect of any act or failure to act.

7) The indemnities apply retrospectively to any act or failure to act which may have occurred before this date and shall continue to apply after the Member or Officer has ceased to be a Member or Officer of The Council for any acts or omissions which took place at a time when they were a Member or Officer of The Council.