

	<h2>Policy and Resources Committee</h2> <h3>5 December 2017</h3>
<p style="text-align: right;">Title</p>	<p>Indemnities for Councillors, Officers and Other independent Committee Members.</p>
<p style="text-align: right;">Report of</p>	<p>Councillor Richard Cornelius</p>
<p style="text-align: right;">Wards</p>	<p>All</p>
<p style="text-align: right;">Status</p>	<p>Public</p>
<p style="text-align: right;">Urgent</p>	<p>No</p>
<p style="text-align: right;">Key</p>	<p>No</p>
<p style="text-align: right;">Enclosures</p>	<p>None</p>
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Summary

Councillors and Officers of the Council enjoy statutory immunity from civil liability where they act within the powers of the council, in good faith and without negligence. However they can incur personal, civil and criminal liability whilst acting on behalf of the Council if they go beyond the powers of the Council or act in bad faith or negligently, or when they are acting on outside bodies to which they have been appointed by the council.

The Government has introduced legal regulations to confer upon Local Authorities powers to grant indemnities and/or to take out insurance to cover the potential liability of Councillors and Officers in a wide range of circumstances. It is up to each Council to decide whether to grant such indemnities, or take out insurance, and to decide (subject to restrictions set out in the regulations) the extent of such indemnities and insurance.

In some cases, for co-opted members, independent panel and board members (other members) there are requirements for Local Authorities to provide indemnities out of public funds for personal liability arising from actions or decisions taken by them in the course of their official duties.

This report sets out the legal position in relation to the Council's powers to indemnify councillors and other members out of public funds for personal liability arising from actions or decisions taken by them in the course of their official duties and makes recommendations in respect of the terms of such indemnities where the Council's insurance does not cover the liability because of the excess provisions or any other reason.

Officer Recommendations

That the Committee agrees that the Council should provide indemnities in respect of financial liabilities arising for Councillors and other co-opted members, independent panel and board members (Other Members) as follows:

- 1. Councillors acting in good faith and as a Member of the Council in respect of acts or defaults covered by the Local Authorities (Indemnities form Members and Officers) Order 2004 ('the Order').**
- 2. Councillors and senior officers acting in good faith, working outside the Council as an authorised representative of the Council for acts or defaults covered by the Order.**
- 3. Officers' liabilities and legal costs in defending a claim against them for acting in good faith but outside the powers of the Council will be indemnified in appropriate circumstances which will be considered on a case by case basis should the liability arise.**
- 4. Other members acting in good faith outside the powers of the Council for all acts or defaults covered by the Order.**

And Committee agree that all indemnities are subject to the following provisions:

- 5. The indemnity will apply retrospectively to any act or failure to act which may have occurred before the date the indemnity was approved and shall continue to apply after the councillor, officer or other member has ceased to be a councillor, officer or other member of the Council as well as during his/her membership of or employment by the Council.**
- 6. The indemnity shall only extend to actual loss and expense incurred. The indemnity does not cover any loss or expense for which the councillor, officer or other member can obtain re-imburement from any other source, including insurance whether taken out by the Council, councillor or officer, or by any other person or organisation**
- 7. An application for an indemnity received from a Member or officer should be processed in accordance with paragraph 4 of this report.**

1. WHY THIS REPORT IS NEEDED

- 1.1** Under Section 265 of the Public Health Act 1875 (the Act), councillors and officers, when acting in the course of their duties and in good faith, have statutory immunity and are not personally liable for the actions they take in relation to certain public health and highways functions. The Act provides for an indemnity in relation to potential liabilities and also costs.
- 1.2** 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.
- 1.3** 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 in a wider range of circumstances than under the 1875 Act. Each local authority has the discretion to decide whether to use the powers, and to decide the extent of such indemnities and insurance.
- 1.4** Under the Order an indemnity can be granted to cover “any act or omission by a councillor or officer which is authorised by the council, or forms part of, or arises from any powers conferred or duties placed, as a consequence of a function being exercised by the member or officer at the request of, or with the approval of, or for the purposes of the council”.
- 1.5** The power extends to circumstances where the councillor or officer is acting in a capacity other than as a councillor or officer. However, where a councillor or officer is acting as a director or trustee insurance should be obtained by that body to cover the councillor.
- 1.6** No indemnity can be granted to any councillor or officer in relation to “outside” work, which is unconnected with the work of the Council. It would not therefore cover any member or officer acting in a private capacity.
- 1.7** There is a power to provide an indemnity where the action or inaction complained of is outside the powers of the Council itself or outside the powers or authority of the councillor or officer concerned. It also covers cases in which a councillor or officer makes a statement that certain steps have been taken or requirements fulfilled but it later becomes clear that this is not the case.
- 1.8** However, an indemnity in these circumstances is limited to cases in which the person indemnified reasonably believed they were acting within their powers, or reasonably believed that the statement was true.
- 1.9** Furthermore, unlike actions which are outside the Council’s powers, an indemnity cannot cover liability for any action which is outside the powers of the outside body, even if the action was taken in the honest belief that it was within the outside body’s powers. The external body’s own insurance needs to cover this potential liability.

- 1.10** For both councillors and officers, the 2004 Order restricts the provision of indemnities so that they cannot cover any finding of criminal liability or liability arising from fraud, deliberate wrongdoing, recklessness, or the cost of pursuing a defamation claim. In such cases, if an indemnity had been provided, any costs incurred under an indemnity would have to be repaid to the Council or insurer.
- 1.11** The indemnity extends to members of other boards/bodies which may not be formal committees but are required by regulation or statute:
- Members of the London Borough of Barnet Local Government Pension Administration Body as required by The Local Government Pension Scheme Regulations 2016.
 - Independent Members of the School Appeals Admission and Exclusion Panels as required School Admission Appeals Code 2012 and Statutory Guidance on Exclusion 2017
 - Independent Members of the Audit or Standards Committee
- 1.12** The indemnity applies to all board members including Independent Members when acting for the council in good faith.

2. REASONS FOR RECOMMENDATIONS

- 2.1** Without the indemnity councillors, officers and other members could be personally liable for costs or expenses, despite the fact that they were carrying out the work at the request of (or with approval) of the council and were acting in good faith.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1** None in the context of this report

4. POST DECISION IMPLEMENTATION

- 4.1** Any application for an indemnity received from a Member or officer should be made to the Head of Governance who will liaise with the Head of Insurance and other relevant officers. The Head of Governance will report his/her findings and recommendations to the Assistant Chief Executive, s151 officer and Leader of the Council.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

By providing indemnity to councillors, officer and other members, the decision will align with the Council's Corporate Plan 2015-2020 objective to make Barnet a place where responsibility is shared fairly.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1.** Should an indemnity be approved, the cost will be:

- presented to the Head of Insurance to recover under the councils existing insurance arrangements (the current uninsured excess sum is £100,000); or if uninsured;
- arrange an appropriate funding source, subject to the value being consistent with the rules under the constitution and agreed by the s151 officer.

5.2.2. There are no procurement, staffing, ICT, property or sustainability implications.

5.3 Social Value

5.3.1 None in the context of this report

5.4 Legal and Constitutional References

5.4.1. Article 7 - Committees, Forums, Working Groups and Partnerships sets out the terms of reference of Policy and Resources Committee including to be responsible for those matters not specifically allocated to any other committee affecting the affairs of the Council.

5.4.2. The legal framework is set out in the body of the report.

5.5 Risk Management

5.5.1. Providing indemnities will allow the recipients to undertake the roles and responsibilities fully, and in the knowledge that they will not incur personal, civil and criminal liability whilst acting on behalf of the Council if they go beyond the powers of the Council, or when they are acting on outside bodies to which they have been appointed by the council. Failure to provide the indemnity may discourage councillors, officer and other members from undertaking these roles and responsibilities.

5.6 Equalities and Diversity

5.6.1. The 2010 Equality Act outlines the provisions of the Public Sector Equalities Duty which requires Public Bodies to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- advance equality of opportunity between people from different groups
- foster good relations between people from different groups

5.6.2. It is not expected that any group will be adversely affected by implementing providing the indemnities.

5.7 Consultation and Engagement

None in the context of this report

5.8 Insight

None in the context of this report

6. BACKGROUND PAPERS

None