

Report To:	EXECUTIVE CABINET
Date:	24 October 2018
Report Of:	Sandra Stewart – Director of Governance and Pensions (Borough Solicitor)
Subject Matter:	PROPOSAL FOR A FORM OF INDEMNITY TO BE GRANTED TO MEMBERS AND OFFICERS
Report Summary:	The Local Government (Indemnity of Members and Officers) Order 2004 allows local authorities to provide an indemnity to protect members and officers when acting on behalf of the authority, which goes beyond the long-standing indemnity provisions that are in place. A form of indemnity is suggested for adoption by the Council.
Recommendation(s):	To support the recommendation that the Executive Cabinet recommend to Council to refresh the existing indemnity and adopt a form of indemnity attached to this report.
Financial Implications: (Authorised By The Section 151 Officer)	In the event that any member or officer calls on the benefits of the indemnity, there will be a financial implication for the Council. The existing indemnity has been in place since 1999 without any calls being made upon it to date.
Legal Implications: (Authorised By The Borough Solicitor)	The Council has the power to provide an indemnity by virtue of the Local Authorities (Indemnity of Members and Officers) Order 2004. Without such an indemnity, members and officers acting on behalf of the Council have no form of protection against personal liability for the matters covered by the Order. There is already an existing indemnity but it is appropriate after 20 years to refresh such indemnity.
Risk Management:	By providing an indemnity, the Council relieves its members and officers of some of the risks of acting on behalf of the Council and provide comfort to those who may otherwise not volunteer to act on the Council's behalf.
Links To Community Plan:	This report has no direct link to the Community Plan; however it will help to support the decision-making which in turn will help to deliver the plan.


Access To Information

NON-CONFIDENTIAL

This report does not contain information which warrants its consideration in the absence of the Press or members of the public

Reference Documents:

The background papers relating to this report can be inspected by contacting the report writer, Dyfrig Lewis-Smith

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1. BACKGROUND

- 1.1 Under section 265 of the Public Health Act 1875 councillors and local authority officers, when acting in the course of their duties and in good faith, have statutory immunity and are not personally liable for actions they take. The Act provides for indemnity in relation to personal liabilities and also costs.
- 1.2 The Local Authorities (Indemnities for Member 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 discretion to decide whether to use the powers and to decide the extent of such indemnities.
- 1.3 At the present time councillors may incur personal liability, or have to defend themselves where allegations are made that:-
 - a) They acted outside the powers of the authority.
 - b) They acted in bad faith, or fraudulently or out of malice.
 - c) Their actions constitute a criminal offence.
 - d) They made a defamatory statement.
- 1.4 Councillors may also be liable, or attract allegations for:-
 - a) Activities where members are appointed to or working with outside bodies in their role as a councillor.
 - b) Action taken for an alleged failure to comply with the member's code of conduct.
- 1.5 In relation to officers, Councils have always been able to indemnify officers and take out insurance cover when an officer acts within his or her powers for the Council, in order to protect the Council in the event of an officer's actions or inactions giving rise to a claim. The 2004 order allows the Council to indemnify officers 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 Given the wide range of council activities, the complexity of issues councillors and officers' face, and the demands made on their time, it is considered appropriate for the Council to provide an indemnity where a councillor / officer inadvertently acts outside the powers given, whilst believing s/he is acting in the interests of the Council.
- 1.7 For both councillors and officers the 2004 order restricts the provisions of indemnities so that they cannot cover any findings of criminal liability or liability arising from fraud, deliberate wrongdoing, or the cost of pursuing a defamation claim. In such cases any costs incurred under the indemnity would normally have to be repaid to the Council or insurer.

2. PROPOSED FORM OF INDEMNITY

- 2.1 A form of indemnity, which sets out the scope of indemnity and restrictions required by the Order, is set out in **Appendix A**.

3. RECOMMENDATIONS

- 3.1 These are as set out at the front of this report.

APPENDIX A

PROPOSED FORM OF INDEMNITY

INTRODUCTION AND INTERPRETATION

1. In pursuance of its powers under the Local Authorities (Indemnities for Members and Officers) Order 2004, Tameside Metropolitan Borough Council grants an indemnity to any member or officer on the terms and subject to the restrictions set out below.
2. The extent of the Indemnity granted by paragraph 1 is set out in paragraphs 5 to 9, and is subject to the restrictions and terms set out in paragraphs 10 to 15.
3. In this document:
 - a. “the Council” means Tameside Metropolitan Borough Council;
 - b. “Part 3 proceeding” means any investigation, report, reference, adjudication or any other proceeding pursuant to Part 3 of the Local Government Act 2000; and
 - c. “secure”, in relation to any indemnity provided by means of insurance, includes arranging for, and paying for, that insurance.
4. The Council may, In addition to the indemnity under paragraph 1 above, in the cases mentioned in paragraphs 5 to 9 below, provide further indemnity by securing the insurance of any of its members or officers.]

CIRCUMSTANCES TO WHICH THE INDEMNITY APPLIES

5. THE indemnity provided by paragraph 1 applies in relation to any action of, or failure to act by, the member or officer in question, which:
 - a. is authorised by the Council; 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 when exercising that function she or he does so in her or his capacity as a member or officer of the Council):
 - i. at the request of, or with the approval of the Council, or
 - ii. for the purposes of the Council.
6. The indemnity granted by paragraph 1 shall also apply to:
 - a. the defence of any criminal proceedings brought against the officer or member; or
 - b. any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence; or
 - c. the defence by a member or officer of any allegation of defamation made against her or him.
7. The indemnity granted by paragraph 1 applies to the extent that the member or officer in question:
 - a. believed that the action, or failure to act, in question was within the powers of the Council, or
 - b. where that 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 it was reasonable for that member or officer to hold that belief at the time when she or he acted or failed to act.

8. The indemnity granted under paragraph 1 shall apply in relation to an act or omission which is subsequently found to be beyond the powers of the member or officer in question but only to the extent that the member or officer reasonably believed that the act or omission in question was within her or his powers at the time at which she or he acted.
9. The indemnity granted by paragraph 1 shall apply to:
 - a. Any matter occurring on or after the date of its granting by the Council, and also any matter occurring in the twelve months prior to that date; and
 - b. any member or officer currently elected to or employed by the Council, and any member or officer who was elected to or employed by the Council in the past but has since ceased to be a member or an officer.

RESTRICTIONS AND TERMS

10. The indemnity granted under paragraph 1 shall not apply in any case where the member or officer has settled or compromised any claim without first obtaining the agreement of the Council to do so.
11. The indemnity provided under paragraph 1 shall not apply in relation to any action by, or failure to act by, any member or officer which:
 - a. constitutes a criminal offence; or
 - b. is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that member or officer.
12. The indemnity granted under paragraph 1 above shall not apply to any claim in relation to an alleged defamation of any member or officer.
13. A member or officer shall reimburse the Council or the insurer (as the case may be) on the terms set out in paragraph 14 below for any sums expended by the Council or insurer pursuant to the indemnity or insurance in relation to the defence of:
 - a. any criminal proceedings; or
 - b. any Part 3 proceedings.
14. The obligation to reimburse applies:
 - a. In the case of criminal proceedings, if the member or officer in question is convicted of a criminal offence and that conviction is not overturned following any appeal, and
 - b. in the case of Part 3 proceedings:
 - i. if a finding is made in those proceedings that the member in question has failed to comply with the Code of Conduct and that finding is not overturned following any appeal, or
 - ii. if the member admits that she or he has failed to comply with the Code of Conduct,
15. Where a member or officer is obliged to reimburse The Council or the insurer pursuant to paragraphs 13 and 14 above, those sums shall be recoverable by the Council or insurer (as the case may be) as a civil debt.