

# CHESHIRE EAST COUNCIL

## COUNCIL

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**Date of meeting:** 30 July 2008  
**Report of:** Interim Monitoring Officer  
**Title:** Constitutional Matters: responsibilities of the Staffing Committee and provision of indemnities

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### **1.0 Purpose of Report**

- 1.1 To seek authority from the Shadow Council to:
- (a) increase the responsibilities of the Staffing Committee; and
  - (b) agree that an indemnity be provided to those representing the Council on various bodies.

### **2.0 Decision Required**

- 2.1 Agreement that the following be added to the responsibilities of the Staffing Committee:
- “Making all non-executive decisions relating to staffing matters except where, in the opinion of the Chief Finance Officer, they could have a significant financial impact on the Council”.
- 2.2 That the Shadow Council’s Constitution be amended accordingly.
- 2.3 That, in determining whether decisions relating to staffing matters could have a significant financial impact on the Council, the Chief Finance Officer shall be guided by the contents of paragraph 7.5 of this report.
- 2.4 That those individuals acting in a representative capacity on behalf of the Authority be indemnified to the maximum extent permitted by the Local Authorities (Indemnities for Members and Officers) Order 2004.

### **3.0 Financial Implications for Transition Costs**

- 3.1 In respect of Staffing Committee issue: there are no direct financial implications for Transition Costs, but the Staffing Committee would be able to make decisions with financial implications provided these are not considered significant.
- 3.2 In respect of the indemnities issue, the financial implications for Transition Costs are set out in the report considered by the Governance and Constitution Committee (see Appendix).

## **4.0 Financial Implications 2009/10 and beyond**

- 4.1 In respect of the Staffing Committee issue there are no financial implications 2009/10 and beyond, but the Staffing Committee would be able to make decisions with financial implications provided these are not considered significant.
- 4.2 In respect of the indemnities issue, Members are referred to the relevant section of the Appendix.

## **5.0 Legal Implications**

- 5.1 The Shadow Council may delegate powers to its committees and, therefore, the delegation of the proposed (non-executive) responsibility to the Staffing Committee has no adverse legal implications.
- 5.2 In relation to indemnities, the Governance and Constitution Committee has delegated authority to approve indemnities for Members and did so at their last meeting. In relation to officers, the Executive will approve the matter but, for non-Member representatives, the Council needs to agree the matter (as this is not a function delegated to the Governance and Constitution Committee), hence this report.

## **6.0 Risk Assessment**

- 6.1 Whilst, as a result of the proposal, more powers would rest with the Staffing Committee, it would seem that there would be reduced risks in proceeding as proposed. The Staffing Committee will have specialist responsibilities for staffing and employment-related matters, in respect of which training has been provided to Members. Therefore, the Staffing Committee would appear to be the best decision making body to make the decisions in question.
- 6.2 In relation to indemnities, failure to grant indemnities will expose individuals to potential personal liability.

## **7.0 Background**

- 7.1 At its first meeting in May, the Shadow Council agreed its constitution which gave responsibility to the Staffing Committee for a number of functions:

### **“Responsibility of the Staffing Committee**

1. Undertaking the selection process for the appointment, and formulating recommendations to the Shadow Council in relation to:
  - the appointment and dismissal of the Head of the Paid Service;
  - the designation of an officer to act as Interim Monitoring Officer and Interim Chief Finance Officer;
  - the appointment/dismissal of Appointed Monitoring Officer and Appointed Chief Finance Officer;

in accordance with the Cheshire (Structural Changes) Order 2008  
in accordance with the appropriate procedures set out in the Staff  
Employment Procedure Rules;

2. Undertaking the selection, appointment and dismissal processes for any other staff in accordance with the appropriate procedures set out in the Staff Employment Procedure Rules;
3. Hearing and determining any appeals by staff under the Shadow Council's approved personnel policies and procedures including through any appointed Sub-Committee;
4. Hearing and dealing with disputes registered with the Shadow Council by recognised Trade Unions".

- 7.2 However, as the process of appointment of staff proceeds, it has become clear that the Staffing Committee needs to have wider powers to decide other non-executive staffing matters. Decisions on staffing issues are increasingly becoming urgent and it is clear that delaying such decisions in order to await the next meeting of Full Council is unworkable.
- 7.3 By way of explanation, executive staffing matters, which would be for the Executive to decide, would include policy-related issues, such as employment policies affecting the workforce in general.
- 7.4 The recommendation of this report proposes that all non-executive staffing matters should become the responsibility of the Staffing Committee except where, in the opinion of the Chief Finance Officer, they could have a significant financial impact on the Council. In those circumstances, the decision would have to be taken by Full Council.
- 7.5 In coming to a view as to whether the financial impact would be significant, the Chief Finance Officer would need to take into account a range of factors and risks, including the scale and likelihood of any financial impact, the costs/risks of any alternative options, whether any impact is one-off or ongoing, whether it may set a wider precedent and the adequacy of current budget provision. For these reasons, it is not possible to set a fixed financial limit. A likely cost of over £1M would generally be considered significant but, depending on the other factors, the threshold in particular circumstances could be somewhat lower.
- 7.6 The delegation of further powers to the Committee will ensure that there is committee involvement in staffing decisions. The only other option, in cases of urgency where a decision could not await the next meeting of the Shadow Council, would be for the decision to be taken by an officer under the urgency procedure, following consultation with certain Members.
- 7.7 Any executive decision on staffing matters would remain the responsibility of the Shadow Council's Executive.

- 7.8 In relation to indemnities, as stated earlier, by way of background, the report considered by the Governance and Constitution Committee/Executive is appended to this report.

***For further information:***

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***Background Documents: Shadow Council Constitution***

*Documents are available for inspection at:*

Shadow Council Support office:  
Congleton Borough Council  
Westfields  
Middlewich Road  
Sandbach

## **Governance and Constitution Committee**

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**Date of meeting:** 14 July 2008  
**Report of:** Governance Group  
**Title:** Indemnities for Members and Officers

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### **1.0 Purpose of Report**

- 1.1 This reports sets out the current powers available to local authorities in relation to the provision of indemnities to elected Members and Officers and proposes that the Shadow Council prior to Vesting Day, agree an indemnity.

### **2.0 Decision Required**

- 2.1 The Committee agree that Members and those acting in a representative capacity on behalf of the Authority be indemnified to the maximum extent permitted by the Local Authorities (Indemnities for Members and Officers) Order 2004 and Section 111 of the Local Government Act 1972.

### **3.0 Financial Implications for Transition Costs**

- 3.1 The provision of an indemnity is a contingent liability and so at this stage cannot be quantified, dependent upon whether events arise which would require the giving of such an indemnity at some stage in the future. Insurance provision has already been put in place for Members and Officers as part of the preparations for Vesting Day following a tendering exercise which has recently been completed.

### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 As stated above, the provision of an indemnity is a contingent liability which at this stage cannot be quantified either now or in future years depending on events. The premia required to be payable to sustain the policies of insurance for Members and Officers will continue to be payable and will need to be factored into the budget for the new Council.

### **5.0 Legal Implications**

- 5.1 Power to give an indemnity arises by virtue of regulations made under sections 101 and 105 of the Local Government Act 2000, section 111 of the Local Government Act 1972, the Local Authorities (Indemnities for Members and Officers) Order 2004, and the Cheshire (Structural Changes) Order 2008.

### **6.0 Risk Assessment**

- 6.1 The need for Members and Officers to be protected by indemnities is important, bearing in mind the range of activities that Members and Officers, both in the

run up to Vesting Day and after Vesting Day (once all of the Local Government functions are vested in the new Council) will be undertaking. Proper public administration dictates that Members and Officers should be so protected when they are acting on behalf of their Authority and properly and lawfully going about pursuing the business of the Authority.

## **7.0 Background and Options**

- 7.1 The Local Authorities (Indemnities for Members and Officers) Order 2004 provides for circumstances in which a relevant authority in England (which includes the Shadow Council and the Council post Vesting Day) may provide an indemnity to any of their Members or Officers. The powers are in addition to any other existing powers that such authorities may have, such as powers under Section 111 of the Local Government Act 1972 – which is relevant in relation to ensuring that any indemnity is extended to those who are acting within the extent of their delegated authority on behalf of the authority (eg individuals who may not be Members or Officers but who have been appointed to act as a representative of the authority most commonly on any outside bodies with which the Shadow Authority or the Unitary Authority post Vesting Day have an involvement). It is proposed that any indemnity agreed include these individuals.
- 7.2 A copy of the text of the Order is reproduced in Appendix 1 to this report.
- 7.3 Article 4 of the Order makes it clear that an indemnity may be provided by means of the authority securing the provision of an insurance policy for the Member or Officer. As stated, insurance arrangements have already now been put in place in anticipation of a formal agreement that an indemnity be introduced.
- 7.4 Article 5 sets out the cases in which indemnities (including those provided by insurance) may be provided. This Article restricts the power to cases in which the Member or Officer is carrying on any function at the request of, with the approval of, or for the purposes of, the authority. However, it does also extend to cases when exercising the function in question, the Member or Officer does so in a capacity other than that of a Member or Officer of the authority. So, this would permit an indemnity, for example, to cover a case where a Member or Officer acts as a Director of a company at the request of the authority, and thus is acting in a capacity as a Director/Trustee. This is particularly relevant in the case of Members who are nominated to serve on outside bodies on behalf of the Council.
- 7.5 Article 6 prevents the provision of an indemnity (or securing of insurance) in relation to criminal acts, any other intentional wrong doing, fraud, recklessness, or in relation to the bringing of (but not the defence of) any action in defamation.
- 7.6 Article 7 gives a limited power to provide an indemnity (including any indemnity provided by insurance) where the action or inaction complained of is outside the powers of the authority itself or outside the powers of the Member or Officer who acts. It also covers cases in which a Member or Officer makes a statement that certain steps have been taken or requirements have been fulfilled but it later becomes clear that this is not the case. This power is, however, limited to cases in which the person indemnified:

- a. reasonably believes that the matter in question was not outside the powers in question, or
- b. where a document has been issued containing an untrue statement as to the authority's powers, or as to the steps taken or requirements fulfilled, reasonably believed that the statement was true when it was issued or authorised.

7.7 Article 8 gives the authority freedom to negotiate such terms for any indemnity or policy of insurance as it thinks appropriate but requires that those terms include repayment for sums expended by the authority or the insurer in cases where a Member has been found to be in breach of the Code of Conduct applicable to him as a Member of the Authority (following proceedings instituted as a result of a complaint to the Standards Board/the authority) or if a Member or Officer has been convicted of a criminal offence (if the indemnity or insurance policy will otherwise cover the proceedings leading to that finding or conviction). Any sums recoverable by the Council may be recovered as a civil debt.

7.8 The Councils constitution has delegated the power to approve the details of arrangements for Members to be indemnified and insured in these circumstances to this Committee. It is suggested that this Committee agree that Members should be indemnified to the maximum extent permitted by the 2004 Order and that similar arrangements be extended to those individuals who act on behalf of the authority and represent the authority's interests (other than Officers or employees of the authority). In relation to Officers/employees, the Council's constitution requires the agreement of the Executive to the giving of such an indemnity and a report in similar terms to this report will be submitted to the Executive separately to seek their authorisation to provide a similar indemnity to Officers/employees.

## **8.0 Overview of Day 1, Year 1, and Term 1 Issues**

8.1 It is not considered that this is relevant.

## **9.0 Reasons for Recommendation**

9.1 So as to ensure that an appropriate arrangement is made to indemnify Members and those acting on behalf of the authority in a representative capacity.

### ***For further information:***

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### ***Background Documents:***

None.

**2004 No.3082**

**LOCAL GOVERNMENT, ENGLAND AND WALES**

The Local Authorities (Indemnities for Members and Officers) Order 2004

*Made*

*22nd November 2004*

*Coming into force*

*23rd November 2004*

The First Secretary of State, in exercise of the powers conferred upon him by sections 101 and 105 of the Local Government Act 2000<sup>[1]</sup> and having consulted representatives of relevant authorities, representatives of employees of relevant authorities and such other persons as he considered appropriate hereby makes the following Order, of which a draft has been laid before, and approved by, resolution of, each House of Parliament:

**Citation, commencement and interpretation**

1. - (1) This Order may be cited as the Local Authorities (Indemnities for Members and Officers) Order 2004.

(2) It shall come into force on the day after that on which it is made.

(3) In this Order -

"Part 3 proceeding" means any investigation, report, reference, adjudication or any other proceeding pursuant to Part 3 of the Local Government Act 2000; and

"secure", in relation to any indemnity provided by means of insurance, includes arranging for, and paying for, that insurance and related expressions shall be construed accordingly.

**Application**

2. This Order applies to relevant authorities in England<sup>[2]</sup> and to police authorities in Wales<sup>[3]</sup>.

**Indemnities**

3. The authorities to whom this Order applies may, in the cases mentioned in article 5 below, provide indemnities to any of their members<sup>[4]</sup> or officers.



## **Insurance**

4. In place of, or in addition to, themselves providing an indemnity under article 3 above, any authority to whom this Order applies may, in the cases mentioned in article 5 below, provide an indemnity by securing the insurance of any of its members or officers.

## **Cases in which an indemnity may be provided**

5. Subject to article 6 below, an indemnity may be provided in relation to any action of, or failure to act by, the member or officer in question, 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 when exercising that function he does so in his capacity as a member or officer of the authority) -

(i) at the request of, or with the approval of the authority, or

(ii) for the purposes of the authority.

## **Restrictions on indemnities**

6. - (1) No indemnity may be provided under this Order 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.

(2) Notwithstanding paragraph (1)(a), an indemnity may be provided in relation to -

(a) subject to article 8 below, the defence of any criminal proceedings brought against the officer or member; and

(b) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

(3) No indemnity may be provided under this Order in

relation to the making by the member or officer indemnified of any claim in relation to an alleged defamation of that member or officer but may be provided in relation to the defence by that member or officer of any allegation of defamation made against him.

**Matters that exceed the powers of the authority or member or officer**

7. - (1) Notwithstanding any limitation on the powers of the authority which grants an indemnity, the authority may provide an indemnity 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 authority, or

(b) where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the authority, 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 he acted or failed to act.

(2) An indemnity may be provided 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 his powers at the time at which he acted.

**Terms of indemnity or insurance**

8. - (1) Subject to paragraphs (2) and (3) below, the terms of any indemnity given (including any insurance secured), under this Order may be such as the authority in question shall agree.

(2) Paragraph (3) applies where any indemnity given to any member or officer (including any insurance secured for that member or officer) has effect in relation to the defence of -

(a) any criminal proceedings; or

(b) any Part 3 proceedings.

(3) Where this paragraph applies, the indemnity shall be

provided, and any insurance secured, on the terms that -

(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 he has failed to comply with the Code of Conduct,

that member or officer shall reimburse the authority or the insurer (as the case may be) for any sums expended by the authority or insurer in relation to those proceedings pursuant to the indemnity or insurance.

(4) Where a member or officer is obliged to reimburse an authority or insurer pursuant to the terms mentioned in paragraph (3) above, those sums shall be recoverable by the authority or insurer (as the case may be) as a civil debt.

Signed by authority of the First Secretary of State.

*Nick Raynsford*

Minister of State in the Office of the Deputy Prime Minister

22nd November 2004

A regulatory impact assessment has been prepared in relation to these Regulations. A copy may be obtained from Local Government Legislation Division, Office of the Deputy Prime Minister, Zone 5/D1, Eland House, Bressenden Place, London, SW1E 5DU (telephone 020 7944 4148; [e-mail lgl@odpm.gsi.gov.uk](mailto:lgl@odpm.gsi.gov.uk)).

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*Notes:*

[1] 2000 c. 22.[back](#)

[2] For the meaning of "relevant authority", see section 49(6) of the Local Government Act 2000.[back](#)

[3] For powers in relation to relevant authorities in Wales, see section 105(2) of the Local Government Act 2000.[back](#)

[4] For the meaning of "member", see sections 49(6) and 101(5) of the Local Government Act 2000 and, in relation to elected mayors, the Local Authorities (Elected Mayors) (England) Regulations 2004 (S.I. 2004/1815).[back](#)

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