

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting: 9th February 2016
Report of: Director of Legal Services
Subject/Title: Indemnities for Members and Officers
Portfolio Holder: Councillor Paul Findlow

1. Report Summary

- 1.1. This reports sets out the current powers available to local authorities in relation to the provision of indemnities to Members and Officers.
- 1.2. This matter was previously considered by the Shadow Authority twice in 2008. In July of that year an indemnity was put in place for 'those individuals acting in a representative capacity on behalf of the Authority.' In December 2008 an indemnity was put in place for Officers.
- 1.3. As a result of the 2008 decisions, no indemnities are currently in place for current or former Members, or for former Officers. This report recommends that, as a matter of urgency, those matters are rectified to the full extent permitted by the law.

2. Recommendation

The Cabinet agree that:

- 2.1. Members and Officers be indemnified to the maximum extent permitted under the Local Authorities (Indemnities for Members and Officers) Order 2004 ('the 2004 Order').
- 2.2. The indemnity under paragraphs 2.1 above shall have retrospective effect from the establishment of the Council on 1 April 2009.
- 2.3. The indemnity under paragraph 2.1 above shall extend to former Members and former Officers; but only in respect of matters arising in relation to the period/s during which they were Members or Officers.
- 2.4. The Director of Legal Services (or, if he is unavailable or conflicted, the Deputy Monitoring Officer) be given authority (in consultation with the Chief Executive (or, if he is unavailable or conflicted, the Deputy Chief Executive)) to put in place such arrangements as he considers appropriate for the provision of independent external legal support for persons he considers reasonably entitled to rely upon the indemnity under paragraph 2.1 above.

- 2.5. The costs incurred pursuant to paragraph 2.4 shall be met from the Legal Services Budget in the first instance with any additional funding being met from the General Reserve.

3. Other Options Considered

- 3.1. Not to provide the indemnity set out in section 2 of this report. This is not recommended as it would mean Members and former Officers, having to bear their own costs in the event that they need legal support as a result of their role as Councillor or former Officer of the authority.

4. Reasons for Recommendation

- 4.1. To put in place an indemnity to ensure that Members and Officers have access to funded legal support in the event that this is required as a result of their role as Councillor or Officer of the authority.
- 4.2. To ensure that an indemnity covers Members and Officers from the establishment of the authority on 1 April 2009 and that they continue to be covered by an indemnity after their respective role with the Council comes to an end; but only in respect of matters arising in relation to the period/s during which they were undertaking their respective role.

5. Background/Chronology

- 5.1. This matter was previously considered twice by the Shadow Authority in 2008.
- 5.2. The power to indemnify Members and Officers was put on a clear statutory footing by the Local Government Act 2000. This empowered the Secretary of State to make regulations governing the provision of indemnities and resulted in the Local Authorities (Indemnities for Members and Officers) Order 2004 ('the 2004 Order').
- 5.3. The 2004 Order prohibits the giving of indemnities in relation to:
 - a) Any action (or lack of action) which constitutes a criminal offence; and/or is the result of fraud, or other deliberate wrongdoing or recklessness; and
 - b) Any claim in relation to an alleged defamation of the Member or Officer indemnified.
- 5.4. The 2004 Order does not prohibit the provision of indemnities in criminal cases where there has yet to be a conviction. In such cases, if the Member or Officer in question is convicted (and that conviction is not overturned on appeal), the indemnified person must reimburse any sums expended under the indemnity. Reimbursement may be enforced as a civil debt.

- 5.5. The matter of indemnities was first considered by the Shadow Authority's Governance and Constitution Committee on 14 July 2008, when the committee considered a report entitled '*Indemnities for Members and Officers.*'
- 5.6. Paragraph 7.1 of the committee report identified three categories of people who the committee might wish to indemnify: (a) Members of the authority; (b) Officers of the authority; and (c) other persons who are neither members nor officers but are acting on behalf of the authority. The recommendation makes no mention of Officers and was worded:

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.

However, the minute of the decision records only:

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.

The effect of this, whether intended or otherwise, is that the Council does **not** have an indemnity in place for Councillors.

- 5.7. On 17 December 2008 the Shadow Authority Cabinet considered a report also entitled '*Indemnities for Members and Officers.*' However, at paragraph 7.8 the report records:

"The Council's Governance and Constitutional Committee has given consideration to the indemnification of Members but, in relation to officers/employees, the agreement of cabinet is required to giving of such an indemnity"

- 5.8. Accordingly, the recommendation only related to indemnities for Officers and was worded:

The Cabinet agree that Officers 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.

The minute records that the Chairman agreed to allow consideration of this item as a matter of urgency '*in order to ensure the correct provision for officers was in place*' and the minute records that it was resolved:

For the reasons set out in the report:

That approval be given for Officers to 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.

- 5.9. Counsel's advice has been sought as to the extent the 2008 indemnities apply. He has advised that:
- a) The indemnities, as far as they go, apply to Cheshire East Council and do not require to be ratified or adopted by the authority on or after vesting day on 1 April 2009;
 - b) The July 2008 decision did not indemnify Members; and
 - c) The December 2008 decision did not indemnify former Officers, so the indemnity ceases to apply when an officer leaves the employment of the authority.
- 5.10 Counsel's conclusions at b) and c) above potentially expose Members and former Officers to a significant level of risk. Most authorities indemnify both Members and Officers. The 2004 Order makes it clear beyond doubt that this is lawful, whilst also restricting and conditioning the giving of indemnities (as explained in paragraphs 5.3 and 5.4 above). Counsel has pointed out that other authorities expressly provide indemnities which continue after Members cease to be Councillors and Officers cease to be employed.
- 5.11 It is therefore recommended that Cabinet approves an indemnity to ensure that Members and Officers have access to funded legal support in the event that this arises as a result of their role as Councillor or Officer of the authority. It is also recommended that Cabinet approves such an indemnity having retrospective effect from the establishment of the authority on 1 April 2009; and that Members and Officers continue to be covered by an indemnity after their respective role with the Council comes to an end; but only in respect of matters arising in relation to the period/s during which they were undertaking their respective role. Cabinet is also recommended to delegate to officers the task of authorising legal support under the indemnity. Finally, it is recommended that the costs of such support are to be met from the Legal Services Budget in the first instance with any additional funding being met from the General Reserve.
- 5.12 The absence of any indemnity for Members and former Officers is a serious matter which it is recommended is remedied as a matter of urgency.

6.Wards Affected and Local Ward Members

- 6.1 This matter is a corporate governance issue for the authority and does not affect any ward more than any other.

7. Implications of Recommendation

7.1 Policy Implications

7.1.1 None.

7.2 Legal Implications

7.2.1 These are set out in the report.

7.3. Financial Implications

7.3.1 The costs of providing external legal support under the existing and recommended indemnities will be met from the Legal Services Budget in the first instance, with any additional funding being met from the General Reserve.

7.4 Equality Implications

7.4.1 None

7.5 Rural Community Implications

7.5.1 None

7.6 Human Resources Implications

7.6.1 None

7.7 Public Health Implications

7.7.1 None

7.8 Other Implications (Please Specify)

7.8.1 The reason the limitations to the indemnities put in place in 2008 has come to light is because the current Police Investigation made it necessary to review the matter.

8 Risk Management

8.4 The need for Members and Officers to be protected by indemnities is important, bearing in mind the range of activities that Members and Officers, undertake. 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.

9 Access to Information/Bibliography

9.4 The reports and legislation referred to in this report are all publicly available.

10 Contact Information

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