

REPORT TO EXECUTIVE

Date of Meeting: 4 November 2025

REPORT TO COUNCIL

Date of Meeting: 9 December 2025

Report of: Monitoring Officer

Title: Proposed Policy of the Council for an Indemnity to Members and Officers

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

1.1 This report outlines the proposed indemnity to be granted under Appendix 1 to Members and Officers, including former Members and Officers. This report explains the Council's power to grant an indemnity, the benefits of it and the proposed terms of the indemnity granted at Appendix 1.

2. Recommendations:

2.1 That Executive recommends to Council that it grants:

2.1.1 the indemnity at Appendix 1 to Officers and Members and the policy is included in Part IV (Codes and Protocols) of the Council's constitution; and

2.1.2 a standing delegated authority to the Monitoring Officer, in consultation with the s151 Officer and the Leader of the Council:

2.1.2.1 to determine whether to meet the cost of any officer or member liability or loss from the Council's own resources where the Council's own insurance policy does not cover such a liability or loss; and

2.1.2.2 to agree and implement any necessary amendments to the indemnity policy where such amendments are required to reflect changes in legislation, insurance arrangements or best practice, provided that any substantive policy changes are reported to Council for approval.

3. Reasons for the recommendation:

Issue	Solution
The current position of Exeter City Council regarding an indemnity to Members and Officers is unclear, and	Indemnity granted to Members and Officers at Appendix 1

a policy is not in place to make clear the terms of the indemnity.	
--	--

4. What are the resource implications including non-financial resources

4.1 The resource implications of the proposed indemnity are that the Council will need to maintain its policy of insurance in place to cover indemnifying members and officers. The current insurance policy with Zurich covers the items covered by the indemnity policy. This is subject to payment of excess each time a claim is made. This is detailed in section 8 of this report.

5. Section 151 Officer comments:

5.1 The Council has official indemnity insurance as part of its overall insurance cover. This is a standard part of the insurance package provided to the Council.

6. What are the legal aspects?

6.1 Due to the statutory protections in place, individual members and officers of local authorities are not generally liable for the authority's acts or omissions:

- The Public Health Act 1875 provides councillors and officers, when acting in the course of their duties and in good faith, with statutory immunity and are not personally liable for the actions they take.
- The Local Government (Miscellaneous Provisions) Act 1976 provides further statutory immunity from personal liability, allowing members and officers to be indemnified from the general fund in relation to the performance of any of their functions, where they act bona fide, for proper purposes and without being negligent.

6.2 These statutory protections apply to functions of a local authority. It does not apply to members or officers sitting on outside bodies.

6.3 The Local Government Act 2000 conferred additional powers on local authorities to grant general indemnities to officers and members. The Local Authorities (Indemnities for Members and Officers) Order 2004 ('the 2004 Order'), which gave effect to these provisions, provides that a Local Authority in England has the power to grant indemnities to officers and members and/or take out insurance to protect them against the costs for incurring liability for acts which are carried out in the course of their official duties.

6.4 The power to grant such an indemnity under the 2004 Order can include cases where a member or officer exercises their functions in a capacity other than that of a member or officer of the authority, for example, as a director of a company or member of an outside body.

6.5 A local authority has the discretion to decide when to use the discretionary power of granting indemnities and the extent of those indemnities and/or insurance, as well as its terms. However, this discretion is subject to limitations: A local authority may not indemnify a member or officer in relation to:

- Any act or failure to act which constitutes a criminal offence (including matters that may give rise to a civil claim which also constitutes a criminal offence). However, an indemnity can be granted to cover criminal defence costs;
- Any act or failure to act which arises as a result of fraud or other deliberate wrongdoing or recklessness; or
- The cost of pursuing a defamation claim.

6.6 It should be noted that if the misconduct of a councillor causes a loss to the council, that councillor may be liable to make good such a loss. Also, should an indemnity be granted to an officer or member to cover the legal costs of defending criminal proceedings, such an indemnity must include sufficient provisions for this to be repaid to the Council should the trial result in a conviction.

7. Monitoring Officer's comments:

7.1 The Council has powers under the 2004 Order to provide indemnities to Members and Officers. The proposed indemnity policy sets out how the indemnity is to be applied and the limits on that indemnity.

The proposed delegation to the Monitoring Officer, in consultation with the Section 151 Officer and the Leader of the Council, provides a flexibility to deal with any exceptional cases not covered by insurance.

Overall, the policy will strengthen the Council's governance arrangements and provide reassurance to Members and Officers in the proper discharge of their duties.

8. Equality Act 2010 (The Act)

8.1 In recommending this proposal, no potential impact has been identified on people with protected characteristics as determined by the Act because:

- The report relates to internal governance and procedural changes to the Council's Constitution and does not affect service delivery or public access to services.
- The changes support principles of transparency, accountability, and inclusion and are designed to improve overall governance without disadvantaging any protected groups.

9. Carbon Footprint (Environmental) Implications:

9.1 No direct carbon/environmental impacts arising from the recommendations.

10. Report details:

10.1 The Council's Policy on indemnities to members and officers acting on outside bodies and guidance to members was last reviewed by Executive on 4th October 2011. In this report to Executive, a policy on indemnities from April 1998 was referred to. However, in preparation of this report, it has not been possible to obtain a copy of this policy from 1998. Furthermore, this policy, if still in place, is likely out of date as it pre-dates the 2004 Order, where the Council's discretion to grant an indemnity now derives.

10.2 The purpose of the proposed indemnity is to support those providing services, carrying out a role and making decisions on behalf of the Council. An indemnity will

ensure that where a Member or Officer carries out their duties in good faith, with a reasonable belief to be acting within their powers, they will be protected from incurring any personal liability. The protection from personal liability extends to officers and members when appointed to outside bodies, acting as a director of a company or in connection with regulatory roles (e.g. acting as the Personal Management Licence Holder (PMLH) for the purposes of the Exeter Community Lottery).

10.3 The protection under the indemnity allows for a positive environment of working, with individuals able to carry out their role without the fear that they may incur personal financial or legal risk. This enables effective and confident discharge of their duties.

10.4 Having in place an indemnity, rather than relying solely on a policy of insurance provides the Council with flexibility and control over the terms for which officers or members are protected and can be adapted to the specific needs of the Council. The Council may not have such discretion over the terms under an insurance policy.

10.5 The proposed terms of the Indemnity to members and officers is available at Appendix 1.

10.6 The Indemnity proposed shall act as the basis of the protection for Members and Officers against incurring liability, setting out the terms of the agreement for this protection, including the extent and limitations, the obligations of Members and Officers, the conditions for which it is subject to and the powers of the Monitoring Officer.

10.7 To provide for the payments made under the Indemnity, the Council must have in place a policy of insurance. The Council's current insurance policy with Zurich expiring on 31st March 2026 includes a £5,000 excess applicable to each individual claim, whereby the Council funds the first £5,000 of any one loss prior to insurer contribution. This excess applies cumulatively across all claims up to an annual aggregate limit of £50,000, after which the insurer assumes full liability for subsequent valid claims during the remainder of the policy year. The overall limit of indemnity under the policy is £10 million.

10.8 There may be instances when such insurance does not cover every eventuality, but a power has been retained it is at the council's discretion to approve use of Council funds to indemnify the officer and/or member.

11. How does the decision contribute to the Council's Corporate Plan?

11.1 The proposed indemnity directly supports the delivery of the Council's Corporate Plan 2025–2028, particularly the priority of maintaining a well-run Council. By putting in place such an indemnity will contribute to a more open, transparent and accountable local authority. The changes also reflect a commitment to good governance which is a key element outlined in the Corporate Plan.

12. What risks are there and how can they be reduced?

12.1 There is a risk of confusion or inconsistent application of the new procedures. This will be mitigated through clear communication, updated guidance and support from Democratic Services and the Monitoring Officer to ensure smooth implementation.

13. Are there any other options?

13.1 The Council could choose to put in place a policy of insurance to cover officer and member liability, rather than an indemnity. As discussed under para 1, this would limit the Council's control over the terms and the discretion to adapt to the specific needs of the Council. The proposed indemnity at Appendix 1 reflects best practice.

Simon Copper, Head of Legal & Democratic Services and Monitoring Officer

Author: Simon Curran, Planning Lawyer

Local Government (Access to Information) Act 1972 (as amended)

Background papers used in compiling this report:-

None

Contact for enquires:
Democratic Services (Committees)
Room 2.35
01392 265275