

EXETER CITY COUNCIL

EXECUTIVE
4TH OCTOBER 2011

REVIEW OF THE COUNCIL'S POLICY ON INDEMNITIES TO MEMBERS AND OFFICERS ACTING ON OUTSIDE BODIES AND GUIDANCE TO MEMBERS

1 PURPOSE OF REPORT

- 1.1 The issue of appointing Members and officers to represent the Council on outside bodies, and of the indemnities that the Council could give to them for that purpose, was last considered by the then Policy Committee in April 1998. At that time there was great concern, arising from recent High Court cases, about the extent to which the Council could effectually provide indemnity if Members or officers incurred liabilities whilst acting on outside bodies.
- 1.2 The need to update both the Council's policy and the guidance given to Members for acting on outside bodies has been highlighted by recent enquiries from some Members.

2. BACKGROUND

- 2.1 The problems that had been identified in 1998 were subsequently resolved when Parliament passed the Local Authorities (Indemnities for Members and Officers) Order 2004 ("The Order"), although it appears that the City Council did not formally review its policy at that time. The Order removed the previous uncertainties and gave authorities express powers to indemnify Members and officers as they saw fit, so that the giving of indemnities now has a clear legal basis.
- 2.2 The different roles of acting as a Councillor and acting as the Council's representative on an outside body can sometimes be difficult to distinguish. Therefore the Head of Legal Services has updated the Council's Guidance on this which is set out in more detail in the Guidance Note annexed to this report.

3. RELEVANT PROVISIONS OF THE 2004 ORDER

- 3.1 The Order gives a wide discretion to local authorities in respect of indemnities. Article 5 of the Order states:

"..an indemnity may be provided in relation to any action of, or failure to act by, a member or officer 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 (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."*

- 3.2 By virtue of Article 7 an indemnity can include actions which are beyond the powers of the authority, or beyond the powers of the Member's or officer's appointment, so long as the person concerned believed that the action was within the authority's powers (or within the powers of his or her appointment) and it was reasonable to hold that belief.
- 3.3 No indemnity may be provided in relation to conduct which is criminal or the result of fraud or deliberate wrongdoing or recklessness on the part of the Member or officer or in relation to an alleged defamation of (but not by) a Member or officer.
- 3.4 It should be noted that this wide power potentially enables the Council to grant indemnities which go beyond the extent of the Council's insurance cover.

4. PROPOSAL

4.1 The proposal is that the Council should give an indemnity to:

- (a) Members of the Council in relation to any action of, or failure to act by, them in the course of functions exercised by them (in their capacity as a Member of the Council) by virtue of any appointment to a body other than the Council;
- (b) Officers of the Council in relation to any action of, or failure to act by, them in the course of functions exercised by them (in their capacity as an officer of the Council and in the course of their employment), by virtue of any appointment to a body other than the Council;

subject (in each case) to the following conditions:

- (i) the appointment being approved by the Council or its Executive or other Committee of the Council or, in the case of an officer, by a Director acting within the scope of his/her delegated powers;
 - (ii) the Member or officer acting solely as a representative of the Council or in a decision-taking capacity but solely in furtherance of the Council's objectives; and
 - (iii) those matters set out in paragraph 3.3 above being excluded from the indemnity..
- 4.2 Treasury Services have confirmed that the indemnities referred to in 4.1 already fall within the scope of the Council's current insurance cover for normal Council business.
- 4.3 Appointments to outside bodies which involve acting in a decision-making capacity within the outside body will be outside the scope of the Council's insurance policy, unless the purpose of the role is in furtherance of one or more of the Council's objectives (such as promoting the economic well-being of the City). It is suggested that the Council follows the approach taken by Zurich Insurance, and does not provide an indemnity to those acting on an outside body where there is no direct link between that body's activities and the Council's normal business.

5. RESOURCE IMPLICATIONS

5.1 The indemnities referred to in 4.1 above are covered by the Council's existing liability insurance, so there should be no resource implications if the recommendation is followed.

6. RECOMMENDED

That Executive agrees:

- 6.1 That the Council gives an indemnity to officers and Members in the terms set out in Paragraph 4.1.
- 6.2 To adopt the guidance for Members set out in Annex A to this report.

BAAN AL-KHAFAJI, HEAD OF LEGAL SERVICES

CORPORATE SERVICES DIRECTORATE

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

Background papers used in compiling this report:-

The Local Authorities (Indemnities for Members and Officers) Order 2004 (Statutory Instrument 2004 No. 3082)

25.8.2011

ANNEX A

GUIDE FOR MEMBERS APPOINTED TO OUTSIDE BODIES

As a Councillor you may be asked to act as the Council's representative on an outside body. Such appointments may vary considerably in respect of the nature and scope of the responsibilities that you are asked to take on. Please bear in mind the following guidance, which is in general terms. If you need more specific advice please contact the Head of Legal Services.

1. When acting as a representative of the Council on another body you are acting in your official capacity as a City Councillor, and so you must comply with the Members' Code of Conduct at all times.
2. Your role as a representative of the Council is limited to representing the views and interests of the Council to the outside body, or acting as an observer or facilitator in the exchange of views or information between the Council and that body. As an individual Member you cannot make decisions which are binding on the Council.
3. So long as you are acting in a representative capacity, in accordance with the Council's normal business and within the terms of your appointment, you will be covered by an indemnity from the Council which protects you against any claims or liability. The Council in turn is protected by its insurance cover.
4. However, some appointments to outside bodies involve undertaking work on behalf of that body, rather than acting purely as a representative of the Council (even though it was the Council which made the appointment). For example, if your role involves participating in the decision taking process of the organisation, then you will owe that organisation a general duty of skill and care, which means, for example, that you will need to obtain proper advice on any matter which is outside your general competence.

If you are appointed as a company director or as a trustee, these roles import specific obligations, and your duty will be to the company or trust and not the Council.

Unless the purpose of the appointment is the furtherance of a function of the Council (such as promoting the economic well-being of the City) then this type of role will take you outside the scope of the Council's indemnity referred to in 3 above, so you will need to look to the organisation itself to provide insurance cover for your protection.

5. Where you find yourself in a situation described in 4 above, in which you will be taking on duties to the organisation to which you are appointed, you will need to consider whether there is any risk of a conflict between those duties and your responsibilities as a Councillor. If there is a risk of a significant conflict you should not take on the appointment.
6. You can of course take on roles on other bodies on your own account, but subject to the same proviso that there should be no conflict with your role as a Councillor. Such roles are not covered by the Council's indemnity.

For further advice please contact the Head of Legal Services.

4th October 2011