

INDEMNITY 2008

(1) "Officers" includes any person employed by the Council and any other person engaged or appointed to be an officer of the Council. "Members" includes co-opted members of the Standards Committee and co-opted members on the Overview and Scrutiny Committee and of any Committee or Sub Committee discharging the same or similar functions.*

(2) The Council hereby indemnifies its officers and members, whether appointed or elected at the date of this resolution or at any time thereafter, against the costs, claims and expenses set out in paragraph (3) of this indemnity, subject to the exceptions set out in paragraph (4) of this resolution, and to paragraph (6) of this resolution, and on the terms set out in paragraph (5). It will not itself make any claim against them in relation to any costs or expenses for which they are hereby indemnified.

Notwithstanding any limitation on the powers of the Council, the indemnity is effective 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 officer or member to hold that belief at the time when he or she acted or failed to act.

The indemnity is also effective in relation to any act or omission which is subsequently found to be beyond the powers of the employee or member in question but only to the extent that he or she reasonably believed that the act or omission in question was within his or her powers at the time at which he or she acted.

(3) The costs, claims and expenses are those which arise from, or in connection with, any action of, or failure to act by, the employee or member in question, which:-

- (a) is or has been authorised by the Council
- (b) forms part of, or arises from, any powers conferred, or duties placed, upon that officer or member, as a consequence of any

function being exercised by that officer or member (whether or not when exercising that function he or she does so in his or her capacity as an officer or member of the Council)-

- (i) at the request of, or with the approval of the Council, or
- (ii) for the purposes of the Council.

(4) The exceptions are that:-

- (a) No indemnity is given in relation to any action by, or failure to act, by any member or officer which -
 - (i) constitutes a criminal offence; or
 - (ii) is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that officer or member.
- (b) Notwithstanding paragraph (4)(a)(i), the indemnity does relate to
 - (i) (subject to paragraph 5) the defence of any criminal proceedings brought against the officer or member; and
 - (ii) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.
- (c) No indemnity is given in relation to the making by the employee or member or officer indemnified of any claim in relation to an alleged defamation of that member or officer but the indemnity does relate to the defence by that officer or member of any allegation of defamation made against him or her.

(5) The terms of the indemnity are as follows:-

- (a) Where the indemnity has effect in relation to the defence of any criminal proceedings; or any Part 3 proceedings (meaning any investigation, report, reference, adjudication or any other proceeding pursuant to Part 3 of the Local Government Act 2000) then
 - (i) 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
 - (ii) in the case of Part 3 proceedings –
 - (1) 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

- (2) if the member admits that he has failed to comply with the Code of Conduct,

the employee or member shall reimburse the Council for any sums expended by it in relation to those proceedings pursuant to the indemnity, and those sums shall be recovered by the Council as a civil debt.

- (b) The indemnity will only extend to cover actual loss and expense incurred and evidenced by the officer or member to the satisfaction of the Borough Treasurer.
- (c) The indemnity will not cover any loss or expense in respect of which the officer or member can obtain reimbursement from any other source, including any policy of insurance whether taken out by the Council or the officer or member or by any other person.
- (6) The provision of an indemnity for the purposes of any proceedings referred to in Clause (4)(c) or (5)(a) is subject to the prior approval of the Managing Director (People and Places), acting in his or her sole discretion, following the receipt of advice from the Borough Treasurer, the Borough Solicitor and the Transformation Manager to the maximum amount of costs or expenses that the Council will pay or bear in the matter.

To the extent that the law permits, in order to facilitate the discharge of its functions relating to its staff, and its democratic functions, the Council hereby confirms that it will continue to indemnify its employees and former employees, in the terms set out in Appendix A.

* This indemnity shall apply in like terms to any Independent Person and/or Reserve Independent Person within the meaning of Section 28 (7) of the Localism Act 2011 for the time being appointed by the Council for any statutory purpose.

Formatted: Indent: Left: 0 cm,
Hanging: 0.5 cm

APPENDIX A

INDEMNITY 1996

“The Council will indemnify all officers of the Council against the whole or part of any damages, costs or legal expenses which any such officer may have been ordered to pay or may have incurred, if the officer acted in good faith and honestly believed that the act complained of was within his/her power and that his/her duty as an officer required or entitled him/her to do it. Such indemnity shall extend to responsibilities arising from duties performed by any officer by virtue of his/her employment with the Council itself or with the Council but on behalf of other bodies to which the Council supplied the services of the employee which have resulted in the act or omission complained of.

Exceptions: The indemnity will not extend to loss or damage directly or indirectly caused by or arising from:

- (a) fraud, dishonesty or a criminal offence on the part of the employee; or
- (b) any neglect, error or omission by the employee otherwise than in the course of his/her duties; or
- (c) liability in respect of surcharges made by the District Auditor or orders made under Section 19 of the Local Government Finance Act 1982.

The Council reserves the right to withdraw the indemnity if an employee, without the written authority of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this resolution.

In pursuance of the indemnity above, the Council undertakes not to sue (or join others in suing) an employee of the Council in respect of any neglect, error or omission by the employee in the course of his/her employment, but subject to the same exceptions as in (a) (b) and (c) above.

The above indemnity and undertaking are continuing and cover present employees of the Council and after that employment has ceased and they apply retrospectively to any neglect, act, error or omission which may have occurred before this date,

The above indemnity and undertaking shall be without prejudice to the right of the Council to take disciplinary action against the employee.

The cost of the indemnification is to be met by the Council.”

PSS23