

ISLE OF ANGLESEY COUNTY COUNCIL

MEETING:	FULL COUNCIL
DATE:	9 JUNE 2011
TITLE OF REPORT:	INDEMNITIES FOR MEMBERS AND OFFICERS
REPORT BY:	DIRECTOR OF LEGAL SERVICES
PURPOSE OF REPORT:	FOR FULL COUNCIL TO CONSIDER ADOPTING A POLICY AND PROCEDURE TO DEAL WITH REQUESTS FOR INDEMNITIES BY MEMBERS AND OFFICERS PURSUANT TO THE LOCAL AUTHORITIES (INDEMNITIES FOR MEMBERS AND OFFICERS) (WALES) ORDER 2006

1. Introduction

- 1.1 The Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006 (“the Order”) allows the Council to offer an indemnity to Members and Officers in respect of certain matters as detailed in the earlier report.
- 1.2 By its decision on 12 May 2011, full Council resolved to adopt, in principle, the powers granted by the Order for the giving of indemnities to Members and Officers.
- 1.3 It is necessary to adopt a policy and procedure for the making and determining of applications for indemnities under the Order. This report sets out a proposed policy, procedure and general form of wording for an indemnity (all set out in the Appendix to this report).
- 1.4 As indicated in the previous report, an Equalities Impact Assessment has been carried out on the proposed policy which concluded that it has, overall, a positive impact.

2. Policy

2.1 Insurance

- 2.1.1 The report submitted to full Council on 12 May indicated that Officers would consider recommending that indemnities be provided by way of insurance cover. Enquiries have been made with the insurers. It appears that insurance cover is unlikely to be commercially offered in respect of indemnities for defending complaints of breaches of the Members Code of Conduct. It will be recalled that this was the significant new category of indemnity offered under the Order and which the Council did not (and could not), potentially, insure against already. Changes to the procedure for dealing with complaints against members in England mean that the insurance industry are very likely to withdraw this type of insurance cover in both England and Wales and

indications are that new cover for this category of matter is not being provided.

2.1.2 It therefore appears that the option preferred by Officers of offering the indemnity by way of insurance cover is not available at least in respect of complaints for breach of the Members Code of Conduct. A request for cover that will be refused is likely to adversely affect the Council's prospects of securing competitive premiums for all insurance policies when it re-tenders insurance in 2012 and later years.

2.1.3 Insofar as the Council's current insurance policy covers other types of incident authorized to be indemnified by the Order (other than complaints against Members and claims relating to the general running of outside bodies), then it is recommended that these types of incident be indemnified by that insurance. A procedure for the making and determining of such applications needs to be established and these matters are addressed in this report.

2.2 Other Form of Indemnity

2.2.1 The other means of offering an indemnity under the Order is for the Council to make financial payment to a successful Applicant for an indemnity. A procedure for the making and determining of such applications needs to be established and these matters are addressed below.

2.2.2 This means of offering an indemnity should only apply to those cases which are not potentially covered by the Council's insurance policy. Principally these cases will be the indemnification of Members for complaints against them for breach of the Code of Conduct.

3. Procedure

3.1 Where the Indemnity is provided by Insurance

3.1.1 Indemnifying the risk by way of insurance cover would not establish a relationship between the Members and Officers seeking an indemnity and the insurers as the contract of insurance is between the Council and the insurer rather than individual Members or Officers.

3.1.2 Where the matter which is to be indemnified is, potentially, covered by the Council's existing insurance cover, then the Applicant for an indemnity should submit an application to the Council to be determined in accordance with the Appendix to this report. However, this does not preclude the insurer from asking for any further or different information or asking for it in such form as they may determine in due course following a successful application.

3.1.3 The terms and conditions of any indemnity after a successful application will also be a matter for the insurer under the terms and conditions of the policy. Any Applicant who is unsuccessful (either in whole or in part) in their application or whose cover is refused or limited by the insurer under the terms of the policy shall have no further right against the Council.

3.2 Where the Indemnity is provided by Financial Payment

- 3.2.1 In cases where a matter for indemnity is covered by the Order but not by the insurance cover the Council has in place, then an Application must be made to the Council. The Application should (at the very least) contain the relevant details set out in paragraph 2 of Part A in the Appendix.
- 3.2.2 The Application should be considered and determined by the Council (or as delegated by them) in accordance with the Policy set out in the Appendix to this report. It is recommended that the Council establish a Sub-Committee to determine such applications. That Sub-Committee should consist of at least three members and be politically balanced. The Sub-Committee should be delegated all rights to make decisions in respect of applications and be granted the power to allocate money in accordance with any decisions that they make on applications. The Director of Legal Services and the Corporate Director of Finance shall advise the Sub-Committee during their deliberations as necessary.

4. Recommendation

4.1 That full Council resolves as follows:

- 4.1.1 Where the Council's existing insurance policy potentially covers a matter which can be indemnified under the terms of the Order then an indemnity for that matter will be offered by way of insurance only and upon such terms, conditions, policy limits and deductibles as may be required by the Council's insurers.
- 4.1.2 Where the Council's existing insurance policy does not cover a matter which can be indemnified under the terms of the Order then an indemnity for that matter will potentially be offered by way of financial payment but subject to such terms and conditions as may be determined in accordance with the Policy as set out in the Appendix to this report.
- 4.1.3 To establish a Sub-Committee to determine applications for indemnities as shall fall within paragraph 4.1.2 above. The Sub-Committee shall consist of at least three members, be politically balanced and appoint a Chairman from amongst their number. The Sub-Committee shall be delegated all rights to make decisions in respect of applications and be granted the power to allocate money in accordance with any decisions made on applications. The Director of Legal Services and the Corporate Director of Finance shall advise the Sub-Committee during their deliberations as necessary.
- 4.1.4 To adopt the proposed form of wording for an indemnity, the policy and the procedure for dealing with Applications for indemnities as is set out in the Appendix to this report.

Background Papers

Completed Equality Impact Assessment Template

APPENDIX

Matters Relating to Applications for and the Determining of Indemnities Pursuant to the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006

A. Procedure

- 1.1 This procedure shall apply where the Isle of Anglesey County Council (“the Council”) receives an application (“the Application”) by a Member or Officer of the Council (“the Applicant”) for an indemnity pursuant to the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006 (“the Order”) the powers of which Order the Council adopted by a resolution dated 12 May 2011.
- 1.2 Where an indemnity is given it shall accord with the requirements and restrictions of the Order authorizing the right to give an indemnity.

2 The Application

- 2.1 The Application for an indemnity may set out such matters as the Applicant wishes but it must comply with the following minimum requirements (where relevant to the Application):
 - 2.1.1 be in writing and addressed to the Council’s Director of Legal Services,
 - 2.1.2 be signed by or on behalf of the Applicant,
 - 2.1.3 identify the sum for which an indemnity is sought,
 - 2.1.4 identify the name and address of the solicitors retained by the Applicant in the matter for which an indemnity is sought (“the Matter”). The name of the individual solicitor having conduct of the Matter must be given together with that of any other fee earner who will deal with the Matter together with their hourly charging rates or agreed fee and a summary of their experience in the field of work within which the Matter falls,
 - 2.1.5 identify any barrister retained by the Applicant in the Matter together with the hourly rates agreed or the agreed brief fee for their retention. In addition details shall be given of the experience of the barrister in the field of work within which the Matter falls,
 - 2.1.6 identify any expert witness or any other witness the costs of which the Applicant will incur in dealing with the Matter together with details of those costs by way of hourly rates, agreed fee or estimated costs as the case may be,
 - 2.1.7 give an indication of the likely total costs to be incurred by the Applicant in dealing with the Matter,

- 2.1.8 provide such details of the case both for and against the Applicant as will allow a reasonable assessment to be made upon the merits of the Matter before the Application is determined.
- 2.1.9 address those matters in the Order which prevent, restrict or limit the giving of an indemnity and to do so with sufficient detail so as to enable the Council to be satisfied that the granting of an indemnity falls within the powers granted by the Order.
- 2.2 Notwithstanding the above, the Council (initially acting by its Director of Legal Services) may request further information of the Matter from the Applicant where it believes that it has insufficient information to properly determine the Application in accordance with the provisions of the Order.
- 2.3 No indemnity shall be granted in respect of any costs incurred by the Applicant prior to the submission to the Council of an Application which must comply with the requirements of this section 2.
- 2.4 Any decision on an Application does not prevent the Applicant from taking such action as he thinks fit in the conduct of the matter subject to any terms upon which an indemnity may be given.

3 Determining the Application

- 3.1 Determining the Application shall be the responsibility of the Sub-Committee established by full Council for that purpose.
- 3.2 A meeting of the Sub-Committee (“the Meeting”) shall be convened as soon as is practicable to determine the Application after receipt of an Application that complies with the requirements of paragraph 2 above. Where necessary the Meeting shall be in private with the press and public excluded.
- 3.3 At the Meeting there shall be tabled a written report from the Director of Legal Services together with a copy of the Application.
- 3.4 It is possible that where the Applicant is a Member he (or she) shall have a prejudicial interest which shall preclude him (or her) from attending the Meeting. The Applicant may consider and can request that the Application be dealt with as follows by the Sub-Committee:
 - 3.4.1 as a paper Application only with no representations on behalf of the Applicant,
 - 3.4.2 by way of a brief presentation of the Application on behalf of the Applicant (such as by their solicitor), or
 - 3.4.3 by way of a brief presentation by the Applicant provided that where the Applicant has a prejudicial interest in the Matter they have first obtained a dispensation from the Council’s Standards allowing them to attend the meeting and to make their representations in accordance with the terms of any such dispensation .

- 3.5 Where the Applicant requests the right to make a presentation (either by themselves or their representative) at the Meeting the following procedure shall be followed:
 - 3.5.1 The written report shall be presented to the Meeting,
 - 3.5.2 The Applicant or his (or her) representative shall be allowed to make a short presentation in support of the Application,
 - 3.5.3 Members (or officer) may ask questions of the Applicant or the representative which may be answered,
 - 3.5.4 The Applicant or representative may make a brief closing submission,
 - 3.5.5 Members shall debate the Application in the absence of the Applicant and the representative,
 - 3.5.6 Members shall determine the application (subject to the provisions of paragraph 3.7 below) having regard to any issue, restriction or condition arising from the Order or this Policy and which may be relevant to the circumstances of the Application,
 - 3.5.7 The Applicant or his representative shall receive written notice of the decision made as soon as is reasonably practicable.
- 3.6 Provided that the Sub-Committee are satisfied that there is sufficient information to make a determination on the Application then it shall determine the Application. Any decision made shall be supported by reasons which shall be recorded.
- 3.7 Where the Sub-Committee believes that further information is required before it can determine the Application, it shall endeavor to obtain that information from the Applicant or his representative at the Meeting. Where that information is not available at the Meeting, the Sub-Committee shall adjourn the Meeting having first identified and recorded the required information. The Meeting shall be reconvened as soon as practicable after receipt of the information requested.

B. Conditions and Restrictions on the Terms of any Indemnity Given

- 4.1 The Sub-Committee shall have complete discretion as to the terms, nature, duration and / or limits placed on any indemnity given to the Applicant. Any indemnity granted shall be subject to such terms or restrictions as the Sub-Committee shall see fit having regard to the circumstances of each individual Matter and any advice given by the Director of Legal Services at the Meeting.
- 4.2 Without prejudice to the generality of paragraph 4.1 above, an indemnity may be granted to an Applicant subject to one or more of the following restrictions:

- 4.2.1 A cap on the monetary sum to be indemnified and that the sum paid shall be a VAT inclusive sum,
- 4.2.2 A restriction on the hourly rates of solicitors, barristers or any other person whose costs form part of the Application,
- 4.2.3 That sums indemnified shall only be paid to the Applicant in specified monetary tranches according to criteria or conditions laid down by the Sub-Committee as part of its decision on the Matter,
- 4.2.4 That only certain identified costs shall be indemnified,
- 4.2.5 That payment of any indemnity (or part of an indemnity) shall only be made following submission to the Council of receipted invoices for costs identified in the Application,
- 4.2.6 That the prior consent or advice of a specified person (such as the Director of Legal Services or an independent counsel) must be obtained or that any specified step is taken by the Applicant in relation to the Matter before payment is made of either the whole or any part or tranche of the indemnity,

C. General Terms of the Indemnity

1. Subject to the above and to any terms, conditions or limitations determined or imposed in any particular case by the Sub-Committee, the Isle of Anglesey County Council indemnifies each member and officer of the Council against any claim liability or loss and/or damage in relation to any action or failure to act by any member or officer and:-
 - (a) is authorised by the Council; 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 in exercising that function the member or officer does so in the capacity of member or officer of the Council)
 - (i) at the request of or with the express approval of the Council; or
 - (ii) for the purposes of the Council

Except that the costs of defending such claim expended before an Application for an indemnity is successful shall not be paid.

Without prejudice to the generality of this indemnity (above) the indemnity extends to action :-

- (a) taken under delegated powers;

- (b) taken personally under any specific statutory provision such as Head of Paid Service, Chief Finance Officer, Monitoring Officer, Local Government (Contracts) Act 1997.
- (c) Taken at Partnerships, informal joint working arrangements, charitable organisations, companies (however constituted) when the member or officer is serving as the Council's representative on these bodies.

(For the purpose of this indemnity "member" includes independent and co-opted persons who sit on the Council's Standards Committee).

2. Conditions and Limitations applying to the Indemnity

A. Good faith

A member or officer relying on the indemnity :-

- (i) must believe that the action, or failure to act, in question was within the powers of the Council
or
- (ii) where that action or failure to act comprises the issuing or authorising of any document containing any statement as to the powers of the relevant Council, or any statement that certain steps had been taken or requirements fulfilled, believed that the contents of that statement were true;
and
in either case that it was reasonable for that member or officer to hold that belief at the time when that member or officer acted or failed to act.

The Council will provide the indemnity in relation to an act or failure to act which is subsequently found to be beyond the power of that member or officer in question, but only to the extent that the member or officer reasonably believed that the act or failure to act in question was within that member or officer's powers at the time at which that member or officer failed to act.

B. Repayment of cost

Where any indemnity is given to a member or officer in relation to the defence of criminal proceedings or proceedings alleging a breach of the code of conduct, then :-

- (i) in relation to criminal proceedings if the member or officer is convicted of a criminal offence then the sums expended by the Council or its insurers in relation to those proceedings must be reimbursed to the Council or to the insurers;
- (ii) where the proceedings relate to an allegation against a member of a breach of the code of conduct :-

- (a) if a finding is made that finds that the member has failed to comply with the code of conduct (or the member has admitted that failure) and as a consequence the member is suspended, partially suspended or disqualified, then the sums expended by the Council or its insurer must be reimbursed to the Council or its insurers
- (b) in the case of an allegation of a breach of the code of conduct and there is a finding that the member has failed to comply with the code of conduct (or the member has admitted that failure) and as a result the member is censured or has some penalty imposed other than suspension, partial suspension or disqualification then if the Council's Standards Committee deems it appropriate the sums expended by the Council or its insurers must be reimbursed to the Council or its insurers.

Where repayment is required this will include any VAT paid as part of the sum indemnified.

C. Defamation

This indemnity does not extend to the **making** by a member or officer of any claim in relation to an alleged defamation of that member or officer.

D. Returning Officer

The work and functions of the Returning Officer are not covered by this indemnity.

E. General Principles

- (i) The Council will provide the member or officer with reasonable and proportionate access to Council employees and Council resources and facilities to enable the individual officer to properly respond to allegations of personal liability being advanced;
- (ii) The Council will allow legal representation for a member or officer separately from the Council's own legal advisers (and/or the Council's insurer's legal advisers) where the interests of the Council and the individual officer may conflict or in such other circumstances where it is agreed between the Council and the individual officer that separate legal representation is appropriate.
- (iii) The Council will not seek to recover from an individual member or officer any losses incurred by the Council as a result of an action or failure to act by the member or officer concerned except :-
 - (a) Where the member or officer involved did not reasonably believe that the act or omission in question was within his power at the time when that act or omission took place, or
 - (b) Where the action or failure to act constituted a criminal offence.

