

<b>ISLE OF ANGLESEY COUNTY COUNCIL</b>	
<b>MEETING:</b>	COUNCIL
<b>DATE:</b>	5 <sup>th</sup> MARCH 2013
<b>TITLE OF REPORT:</b>	AMENDMENT TO THE INDEMNITIES POLICY
<b>REPORT BY:</b>	HEAD OF FUNCTION LEGAL AND ADMINISTRATION / MONITORING OFFICER
<b>PURPOSE OF REPORT:</b>	TO COMPLY WITH A RECOMMENDATION FROM THE WELSH GOVERNMENT DATED 15 <sup>TH</sup> JANUARY 2013

## 1. **CONTEXT**

- 1.1 On the 9th June 2011 the Council exercised its discretion to adopt an Indemnities Policy. The Policy includes indemnity for Members to defend proceedings brought by the Public Services Ombudsman for Wales (PSOW) in connection with alleged breaches of the Code of Conduct.
- 1.2 Applications for indemnity are decided by the Indemnities Sub-Committee; which is a Sub-Committee of the Council, with full powers to act.
- 1.3 Since June 2011 the Indemnities Sub-Committee has granted three indemnities and, while the Policy does not include a financial cap, the Sub-Committee has thus far imposed a cap of ten thousand pounds in every case.
- 1.4 However, this approach is not always been mirrored in other Councils, resulting in concerns expressed by the Welsh Government in a letter to the Leader dated the 15th January 2013. A copy is attached at **Enclosure 1**. The relevant sections are highlighted.
- 1.5 The Welsh Government's request has been canvassed with our Group Leaders; who favour amending the current Policy to introduce a cap of twenty thousand pounds in those cases which relate to the defence of PSOW complaints.
- 1.6 At **Enclosure 2** is a copy of the Council's Resolution of the 9th June 2011, with suggested changes highlighted.
- 1.7 At **Enclosure 3** is a copy of the Policy adopted by this Council on the 9<sup>th</sup> June 2011, with suggested changes highlighted.

2. **RECOMMENDATION**

- 2.1 The Council amend its Indemnities Policy to impose a maximum indemnity of twenty thousand pounds to defend proceedings brought by the PSOW under the Code of Conduct.
- 2.2 The maximum indemnity be imposed by means of the suggested changes highlighted at **Enclosures 2 and 3**.

PAPUR / ENCLOSURE

1

Carl Sargeant AC / AM  
Y Gweinidog Llywodraeth Leol a Chymunedau  
Minister for Local Government and Communities



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref SF/CS/0102/13

To:  
Leaders, County and County  
Borough Councils

Chairs, Fire and Rescue  
Authorities

Chairs, National Park Authorities

15<sup>th</sup> January 2013

## LOCAL GOVERNMENT ETHICAL FRAMEWORK

I am writing to follow up aspects of last year's 'Promoting Local Democracy' White Paper covering matters relating to the operation of the ethical framework established under the Local Government 2000 ("the 2000 Act").

The 'Programme for Government', published in September 2011, included a commitment to review the process for making a complaint under the local government member code of conduct to ensure that it is used only for the purpose for which it was intended.

Last year's White Paper conveyed our view that the current framework in Wales, founded upon a common set of guiding principles and a statutory model code of conduct, provides an appropriate balance between guiding members on standards of conduct and giving reassurance to the public that misconduct will be dealt with consistently and appropriately. However, I believe that there is scope for a more local approach to the resolution of low-level complaints, without immediate resort to the full and potentially costly investigatory role of the Public Services Ombudsman for Wales, in some circumstances.

With this in mind, the White Paper welcomed discussions that had already taken place on the voluntary adoption by local authorities of a common, national approach to informal local processes for dealing with member-on-member and officer-on-member complaints. The White Paper indicated that the Welsh Government wished to see such processes

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*Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)*

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implemented by all county and county borough councils, national park authorities and fire and rescue authorities as soon as practicable following last year's local elections.

The White Paper also welcomed discussions that have taken place on the introduction of a voluntary cap of £20,000 on the level of indemnity offered by authorities to members subject to misconduct proceedings under the 2000 Act. Authorities powers to provide indemnities are derived from the 'Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006'. These powers would enable them to set such a limit and, again, the White Paper indicated that the Welsh Government wished to see this implemented soon after last year's elections.

I understand that some authorities have responded positively to these proposals. However, I am concerned that perhaps not all authorities have made progress and, through this letter, I want to impress upon those who have yet to do so the importance that I place on taking this forward.

In order that I have a complete picture of the current position across Wales, I ask that you report back to me on what steps your authority has taken, or plans to take (with timescales), to introduce a local resolution process and to adopt the voluntary cap on indemnities for member code of conduct proceedings. This information should be sent by email by the end of February to: CorrespondenceMail-CS@Wales.GSI.Gov.UK.

To facilitate the introduction of local resolution processes, I intend to remove the obligation on members contained in paragraph 6(1)(c) of the model code of conduct to report potential breaches of the code to the Ombudsman. The Ombudsman has issued guidance on how he will deal with low-level alleged breaches made to his office and this obligation need not, therefore, give cause for delay in the introduction of local resolution processes where this has yet to be done.

In addition to removing the obligation to report breaches to the Ombudsman, I intend to address concerns arising from the interpretation of paragraph 10(2)(b) by removing this from the model code. Members taking decisions, whether acting collectively or individually, would still be required by paragraph 8 of the code to act objectively and in the public interest when doing so. I consider, therefore, that paragraph 10(2)(b) can be removed without detriment to the code.

Also in relation to the code, you will no doubt be aware of the High Court ruling last year – '*R (Calver) v the Adjudication Panel for Wales*' - in relation to the requirement in paragraph 4(b) of the code for members to show respect and consideration for others. The Ombudsman has revised his guidance to take account of the ruling, but I have also asked my officials to consider whether any modification of the code is necessary.

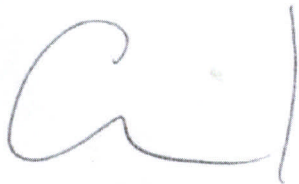
Whilst writing, I note with concern that the Ombudsman has again found it necessary to make reference in his latest annual report to the number of member on member complaints which might be regarded as vexatious. Paragraph 6(1)(d) of the code could not be clearer in stipulating that members must not make vexatious, malicious or frivolous complaints against other members or anyone who works for their authority. If unchecked, such actions have potential to clog up the system and divert resources from more important matters. I would ask that this issue is given some prominence when refresher training on the code is arranged for members.

Also, you will not have failed to have seen recent reporting in the media of unfortunate events arising from the inappropriate use of social media. The Ombudsman's guidance on the code makes clear the circumstances in which use of electronic and social media is covered by the code. This is a continually evolving area and again it is timely, I believe, to

encourage members to avail themselves of the training which authorities provide on the use of social media and the potential pitfalls to be avoided.

Any observations or comments that you may wish to make in relation to these or other aspects of the code when responding as requested above would be most welcome.

Finally, I would like to take this opportunity to mention an issue that has been raised with me recently regarding the publication of registers of members' interests maintained under section 81 of the 2000 Act. At present, registers must be available at an office of the authority for inspection by members of the public at all reasonable hours. However, citizens increasingly expect to be able to access information about councils and their elected members via the internet. Consequently, I have sympathy with the view expressed to me that authorities should be required to additionally publish these registers on their websites to facilitate access and to improve transparency. I am, therefore, minded to bring forward an amendment to the Local Government (Democracy) (Wales) Bill to give effect to this. There is a brief window of opportunity for bringing forward such an amendment but, before doing so, I would welcome any views that you may have on this.



**Carl Sargeant AC / AM**

Y Gweinidog Llywodraeth Leol a Chymunedau  
Minister for Local Government and Communities

PAPUR / ENCLOSURE

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### 3. INDEMNITIES FOR MEMBERS AND OFFICERS

(a)Reported - That the County Council at it's meeting on 12th May, 2011, had resolved *"to agree in principle at this stage that the Council wishes to adopt the power to grant indemnities as provided for by the Order, and that a further report on the matter be submitted to Council in due course."*

(b)Reported by the Legal Services Manager – That it was necessary to adopt a policy and procedure for the making and determining of applications for indemnities under the Order. This report set out a proposed policy, procedure and general form of wording for an indemnity which were set out in the Appendix to this report.

As indicated in the previous report to Council on 12<sup>th</sup> May, 2011, an Equalities Impact Assessment had been carried out on the proposed policy which concluded that it had, overall, a positive impact.

The Legal Services Manager stated that the report referred to establishing a Sub-Committee of at least 3 members of the Council to determine applications for indemnity. However, having looked further at the figures, there were further choices available to members in this respect, namely a Sub-Committee of four members consisting of a representative from each Political Group or a Sub-Committee of 5 members to include, in addition, one unaffiliated member.

It was proposed and seconded that the recommendations within the report be accepted and that the Sub-Committee should consist of 5 members and that the Chair and Vice-Chair of the Council be exempted as members of the Sub-Committee.

An amendment was proposed and seconded that the Sub-Committee should consist of 10 members and be politically balanced.

The Legal Services Manager pointed out that a Sub-Committee of 10 members might have an effect on the overall political balance of Committees across the Council and would be administratively more burdensome.

A member stated that a complaint had been made against a member of Flintshire County Council and that the member in question did not have the means to fight the case since it would cost in the region of £250k. The member received the payment but without that money he would not have been able to win that case. However, the Councillor accepted the principle being put forward and supported the recommendations within the report.

Mr.Alex Aldridge, Commissioner, was afforded the opportunity of addressing the Council. With regard to the comment made, he wished to clarify that Flintshire County Council did not pay an individual the sum mentioned. The indemnity as it stood was to do with a case that went before the Ombudsman.The individual at Flintshire was currently facing adjudication by the Ombudsman. The Council with the advice of the Monitoring Officer, indemnified that individual to bring a lawyer to represent him through the process,on the clear understanding that if the case was lost they would have to repay in full the costs to the Council. They also set a very strict limit of spend. The case was still ongoing. At Flintshire it was the full Council that made the determination based on the advice given by the Monitoring Officer.



Following the above statement, the mover and seconder withdrew their original amendment of a Sub-Committee of 10 members and they proposed and seconded an amendment that this Council should follow the example of Flintshire Council in this respect.

The Legal Services Manager advised that it appeared from contributions by some members that the report had either not been read or understood by some members. In those circumstances, those members must be advised to refrain from voting on the matter.

The amendment was lost by 20 votes to 7 and it was resolved to accept the recommendations contained within the report subject to the establishment of a Sub-Committee of 5 members as referred to above.

Councillor Raymond Jones wished it to be minuted that he had abstained from voting on this matter.

## **RESOLVED**

● **That 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;**

● **That 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 a 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;**

● **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 *save that the Sub-Committee shall not be able to grant an indemnity in excess of £20,000 to a member defending any complaint under the Code of Conduct.* The Head of Function Legal and Administration and the Head of Function Resources shall advise the Sub-Committee during their deliberations as necessary.**

● **To adopt the proposed form of wording for an indemnity, the policy and the procedure for dealing with Applications for indemnities as set out in the Appendix to this report.**

PAPUR / ENCLOSURE

3

## **INDEMNITIES POLICY FOR MEMBERS AND OFFICERS**

### **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**

- 1.1.1 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 Head of Function Legal and Administration
  - 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 Head of Function Legal and Administration) 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 Head of Function Legal and Administration 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 except that any indemnity ~~granted to a Member in defending allegations of a breach or breaches of the Code of Conduct shall be~~ subject to a cap of £20,000 (twenty thousand pounds). 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 Head of Function Legal and Administration at the Meeting.

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- 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 Head of Function Legal and Administration 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 or individual member 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 or individual member 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.