

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
COMMITTEE:	Democratic Services Committee
DATE:	29 November, 2023
REPORT TITLE:	The Council's Indemnities Policy
PURPOSE OF THE REPORT:	To Review and Endorse the Existing Policy
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1. INTRODUCTION

The Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006 ('the Order') permits local authorities to offer indemnities (and insurance) to members and officers when discharging the duties of their respective roles.

The powers granted by the Order were adopted by this Council in 2011 when it resolved to offer indemnities to members and officers according to a policy ('the Policy') adopted at the same time.

In 2013 the Policy was amended to include a recommendation by the Welsh Government that any indemnity granted under the Order to an elected member to defend a claim of breach of the Code of Conduct should be limited to a maximum of twenty thousand pounds.

2. THE CURRENT POLICY

The current Policy was last reviewed in 2021 and is available on the Council's intranet service (MonITor and the Policy Portal). A copy of the current Policy is attached.

Recently a number of elected members have asked about the Policy having seen references to it and to the Indemnities Sub-Committee (which appears on the list of Committees in the periodic reports to full Council on political balance).

The opportunity is therefore taken to formally report on the Policy to this Committee as it is relevant to the Committee's terms of reference as it relates to a resource made available to elected members to discharge their democratic function.

3. THE OPERATION OF THE POLICY

The Council established an Indemnities Sub-Committee to determine any applications made for an indemnity in accordance with the Policy. Very few applications have been made and none have been made in recent years. Even before the Welsh Government requested a cap for any indemnity granted, the Sub-Committee would consider imposing a cap of its own on the amount of any indemnity granted.

The Policy follows closely the terms of the Order granting the right to give indemnities. Most matters that could be covered by indemnities are already covered by insurance that the Council has in place. Most actions by officers and members carrying out their official functions on behalf of the Council are therefore covered by insurance so that an additional, specific indemnity is not also required.

The Council has insurance cover for elected members and officers if action is taken against them as named individuals as opposed to in the name of the Council itself. It is necessary that the actions complained of arise from within the respective authority of elected members and officers of the Council. The insurance for defamation proceedings brought against elected members requires a contribution of 10% towards any costs or damages awarded.

The insurance cover is, of course, offered subject to more detailed terms and conditions and, ultimately, whether any individual matter will be the subject of cover is a decision for the Council's insurer.

The one area where there is no insurance cover, and which does fall within the scope of the Order and the Policy, is the power to offer an indemnity for the costs of an elected member to defend any claim brought against them for breach of the Council's Code of Conduct.

The Policy provides a broad discretion for the Sub-Committee to grant an indemnity in cases of allegation of breach of the Code. But the Policy also gives to the Sub-Committee an indication of and guidance on both matters to be borne in mind and of possible conditions and limitations to impose on any such indemnity.

In cases where an elected member is found to have breached the Code and is subject to a penalty of a suspension or disqualification, then the law requires that any indemnity granted must be repaid. Where the penalty imposed is less severe than a suspension then the requirement to repay depends on a decision by the Council's Standards Committee.

The Policy is next due for a formal review in early 2024, and officers also take this opportunity to canvass the views of this Committee on any issue they believe may be pertinent for that review to consider.

4. RECOMMENDATION

As the Policy is one adopted by full Council any substantive changes to the Policy will have to be made by it. However, minor changes to the Policy (such as re-wording or explanation) may be made by the Monitoring Officer under delegated powers.

Subject to the above, the Democratic Services Committee is asked to:

- (a) Note the Policy and its purpose to implement the powers granted to the Council by the Order;

(b) Consider whether they require the next review of the Policy to address any specific matter.

Isle of Anglesey County Council

INDEMNITIES POLICY FOR MEMBERS AND OFFICERS

Version 1.2 (January 2021)

About this policy

- The Council has a discretion to grant indemnities for legal costs, to members and/or officers, in some circumstances
- Any application must fulfil the procedural requirements set out in the policy
- Any application received, which includes the information required under the policy, shall be decided by the Indemnities Sub-Committee, which is a sub-committee of the full council
- The sub-committee will usually meet in private. The policy sets out the process to be followed at the hearing
- The policy sets out the restrictions which may be applied to any indemnity granted, the circumstances in which an indemnity may be granted, and any provisions for repayment subject to the conclusion of the proceedings

Revision history

Version	Date	Summary of changes
1.0	5 March 2013	
1.1	January 2018	None required
1.2	January 2021	Changes to job title

Date of next review	
This policy will be reviewed in:	January 2024
The review will be undertaken by:	Monitoring Officer

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We are happy to provide this policy in alternative formats on request. Please use the above contact details.

Mae'r ddogfen yma ar gael yn y
Gymraeg.

This document is available in Welsh.

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 authorising 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 Function (Council Business)/Monitoring Officer
 - 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 whom 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 Function (Council Business)/Monitoring Officer) 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/she 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 Function (Council Business)/Monitoring Officer 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/her representative shall be allowed to make a short presentation in support of the Application,
 - 3.5.3 Members (or officers) may ask questions of the Applicant or the representative,
 - 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/her representative shall receive written notice of the decision made as soon as is reasonably practicable.
- 3.6 Provided that the Sub-Committee is 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/her 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 Director of Function (Council Business)/Monitoring Officer 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 Function (Council Business/Monitoring Officer) 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 Executive), Chief Finance Officer (S151 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 members)

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 acted, or failed, to act.

B. Repayment

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 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 to properly respond to allegations of personal liability;
- (ii) The Council will allow legal representation for a member or officer separately from the Council's own legal advisors (and/or the Council's insurer's legal advisors) 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/her power at the time when that act or omission took place, or
 - (b) Where the action or failure to act constituted a criminal offence.