



## STANDARDS COMMITTEE

<b>Date of Meeting</b>	13 January 2025
<b>Report Subject</b>	Review of the Indemnity Policy for Members relating to Code of Conduct proceedings
<b>Report Author</b>	Legal Services Manager

### **EXECUTIVE SUMMARY**

Under the Council's constitution it is a function of the Standards Committee to determine requests for representation in code of conduct proceedings under the Council's Indemnity policy. It is function of the Council to set the scheme however the Standards Committee may make recommendations in this regard. The Monitoring Officer received a general enquiry from a member concerning the Council's Indemnity for members and officers and it is considered that the provisions of the scheme which concern code of conduct cases should be reviewed to ensure the scheme remains clear and provides an appropriate level of support to members.

### **RECOMMENDATIONS**

1	To consider the provisions of the current Indemnity for members and officers in the context of code of conduct proceedings, in particular, whether the Indemnity is clear and appropriate and to make recommendations and / or consider whether further information is needed before doing so.
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### **REPORT DETAILS**

<b>1.00</b>	<b>BACKGROUND</b>
1.01	The Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006 allows local authorities to provide indemnities to any of its members or officers in certain prescribed circumstances. In place of, or in addition to,

	<p>an indemnity the Order also permits the provision an indemnity by securing insurance. Following the 2006 Order coming into force, on 10 October 2006, the Council adopted a form of indemnity (referred to in this as the Council's Indemnity) as well as securing insurance cover. The Council's Indemnity was amended by the Council on 29 June 2011. The resolution is below, and the current Indemnity is attached to this report at Appendix A (with some recommended changes in red).</p>
1.02	<p>The Council's Indemnity says that  <i>"it extends to proceedings which relate to an allegation against a Member that the Member has breached the Council's code of conduct. Under the Council's constitution it is a function of the Standards Committee to determine requests for representation in proceedings under the Indemnity policy. However, in such cases the indemnity provided shall not exceed the cover provided under the terms of the Insurance taken out by the Authority."</i></p>
1.03	<p>The Council's Indemnity also states  <i>"In the case of code of conduct proceedings or other proceedings where insurance cover has been effected, cover will be limited to that provided under the terms of the insurance policy and the insurance company in question will determine the nature and extent of professional representation."</i></p>
1.04	<p>Alignment to the terms of the Insurance Policy came about a result of changes adopted by the Council to the Council's Indemnity in June 2011. This means that in code cases the Council secures insurance to provide indemnity in place of an indemnity from the Council. The Council also resolved to arrange insurance cover only for those members who request it and to recover the cost from each member on a pro-rata basis. This resolution (reproduced below) was reached because the Labour Party (and possibly other parties) provides cover for its members, and so the Council did not wish to pay for insurance where it was not needed.</p> <p><b><u>RESOLVED:</u></b></p> <p>(a) That Members support the insurance cover offered, as set out in the report, and agree the revised indemnity as set out in Appendix B; and</p> <p>(b) That the Council arranges insurance cover only for those Members who request it and recovers the cost from each Member on a pro-rata basis.</p>
1.04	<p>One effect of this is that some members that have not requested insurance, will not have cover under the policy and therefore will not fall within the scope of the Council's Indemnity, at least in so far as code cases. It appears from the Insurance Schedule at Appendix 2 that 17 members have requested cover however the Council's insurance team have confirmed that for the 24/25 cover there were 26 members. There are 29 Labour</p>

councillors. This means that 12 councillors would appear to have no cover under the Council's Indemnity for code cases, although they may hold their own insurance.

1.05 Also, it means that for those members that have requested cover, the level of indemnity is limited to and governed by the Insurance Policy. A copy of the Insurance conditions can be found at Appendix 3 which sets out the "insured incidents" that are covered subject to these conditions. The monetary limit of indemnity for a single claim is £100,000. In 2016, this was £50,000, so has increased since the scheme was last reviewed. It is possible that the cost of representation in complex code cases with multiple Tribunal days could exceed the current limit. However, there have been no claims made under the current policy which might inform whether this limit is causing an issue or not.

## Insured incidents

What is covered	What is not covered Please also refer to the policy exclusions on page 10
<b>Government act legal defence</b>	
<p><b>1</b> We represent the <b>Insured person</b> and negotiate for his/her legal rights throughout an investigation conducted by:</p> <ul style="list-style-type: none"> <li>(a) an Ethical Standards Officer in England under the Local Government Act 2000; or</li> <li>(b) a Local Commissioner in Wales under Part III, Section 69 of the Local Government Act 2000; or</li> <li>(c) a Monitoring Officer following referral of a matter under Sections 69(4) or 71(2) of the Local Government Act 2000.</li> </ul> <p><b>2</b> We will represent the <b>Insured person</b> at a hearing of a Standards Committee convened in connection with <b>1(c)</b> above.</p> <p><b>3</b> We will defend the <b>Insured person</b> at an adjudication conducted by a Case Tribunal or Interim Case Tribunal under Section 76 of the Local Government Act 2000.</p> <p><b>4</b> We will appeal against a decision of a Case Tribunal or Interim Case Tribunal to suspend, partially suspend or disqualify the <b>Insured person</b> as a member of the <b>policyholder</b>.</p>	

1.06 The Order permits the provision an indemnity by securing insurance in place of, or in addition to, an indemnity so the Council could (but doesn't have to) provide a direct indemnity for costs of representation in codes cases in excess of the Insurance Policy to supplement the insurance and provide indemnity to members who are not insured. This is one way that the Council might look to address the potential issues identified above.

1.07 However, providing a direct indemnity for costs of representation in excess of the Insurance Policy or to members who are not insured would expose the Council to potentially significant and uncertain costs (and also potentially

	<p>expose members to recovery proceedings in more cases - see paragraph 1.11 below) and a hybrid scheme may be complex to administer. There may be more cost-effective ways to increase access to indemnity such as increasing the monetary limit under the insurance, promoting the availability of cover to members who have not requested it, or recommending that the Council covers the cost of the insurance and that members “opt out” rather than “opt in”.</p>
1.08	<p>Should members of the Standards Committee wish to consider these options further before making recommendations, consultation could be undertaken with our own members, other Welsh Local Authorities to obtain information on what they provide and with the Council’s insurance team to establish out whether the £100,000 limit could be increased and if so, at what cost, as well as understanding what the cost implication to the Council would be if it pays for cover on a “opt out” basis.</p>
1.09	<p>The Order requires the Council’s Indemnity to include reimbursement provisions in certain circumstances. In summary, these are where:</p> <ul style="list-style-type: none"> <li>a) in the case of criminal proceedings, the member or officer is convicted of a criminal offence and that conviction is not overturned following any appeal.</li> <li>b) in the case of Conduct of Conduct proceedings, a finding is made the member has failed to comply with the code of conduct and that finding is not overturned following any appeal; or there is an admission by the member of that member's failure to comply with the code of conduct; and disciplinary measures (suspension or partial suspension) are taken against the member in question as a consequence.</li> <li>c) in the case of Conduct of Conduct proceedings, a finding is made in those proceedings that the member has failed to comply with the code of conduct and that finding is not overturned following any appeal; or there is an admission by the member of that member's failure to comply with the code of conduct; and the member is censured or no disciplinary measures are taken against that member as a consequence.</li> </ul>
1.10	<p>In the circumstances described by (a) and (b) the member has a legal obligation to reimburse the relevant authority or the insurer (as the case may be). In respect of (c), where there is censure, or no action, the Standards Committee may determine that the member must reimburse the relevant authority or the insurer (as the case may be) and as such there is no automatic obligation to reimburse. Members of the Standards Committee may wish to consider whether the Indemnity should be updated to make this clear and suggested wording is included in red in Appendix 1.</p>
1.11	<p>In all circumstances the Order provides that the member must reimburse either the Authority or the insurer is “as the case may be”. The same applies to recovery. Therefore, there is no obligation on a member to reimburse the</p>

	<p>Council for sums expended by the insurer in relation to code of conduct proceedings. Members of the Standards Committee may wish to consider whether the Indemnity could be updated to make this clear by including the wording (“as the case may be”) as shown in red in Appendix 1.</p> <p>Given that the Council’s Indemnity is currently aligned to and limited by the Insurance Policy there will not likely be any circumstances where the Council has expended sums providing an indemnity to a member in code proceedings so the Member’s duty to reimburse the Council in these circumstances will not likely arise.</p> <p>The current Insurer, DAS, have stated in correspondence to the Monitoring Officer that they would not normally take action to recover monies from a policyholder in respect of costs and refer to the conditions section of the Insurance Policy. As such, an indemnity based on insurance may reduce the circumstances in which members are required to reimburse costs.</p>
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<b>2.00</b>	<b>RESOURCE IMPLICATIONS</b>
2.01	N/A

<b>3.00</b>	<b>CONSULTATIONS REQUIRED / CARRIED OUT</b>
3.01	N/A

<b>4.00</b>	<b>RISK MANAGEMENT</b>
4.01	N/A

<b>5.00</b>	<b>APPENDICES</b>
5.01	<p>Appendix 1 – the Indemnity (with suggestions in red)</p> <p>Appendix 2 – DAS insurance schedule</p> <p>Appendix 3 – insurance conditions</p>

<b>6.00</b>	<b>LIST OF ACCESSIBLE BACKGROUND DOCUMENTS</b>
6.01	<p>Indemnity Report dated 29 June 2011</p> <p>Minutes of Flintshire County Council 29 June 2011</p> <p><b>Contact Officer:</b> Matthew Powell</p> <p><b>Telephone:</b> 01352 702354</p>

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<b>7.00</b>	<b>GLOSSARY OF TERMS</b>
7.01	<p><b>Council's Indemnity</b> – the Council's form of Indemnity to members and officers</p> <p><b>Insurance Policy</b> – the insurance that covers code proceedings</p> <p><b>Member</b> – a member of Flintshire County Council</p> <p><b>The Order</b> - The Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006</p>

## **FORM OF INDEMNITY TO MEMBERS AND OFFICERS**

1. This indemnity is made under S.101 of the Local Government Act 2000 and the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, and is supplementary to the provisions of S.265 of the Public Health Act 1875 as extended by S.39 and S.44(1) the Local Government (Miscellaneous Provisions) Act 1976.

2. This Indemnity will not extend to loss or damage directly or indirectly caused by or arising from any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of any Member or Officer or any act or failure to act by the Member or Officer otherwise than in his/her capacity as a Member or Officer of the Authority.

3. This Indemnity extends to proceedings which relate to an allegation against a Member that the Member has breached the Council's code of conduct. However, in such cases the indemnity provided shall not exceed the cover provided under the terms of the Indemnity Insurance Policy taken out by the Authority.

4. Subject to paragraphs 1 to 3 above, Flintshire County Council indemnifies each Member and Officer of the Authority against any claim liability loss and/or damage in relation to any action or failure to act by any 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 as a consequence of any function being exercised by that Member or Officer

(i) at the request of or with the approval of the Authority; or

(ii) for the purposes of the Authority

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.

(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 members of the Council's Standards Committee and any other co-opted members of committees).

5. 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 authority

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 authority, 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 the sums expended by the Authority or its insurers in relation to those proceedings must be reimbursed to the Authority or to the insurers (as the case may be);
- (ii) where the proceedings relate to an allegation against a Member of a breach of the code of conduct, 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 censured, suspended, partially suspended or disqualified, then the sums expended by the Authority or its insurer must be reimbursed to the Authority or its insurers (as the case may be)
- (iii) where the proceedings relate to an allegation against a Member of a breach of the code of conduct, 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 in question is censured or no disciplinary measures are taken against that member the Authority's Standards Committee may determine that the member must reimburse the Authority or the insurer (as the case may be)

## C. Level of representation

In the case of code of conduct proceedings or other proceedings where insurance cover has been effected, cover will be limited to that provided under the terms of the insurance policy and the insurance company in question will determine the nature and extent of professional representation.

## D. 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.

#### E. General Principles

(i) The Authority will provide the Member or Officer with reasonable and proportionate access to Authority employees and Authority resources and facilities to enable the individual "Member or" Officer to properly respond to allegations of personal liability being advanced;

(ii) The Authority will allow legal representation for a Member or Officer separately from the Authority's own legal advisers (and/or the authority's insurers' legal advisers) where the interests of the Authority and the individual Officer may conflict or in such other circumstances where it is agreed between the Authority and the individual Officer that separate legal representation is appropriate.

(iii) the Authority will not seek to recover from an individual Member or Officer any losses incurred by the authority 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 powers at the time when that act or omission took place, or

(b) where the action or failure to act constituted a criminal offence, or

(c) in the circumstances set out in section B. (ii) above.