

POLICY



Date adopted: 30/05/2017
File no: 867909-1
Minute number: 148/2017

Policy title: **INSURANCE AND INDEMNITY FOR COUNCILLORS**

Directorate: ORGANISATIONAL SERVICES

Branch: ADMINISTRATION

Policy objective: To provide guidelines for the circumstances in which the Council will:

- (a) under section 107 of the *Local Government Act 2009* enter into a contract of insurance for a councillor for specified risks where the councillor is performing a councillor's role under the *Local Government Act 2009*
- (b) pay the insurance policy excess for a claim made against a councillor where the councillor is performing a councillor's role under the *Local Government Act 2009*, if the claim is accepted by the claims manager
- (c) indemnify or reimburse a councillor for costs incurred through injury, investigation, hearings or legal proceedings where the councillor is performing a councillor's role under the *Local Government Act 2009*.

Policy scope:

Council will arrange indemnity for all claims including the cost of defending or settling them, in cases where the Councillor concerned has diligently and conscientiously endeavoured to carry out assigned duties. This policy applies to former Councillors of the Council for acts performed during their Council term.

Definitions:

TERM	DEFINITION
Councillor	Includes the Mayor.
Claims manager	Means the entity or person insuring or managing a circumstance giving rise to a potential claim or a claim in order to mitigate the risk involved, which may be the following: (a) the Council (b) the Council's insurer (c) a person appointed by the Council or the Council's insurer.
Executive Leadership Team	For the purposes of this policy where reference is made to "head of directorate" it shall refer to the Chief Executive Officer and directors.

Policy statement:**1. Contracts of insurance**

- (a) The Council will enter into a contract of insurance under section 107 of the *Local Government Act 2009* for a councillor to cover the following risks, where the councillor is performing a councillor's role under the *Local Government Act 2009*:
- (i) Public liability - a claim for an alleged negligent act or omission which occurred or was allowed to occur which results in a personal injury or theft, or loss or injury to property.
 - (ii) Professional indemnity - a claim for an alleged negligent act or breach of duty arising from an act, error or omission in the performance of a professional service.
 - (iii) Councillor's and officer's liability - expenses including legal defence costs and related fees incurred by a councillor to defend themselves against a claim made against them in a personal capacity for an alleged wrongful act.
 - (iv) Statutory liability - any penalty and legal defence costs payable by a councillor to any statutory authority under an Act for a wrongful statutory breach where not deliberate.
 - (v) Domestic and international travel insurance - expenses for approved domestic and international travel in the course of performing a councillor's role under the *Local Government Act 2009*.
 - (vi) Use of motor vehicles - a claim for loss or damage to a motor vehicle belonging to or leased by the Council.
 - (vii) Personal accident - a claim for an insured event, including temporary total disablement caused by injury, where the event giving rise to the claim occurred whilst a councillor was engaged in the course of their duties of their office as defined in the *Local Government Act 2009* including whilst travelling to and from duties.
 - (viii) Group salary continuance - a claim for loss of earnings as a result of an accident or sickness which is 24 hours a day on a worldwide basis.

2. Payment of policy excess

The Council will pay the insurance policy excess for a claim made against a councillor where the councillor is performing in good faith a councillor's role under the *Local Government Act 2009*, if the relevant claims manager confirms in writing its determination that the matter should be managed by the claims manager in order to mitigate the risk involved.

3. Indemnification for loss or damage

The Council will indemnify a councillor against any loss or damage suffered by the councillor where the councillor is performing in good faith a councillor's role under the *Local Government Act 2009*, if in the opinion of the claims manager acting reasonably the loss or damage is not directly or indirectly in respect of the following:

- (a) a criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the councillor which has been established beyond a reasonable doubt
- (b) an act or omission by the councillor otherwise than in performing a councillor's role under the *Local Government Act 2009*
- (c) misconduct or inappropriate conduct under the *Local Government Act 2009* or official misconduct under the *Crime and Corruption Act 2001*, which has been established beyond a reasonable doubt.

4. Legal assistance

The Council will indemnify or reimburse the reasonable legal expenses of a councillor where the councillor is:

- (a) defending an action or allegation with the potential to result in an action arising from the performance in good faith of a councillor's role under the *Local Government Act 2009* and not merely from something that the councillor has done during their term as a councillor; or
- (b) defending an action or allegation with the potential to result in an action for defamation, if the statement complained of was made in good faith in performing a councillor's role under the *Local Government Act 2009* but does not extend to any advice or representation of any claim or threatened claim in defamation to be brought by the councillor; or
- (c) involved in a proceeding before an investigative body as a party, witness or in another capacity if the subject of the proceeding or potential proceeding arises from the performance in good faith of a councillor's role under the *Local Government Act 2009*.

5. Claims against a councillor

The Council may by resolution require repayment of an amount indemnified or reimbursed to a councillor for reasonable legal expenses where in the case of:

- (a) an action or allegation with the potential to result in an action for defamation, the claims manager is of the opinion acting reasonably that it is more likely than not that defamation has occurred; or
- (b) a proceeding or a potential proceeding involving an investigative body, the investigative body makes an adverse finding against the councillor.

The Council will not subject a councillor to a claim for the following:

- (c) a contribution where the Council or its insurer pays any money in settlement of a claim if the claim has arisen as a result of the councillor performing in good faith a councillor's role under the *Local Government Act 2009*
- (d) reimbursement of all or part of any settlement or of any award for damages or costs paid by the Council if the claim has arisen as a result of the councillor performing in good faith a councillor's role under the *Local Government Act 2009*.

Policy administrative procedure:

The following procedure is to be undertaken for this policy:

- (a) A councillor is to, as soon as reasonably practicable, notify to the head of directorate in the form determined by the Director of Organisational Services of the following:
 - (i) a matter to which this policy may apply
 - (ii) the facts and circumstances in respect of that matter.
- (b) A councillor is not to admit liability, negotiate or attempt to negotiate a settlement of a matter to which this policy may apply without the approval of the Director of Organisational Services which in respect of a claim to which a contract of insurance applies is to have regard to the advice of:
 - (i) the relevant claims manager
 - (ii) the relevant claims manager is the Council, the advice of the Council's legal representative.

- (c) The Director of Organisational Services is to:
- (i) determine the relevant claims manager
 - (ii) notify the relevant claims manager of any matter to which this policy may apply.
- (d) The relevant claims manager is to:
- (i) ensure that the relevant processes of the claims manager, such as information-gathering, monitoring and reporting of circumstances, and obtaining consent prior to incurring costs, are ascertained and followed
 - (ii) determine in writing or by conduct whether the matter should be managed by the claims manager in order to mitigate the risk involved
 - (iii) determine any other matter stated in this policy.
- (e) A councillor is to:
- (i) if the relevant claims manager is not the Council, allow the claims manager to take over and instruct in the name of the councillor the defence of any proceeding brought against the councillor and to appoint a particular legal representative to act for the councillor
 - (ii) if the relevant claims manager is the Council, consult with and keep regularly advised the Director of Organisational Services and the Council's legal representative where considered necessary by the Director of Organisational Services, in relation to the defence of a proceeding including the appointment of a particular legal representative to act for the councillor.
- (f) A councillor's entitlement to reimbursement under this policy, which may occur from time to time upon the presentation of a receipt or invoice, is subject to the following:
- (i) the relevant claims manager confirming in writing its determination that the matter should be managed by the claims manager in order to mitigate the risk involved
 - (ii) the amount of reimbursement is to only extend to cover actual loss and expenses incurred and evidenced by the councillor to the satisfaction of the Director of Organisational Services and may include an amount paid in settlement of a legal proceeding for a claim
 - (iii) the amount of reimbursement is to be reduced by the amount of any moneys which may be or is recouped by the councillor
 - (iv) the amount of reimbursement is to be limited to the extent that only fees charged at a rate equivalent to the hourly rate then being charged by the Council's solicitors will be paid and any portion of expenses representing any hourly charge higher than the hourly charge of the Council's solicitors will not be reimbursed
 - (v) there is to be no reimbursement in any circumstance for the costs of any advice or representation for any claim or threatened claim in defamation to be brought by a councillor or if the councillor is a plaintiff in any action.

Related policies/legislation/other documents:

DOC ID	DOCUMENT TYPE	DOCUMENT NAME
-	Regulation	Section 250 <i>Local Government Regulation 2012</i>