

# POLICY



**Date adopted:** 30/05/2017  
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**Policy title:** **INSURANCE AND INDEMNITY FOR EMPLOYEES**

**Directorate:** ORGANISATIONAL SERVICES

**Branch:** ADMINISTRATION

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

1. under section 107 of the *Local Government Act 2009* enter into a contract of insurance for public liability insurance and professional indemnity insurance
2. under section 48 of the *Workers' Compensation and Rehabilitation Act 2003* enter into a contract of insurance for accident insurance to cover an employee
3. pay the insurance policy excess for claims made where an employee is performing an employee's role under their contract of engagement and their responsibilities under the *Local Government Act 2009*, if the claim is accepted by the Council's insurers;
4. indemnify or reimburse an employee for costs incurred through injury, investigation, hearings or legal proceedings where an employee is performing their duties 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 Council employee concerned has diligently and conscientiously endeavoured to carry out assigned duties. This policy applies to former employees of the Council for acts performed during their employment with the Council.

**Definitions:**

TERM	DEFINITION
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.

TERM	DEFINITION
Director	For the purposes of this policy where reference is made to "director" it shall refer to the Director of Organisational Services.

**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* and section 48 of the *Workers' Compensation and Rehabilitation Act 2003* for an employee to cover the following risks, where the employee is performing the employee's role under their contract of engagement and their responsibilities 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 an employee 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 an employee to any statutory authority under an Act for a wrongful statutory breach where not deliberate.
  - (v) Worker's compensation accident insurance - a claim for compensation or damages for the personal injury or death of a worker.
  - (vi) Domestic and international travel insurance - expenses for approved domestic and international travel in the course of performing the employee's role under their contract of engagement and their responsibilities under the *Local Government Act 2009*.
  - (vii) Use of motor vehicles - a claim for loss or damage to a motor vehicle belonging to or leased by the Council.
  - (viii) Personal accident and voluntary workers - a claim for an insured event, including temporary total disablement caused by injury, where the event giving rise to the claim occurred whilst an employee 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.

**2. Payment of policy excess**

The Council will pay the insurance policy excess for a claim made against an employee where the employee is performing in good faith an employee's role under their contract of engagement and their responsibilities 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 an employee against any loss or damage suffered by an employee where the employee is performing in good faith an employee's role under their contract of engagement and their responsibilities 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 employee which has been established beyond a reasonable doubt
- (b) an act or omission by the employee otherwise than in performing an employee's role under their contract of engagement and their responsibilities under the *Local Government Act 2009*
- (c) conduct of the employee which warrants disciplinary action for dismissal of the employee being taken by the Chief Executive Officer under the *Local Government Act 2009*.

#### 4. **Legal assistance**

The Council will indemnify or reimburse the reasonable legal expenses of an employee where an employee is:

- (a) defending an action or allegation with the potential to result in an action arising from the performance in good faith of an employee's role under their contract of engagement and their responsibilities under the *Local Government Act 2009* and not merely from something that the employee has done during their engagement as an employee; 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 an employee's role under their contract of engagement and their responsibilities 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 employee; or
- (c) involved in a proceeding or a potential proceeding before an investigative body as a party, witness or in another capacity the subject of the proceeding or potential proceeding arises from the performance in good faith of an employee's role under their contract of engagement and their responsibilities under the *Local Government Act 2009*.

#### 5. **Claims against an employee**

- (a) The Council may by resolution require repayment of an amount indemnified or reimbursed to an employee for reasonable legal expenses in the case of:
  - (i) 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
  - (ii) a proceeding or a potential proceeding involving an investigative body, the investigative body makes an adverse finding against the employee.
- (b) The Council will not subject an employee to a claim for the following:
  - (i) 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 employee performing in good faith an employee's role under their contract of engagement and their responsibilities under the *Local Government Act 2009*
  - (ii) 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 employee performing in good faith an employee's role under their contract of engagement and their responsibilities under the *Local Government Act 2009*.

**Policy administrative procedure:**

1. The following procedure is to be undertaken for this policy:
  - (a) If the employee involved in the matter is the Director of Organisational Services, an acting director is to be appointed to manage the matter.
2. An employee is to, as soon as reasonably practicable, notify to the director:
  - (b) a matter to which this policy may apply
  - (c) the facts and circumstances in respect of that matter.
3. An employee 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 which in respect of a claim to which a contract of insurance applies is to have regard to the advice of:
  - (a) the relevant claims manager
  - (b) if the relevant claims manager is the Council, the advice of the Council's legal representative.
4. The director is to:
  - (a) determine the relevant claims manager
  - (b) notify the relevant claims manager of any matter to which this policy may apply
  - (c) ensure that the relevant processes of the claims manager are ascertained and followed, such as information-gathering, monitoring and reporting of circumstances, and obtaining consent prior to incurring costs.
5. The relevant claims manager is to:
  - (a) determine in writing or by conduct whether the matter should be managed by the claims manager in order to mitigate the risk involved
  - (b) determine any other matter stated in this policy.
6. An employee is to allow the Council or its insurers to take over and instruct in the name of the employee the defence of any proceeding brought against the employee.
7. An employee'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:
  - (a) the claims manager confirming in writing its determination that the matter should be managed by the claims manager in order to mitigate the risk involved
  - (b) the amount of reimbursement is to only extend to cover actual loss and expenses incurred and evidenced by the employee to the satisfaction of the director and may include an amount paid in settlement of a legal proceeding for a claim
  - (c) the amount of reimbursement is to be reduced by the amount of any moneys which may be or is recouped by the employee
  - (d) the amount of reimbursement is to be limited to the extent that:
    - (i) professional 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
    - (ii) disbursements charged, including for engaging barristers and expert witnesses, will be reimbursed to the extent that the charges achieve parity of representation with the charges incurred by the Council if the Council is a party to a proceeding or the plaintiff if the Council is not a party to the proceeding

- (e) 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 an employee or if the employee is a plaintiff in any action.

**Related policies/legislation/other documents:**

<b>DOC ID</b>	<b>DOCUMENT TYPE</b>	<b>DOCUMENT NAME</b>