

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO STANDARDS COMMITTEE

23RD FEBRUARY 2007

**REPORT OF THE DIRECTOR OF LEGAL & DEMOCRATIC SERVICES AND
THE MONITORING OFFICER**

Providing Indemnities to Members and Officers

1. PURPOSE OF REPORT

To inform Members that a report seeking Cabinet's approval of the provision of an Indemnity to Members and Officers which replaces the previous form of indemnity for employees adopted by the Authority in 1997, is imminent.

2. CONECTION TO CORPORATE IMPROVEMENT PLAN

The ability of members and officers to take decisions and deliver services on behalf of the council without the risk of personal liabilities where they have acted properly, is fundamental to the effective operation of the authority, to process the Corporate Improvement Plan and all Corporate Priorities.

3. BACKGROUND

Councils have long been able to give indemnities to their elected members and their officers but the changing environment of delivery of services, particularly by way of partnership working, have shown up weaknesses in the existing legislation. The Local Government Act 2000 allowed the National Assembly for Wales to make regulations giving additional powers to local authorities to grant indemnities in certain defined circumstances; The Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006 has only just been made and this report explains what indemnities can be given in the light of these regulations, what are the restrictions that apply, and goes on to suggest a form of indemnity which could be accepted by members.

4. CURRENT SITUATION / PROPOSAL

- 4.1 The new rules apply to county/county borough councils, community/town councils, fire/fire and rescue authorities and national park authorities. Police authorities in Wales are subject to separate regulations made in England, but those regulations are substantially the same as the

regulations applying to other public authorities in Wales.

4.2 Powers for indemnities

- (a) Section 265 Public Health Act 1875 (extended by the Local Government (Miscellaneous Provisions) Act 1976.

This Act provides a protection from liability, and an indemnity, for members or officers of local authorities acting under the direction of the authority acting under any Act of Parliament. The protection also applies to a person appointed as member of a joint committee of two or more local authorities.

- (b) Section 111 Local Government Act 1972 which provides powers to a local authority to do anything that is “incidental or conducive to the discharge of a function of the authority”.

Over the past 10 years or so there have been a number of court decisions which have reduced the circumstances in which an indemnity can be given, under the above, in particular the 1972 Local Government Act. In particular the courts have prevented the 1972 Act power being used where there was negligent conduct or the power or the activity was outside the powers of the local authority (“ultra vires” decisions). These decisions came from a number of high profile cases where limited companies set up by local authorities to carry out specific projects failed, incurring significant debts. In those cases the creditors pursued the individual directors and the local authorities themselves for the debts of the limited company.

Although there has not been a ruling either for or against these, new methods of working involving partnerships, joint venture companies and charitable trusts may not be covered by the existing legislation and so the new regulations under the Local Government Act 2000 have been long awaited and are very welcome.

- (c) Indemnities under Local Government Act 2000 – The Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006.

The Assembly regulations help to remove the doubt about whether indemnities can be used for new methods of working such as partnerships but the guidance from the National Assembly stresses that the new powers supplement - they do not replace - the existing powers of indemnity, which are described above.

The new powers allow this Council to grant indemnity, at its discretion to members (including independent and co-opted members on Standards Committees) and officers.

It is a matter for each council to determine which members and officers should be granted indemnity and while it is a matter for each council to decide how widely to give the indemnities, the view of the ACSeS members consulted in preparing this report is that:-

- (i) for consistency the indemnities ought as far as possible to be the same for all authorities;
- (ii) so that officers and members can carry out their duties without fear of any personal liability, the indemnities should be as wide as possible.

The suggested form of indemnity appears as Appendix 1 to this report. It is important to stress that it does not extend to members or officers acting in a personal capacity, or where their personal activity has brought the Council into disrepute.

4.3 Limitations

The current regulations set out limitations on giving indemnities, and these are reflected in the form of indemnity at Appendix 1:-

- (i) indemnities do not extend to liabilities arising from any action, or failure to act which constitutes a criminal offence;
- (ii) the indemnity will apply where the member or officer when taking the action which gave rise to the liability, acted honestly and in good faith. If the action was knowingly reckless then the indemnity will not apply;
- (iii) indemnity cannot be given to cover the cost of members or officers taking legal action for defamation. Indemnities can of course be given to individuals in order to defend any defamation proceedings taken against that individual in relation to their official functions;
- (iv) if any money is paid under an indemnity allowing a member to answer allegations of a breach of the code of conduct, that sum is repayable if there is a finding against the councillor of a breach of the code of conduct and the councillor is suspended, partially suspended or disqualified as a result. Where there is a finding of a breach of the code of conduct but the penalty falls short of a suspension, partial suspension or disqualification the regulations

provide that the Council's Standards Committee will decide whether the costs involved in providing the indemnity should be repayable by the councillor;

- (v) in relation to criminal proceedings indemnities can be given to a member or officer to defend criminal proceedings. That sum is repayable in the event of a conviction for that offence.

5. EFFECT UPON POLICY FRAMEWORK & PROCEDURE RULES

As with the Corporate Improvement Plan and Other Priorities, the ability of members and officers to take decisions and deliver services on behalf of the council without the risk of personal liabilities where they have acted properly, is fundamental to the effective operation of the Policy Framework and Procedure Rules.

6. LEGAL IMPLICATIONS

This report, and the suggested indemnity, have been prepared in consultation with the Association of Council Secretaries and Solicitors in Wales (ACSeS) and so what is being suggested in this report, is likely to be used by authorities across Wales. The provision of an indemnity impacts upon the ability of the authority to carry out its functions.

7. FINANCIAL IMPLICATIONS

Much of the indemnity described in Appendix 1 will already be covered by the Council's own insurance policy, which bears a policy excess of £104,000, but there is potentially some additional expenditure on behalf of the authority in providing an indemnity where there is no insurance cover and within the deductible. Each case will depend on its own circumstances and so it is difficult to give any accurate forecast of what those sums might be. Clearly an authority could be exposed to significant expenditure were the member or officer involved allowed free rein in incurring "defence costs" and so the indemnity allows the authority through its Standards Committee to pre-approve the level of expenditure which may be incurred by a member or officer, always ensuring however that the level of protection afforded to the officer is not compromised by limiting the nature of that representation. This is detailed in the appendix to this report.

8. RECOMMENDATIONS

That members note the proposed provision of an indemnity in the form contained in Appendix 1 to replace the previous form of indemnity for employees.

P A Jolley
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Background Papers:

The Local Government Act 2000

The Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006.

Joint Report of the Chief Executive and Director of Corporate Services 2/7/1997
– Professional Indemnity of Employees.

Appendices:

Appendix 1 Form of Indemnity.