

PLYMOUTH CITY COUNCIL

INDEMNITY SCHEME FOR MEMBERS AND OFFICERS

I. Indemnity

I.1 Plymouth City Council ("the Council") will indemnify ("the indemnity") each Member (or co-opted Member) and Officer of the Council against any costs, claim, liability, loss and/or damage in relation to any action of, or failure to act by a Member or officer which :

I.1.1 is authorised by the Council; or

I.1.2 forms part of, or arises from, any powers or duties placed on that member or officer as a consequence of any function being exercised by him/her (whether or not when exercising that function he/she does so in the capacity of member or officer of the Council) and the function is being exercised at the request of, or with the approval of the Council, or for the purposes of the Council.

I.2 The Council undertakes not to sue (or join in an action as co-defendant) a member or officer for any loss or damage or legal or other expenses in respect of any negligent act or failure to act by him/her in his/her capacity as a member or officer of the Council, subject to the following exceptions :

I.2.1 Any criminal offence, fraud or other deliberate wrongdoing or reckless act on the part of the member or officer; or

I.2.2 Any act or failure to act by the member or officer otherwise than in his/her capacity as a member or officer of the Council.

I.2.3 Liability in respect of losses certified by the Council's external auditors as caused by wilful misconduct or where unlawful expenditure has been knowingly or recklessly authorised.

I.2.4 Circumstances in which the member or officer has not acted in good faith

I.3 The indemnity will also, subject to paragraph 5, be provided in relation to :

I.3.1 the defence of criminal proceedings arising in relation to the undertaking of functions (excluding motoring offences) brought against the member or officer.

I.3.2 any civil liability arising as a consequence of any act or failure to act which also constitutes a criminal offence.

I.3.3 the defence of any proceedings pursuant to Part 3 of the Local Government Act 2000 relating to alleged failure to comply with the Members Code of Conduct ("Part 3 Proceedings").

1.4 No indemnity is provided in relation to the pursuit by a member or officer of any claim for alleged defamation of that member or officer but may be provided in relation to the defence by that member or officer of any allegation of defamation made against him/her.

1.5 This indemnity will not apply if a member or officer, without the express permission of the Council or of the appropriate officer of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the indemnity.

2. Ultra Vires Acts

2.1 Where the act or failure to act falls outside the powers of the Council, the member or officer :

2.1.1 must have believed that the act or failure to act in question was within the powers of the Council;

2.2.2 where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the Council, or any statement that certain steps have been taken or requirements fulfilled, must have believed that the contents of that statement were true; and

it must be reasonable for the member or officer to hold that belief at the time when he/she acted or failed to act.

2.2 The indemnity may apply to an act or omission which is subsequently found to be beyond the powers of the member or officer in question, but only to the extent that the member or officer reasonably believed that the act or omission was within his/her powers at the time when he/she acted.

3. Acting as a Member or Officer on Outside Bodies

3.1 Where the member or officer is acting on behalf of another organisation then the activities covered will be deemed to have arisen in his/her capacity as a "member or officer of the Council" where :

3.1.1 the appointment to that outside body was made by the Council; or

3.2.2 the nomination to that outside body was made by the Council; or

3.2.3 such appointment to that outside body was specifically approved for the purpose of these indemnities.

4. Repayment of and Approval of Legal Costs Representation

4.1 Where a member or officer seeks the indemnity in relation to the defence of any criminal proceedings, the defence of an action for defamation or the defence of any Part 3 Proceedings, the indemnity shall be subject to the terms that if :-

4.1.2 in the case of criminal proceedings, the member or officer in question is

convicted of a criminal offence and that conviction is not overturned following any appeal, or

4.1.3 in the case of civil proceedings for defamation the member or officer in question is found to have acted out of malice, or

4.1.4 in the case of Part 3 Proceedings:

- a) a finding is made that the member in question has failed to comply with the Code of Conduct, and that finding is not overturned on any appeal, or
- b) the member admits that he/she has failed to comply with the Code of Conduct

then the member or officer shall be required to reimburse the Council for any sums expended by the Council in relation to those proceedings pursuant to this indemnity.

4.2 Where a member or officer is obliged to reimburse the Council pursuant to the terms of the indemnity, those sums shall be recoverable by the Council as a civil debt.

4.3 Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in Paragraph 4.1 shall apply as if references to the Council were references to the insurer.

5. Notification of a claim, approval of expenditure etc.

5.1 The indemnity will have no effect if the member or officer fails to:

- 5.1.1** notify the Monitoring Officer as soon as reasonably practicable after the member or officer is aware that a claim might be made,
- 5.1.2** take reasonable steps to mitigate the amount that might otherwise be claimed under the indemnity, or
- 5.1.3** permit appropriate Council officers access to any information or advice, such as legal advice, relevant to the matter and comply with all other requests of the Council in the conduct of the claim.

5.2 The indemnity will not apply if a member or officer, without the express permission of the Council or the Monitoring Officer acting on behalf of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the indemnity.

5.3 The Indemnity will not apply in paragraph 1.3.3 unless and until the Monitoring Officer has received instructions from the Assessment Sub-Committee or the Standards Board for England to undertake a formal investigation into allegations.

6. Insurance

6.1 To assist in discharging the indemnity, the Council may, at its discretion, arrange insurance.

- 6.2** In any case where insurance is available, any member or officer claiming to be indemnified by the Council shall use all reasonable endeavours to abide by any requirements of the insurer and to assist the Council in claiming and securing payment(s) under the insurance policy.

7. Relationship with other insurances

- 7.1** The indemnity shall not apply to the extent that an external body in respect of which the member or officer is carrying out any function at the request of, or for the purposes of the Council, indemnifies or insures such member or officer itself.

- 7.2** The indemnity will not apply in respect of claims falling within the cover provided to members and officers under any insurance policy taken out by the Council or otherwise, or any motor insurance taken out by the member or officer.

8. Disciplinary Action

- 8.1** This indemnity and undertaking are without prejudice to the rights of the Council to take disciplinary action, if appropriate, against an officer in respect of any act or failure to act.

9. Retrospective and future application of indemnity

- 9.1** These indemnities and undertaking shall apply retrospectively to any act or failure to act which may have occurred before the date of this Indemnity Scheme and shall continue to apply after the member or officer has ceased to be a member or officer of the Council as well as during his/her membership of or employment by the Council.