

## **INDEMNITY FOR MEMBERS AND OFFICERS**

1. Dartford Borough Council (the Council) shall indemnify each Member and Officer of the Council against any claim, liability, loss and/or damage in relation to any action of, or failure to act by a Member or Officer which:
  - (a) is authorised by the Council; 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 (whether or not when exercising that function h/she does so in his/her capacity as a Member or Officer of the Council):
    - (i) at the request of, or with the approval of the Council, or
    - (ii) for the purposes of the Council.
2. 'Member' means an elected Member of the Council, a co-opted Member of a committee of the Council and a non-elected independent Member of the Council's Standards Committee.
3. The Managing Director has delegated authority to make decisions on the granting of indemnities.
4. The cost implications of any proposed indemnity shall be considered at the outset and an initial ceiling on the level of indemnity agreed with the Managing Director. Any further funding shall require a decision by the Managing Director. A proposal to refuse further funding shall be at the Managing Director's discretion whose decision shall be final.
5. The indemnity shall only extend to actual loss and expense incurred. The indemnity shall NOT cover any loss or expense for which the Member or Officer can obtain re-imburement from any other source, including insurance whether taken out by the Council, Member or Officer, or by any other person.
6. The indemnity shall apply retrospectively to any act or failure to act which may have occurred before the date of the adoption of this indemnity but that are the subject of proceedings or action in progress at the date this indemnity is adopted by the Council or commencing after that date and shall continue to apply after the Member or Officer has ceased membership or employment of the Council as well as during his/her membership or employment of the Council.
7. The Managing Director reserves the right to determine that in any specific proceedings or case, it would be unreasonable for the Council as

a public body, to indemnify a Member or Officer in the particular circumstances.

8. Where a Member or Officer requests an indemnity, he/she shall provide the Managing Director with such information as he may reasonably require in respect of such proceedings and the likely costs for which the Member or Officer may claim reimbursement under this indemnity.

**9. Restrictions on Indemnities**

The indemnity is subject to the following requirements and exclusions:

**(1) Criminal Offences, 'Part 3 Proceedings', Deliberate Wrongdoing or Recklessness**

(a) To be covered by the indemnity, the action or failure to act of the Member or Officer must not constitute a criminal offence, or be as a result of fraud or other deliberate wrongdoing or recklessness on the part of the Member or Officer, or be a breach of the Member or Officer Code of Conduct.

(b) Subject to para.(2) below, an indemnity may be provided to defend criminal proceedings and allegations of breaches of the Member or Officer Code of Conduct and any civil liability arising as a consequence of any action or failure to act, which also constitutes a criminal offence.

(2) Where a Member or Officer relies upon this indemnity in relation to the defence of either any criminal proceedings, or of any investigation, report, reference, adjudication or any other proceeding pursuant to Part 3 of the Local Government Act 2000 ('Part 3 Proceedings'), this indemnity shall be subject to the terms that:

(i) in the case of criminal proceedings, if the Member or Officer in question is convicted of a criminal offence and that conviction is not overturned following any appeal, and

(ii) in the case of Part 3 Proceedings;

- if a finding is made in those proceedings that the Member in question has failed to comply with the Code of Conduct and that finding is not overturned following any appeal, or

- if the Member admits that he/she has failed to comply with the Member Code of Conduct;

that Member or Officer shall reimburse the Council or the insurer (as the case may be) for any sums expended by the Council or the insurer in relation to those proceedings pursuant to the indemnity.

- (3) Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in paragraph (ii) above, shall apply as if references to the Council were references to the insurer.
  - (4) Where a Member or Officer is obliged to reimburse the Council or an insurer pursuant to the terms of this indemnity, those sums may be recoverable by the Council or the insurer as a civil debt.
  - (5) **Obligation upon the Member or Officer to believe their action to be within the Council's powers or that statements made were true**
    - (1) A Member or Officer relying upon an indemnity must:
      - (a) have believed that the action or failure to act in question was within the powers of the Council; or
      - (b) 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, believed that the contents of that statement were true; and
      - (c) prove that it was reasonable for that Member or Officer to hold that belief at the time when he/she acted or failed to act.
    - (2) This 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 in question was within his powers at the time which he/she acted.
- 10.** This indemnity shall not apply if a Member or Officer, without the express permission of the Council or of the Managing Director, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this indemnity in circumstances which may give rise to liability on the part of the Council.
- 11. Defamation**  
This indemnity shall apply to the defence by a Member or Officer of any allegation of defamation made against him/her, but does not extend to the making/initiating by a Member or Officer of any claim in relation to an alleged defamation of that Member or Officer.

Adopted by the General Assembly of the Council: 23 April 2007:Min.No. 127