

INDEMNITY FOR MEMBERS AND OFFICERS

1. In accordance with the Local Authorities (Indemnities for Members and Officers) Order 2004, subject to the exceptions set out in paras.9, 10 and 11 below, Dartford Borough Council (the Council) indemnifies 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 he/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 [voting] co-opted Member of a committee of the Council and the Independent Person.
3. The Strategic Director (Internal Services) 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 of proceedings or action and an initial ceiling on the level of indemnity agreed with the Strategic Director (Internal Services). Any further funding shall require a decision by the Strategic Director (Internal Services). A proposal to refuse further funding shall be at the Strategic Director (internal Services)'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 or earlier indemnities 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 Strategic Director (Internal Services) reserves the right to determine that in any specific proceedings or action, 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 Strategic Director (Internal Services) 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 and Exclusions on Indemnities**
 - (a) Subject to the following requirements and exclusions, an indemnity may be provided to defend criminal proceedings and any civil liability arising as a consequence of any action or failure to act, which also constitutes a criminal offence.
 - (b) Where a Member or Officer relies upon an indemnity to defend any criminal proceedings, or any other legal proceeding, the indemnity shall be subject to the terms that in the case of criminal proceedings, if the Member or Officer in question is convicted of a criminal offence, 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.
 - (c) No indemnity is given in relation to any action by, or failure to act by, any Member or Officer which:
 - (i) constitutes a criminal offence; or
 - (ii) is the result of fraud or other deliberate wrongdoing or recklessness on the part of the Member or Officer; or
 - (iii) is a breach respectively, of the Member Code of Conduct or Employee Code of Conduct.
 - (d) Where the Council arranges insurance to cover its liability under this indemnity, the requirement to reimburse in para. (b) above, shall apply as if references to the Council were references to the insurer.
 - (e) 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.
 - (f) **Obligation upon the Member or Officer to believe their action to be within the Council's powers or that statements made were true**
 - (i) 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 prove that it was reasonable for him/her to hold that belief at the time when he/she acted or failed to act; or
 - (c) have believed that he/she was acting on reasonable advice of the Officers of the Council and prove that it was reasonable for him/her to hold that belief at the time when he/she acted or failed to act.
 - (ii) 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/her 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 Strategic Director (Internal Services), 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
Amended by the Managing Director [GAC 16 July 2012 Min.No.35]
Amended under Directors' delegated authority – 29 June 2020