

DEED OF INDEMNITY FOR MEMBERS AND OFFICERS

1. SCOPE

- (1) In accordance with the Local Authorities (Indemnities for Members and Officers) Order 2004, Dartford Borough Council (the Council) indemnifies each Member and Officer of the Council against any costs, claims and expenses set out in section 3, subject to the restrictions set out in section 4 and on the terms set out in section 5 of this Deed of Indemnity.
- (2) Notwithstanding any limitation on the powers of the Council, the indemnity is effective to the extent that the Member or Officer reasonably believed at the time at which they acted:
 - (a) 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.

2. DEFINITIONS

In this Deed of Indemnity:

Co-opted Member- has the meaning in section 27(4) of the Localism Act 2011

Independent Member – means a person who is not a councillor, appointed to a committee for their particular experience or expertise

Independent Person – has the meaning in section 28(7) of the Localism Act 2011

LA Proceedings means any investigation, report, reference, or any other proceeding pursuant to section 27(6) of the Localism Act 2011¹

Member means an elected and Co-opted Member and for the purposes of this Deed of Indemnity, include Independent Members and Independent Persons

Officer means any person employed by the Council

Outside Bodies include trusts, companies, charities, school governing bodies, industrial and provident societies and community associations to which Members or Officers are appointed by the Council to serve on the Outside Body as a director, trustee, governor or member (with or without voting powers)

¹ A relevant authority other than a parish council must have in place - (a) arrangements under which allegations can be investigated and (b) arrangements under which decisions on allegations can be made

3. COSTS, CLAIMS AND EXPENSES

- (1) Subject to the restrictions in section 4 of this Deed of Indemnity, the costs, claims and expenses are those, which arise from, or in connection with, any action of, or failure, to act by, the Member or Officer, which:-
 - (a) is or has been 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 them (whether or not when exercising that function they do so in their capacity as a Member or Officer);
 - (i) at the request of, or with the approval of the Council, or
 - (ii) for the purposes of the Council.
- (3) The costs, claims and expenses' implications of any proposed indemnity will be considered at the outset of proceedings or action and an initial ceiling on the level of indemnity agreed with the Chief Officer & Director of Corporate Services or nominee. Any further funding will require a decision by the Chief Officer & Director of Corporate Services or nominee who will consider whether any special circumstances apply to a request for further funding. A proposal to refuse further funding will be at the Chief Officer & Director of Corporate Services or nominee's discretion, whose decision will be final.
- (4) The indemnity will apply retrospectively to any act or failure to act which may have occurred before the date of the adoption of this Deed of Indemnity or earlier indemnities but that are the subject of proceedings or action in progress at the date this Deed of Indemnity is adopted by the Council or commencing after that date and will 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.
- (5) Where a Member or Officer requests an indemnity, they will provide the Chief Officer & Director of Corporate Services or nominee with such information as may be reasonably required and the likely costs for which the Member or Officer may claim reimbursement under this Deed of Indemnity.

4. RESTRICTIONS

- (1) No indemnity is provided 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 that Member or Officer.
- (2) Notwithstanding section (4)(1)(i), the indemnity may be provided in relation to:
 - (i) (subject to section 5 below) the defence of any criminal proceedings brought against the Member or Officer; and
 - (ii) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

(3) This indemnity will 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.

5. TERMS OF INDEMNITY OR INSURANCE

(1) Subject to section (2) below, the terms of the indemnity (including any insurance secured for the Member or Officer) has effect in relation to the defence of:

- (a) criminal proceedings;
- (b) LA Proceedings;
- (c) employee code of conduct proceedings.

(2) The indemnity is provided and any insurance secured, on the terms that in circumstances where (a), (b) or (c) below apply, the Member or Officer will reimburse the Council or the insurer (as the case may be) for any sums expended by the Council or insurer pursuant to the indemnity or insurance. Any sums expended will be recoverable by the Council or the insurer as a civil debt.

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

(b) in the case of **LA Proceedings**:

(i) if a finding is made that the Member has failed to comply with the [Member] Code of Conduct and that finding is not overturned following any appeal, or

(ii) if the Member admits that they have failed to comply with the Code.

(c) in the case of **employee code of conduct proceedings**:

(i) if a finding is made that the Officer has failed to comply with the Code and that finding is not overturned following any appeal; or

(ii) the Officer admits that they have failed to comply with the Code.

(3) The indemnity will only extend to cover actual loss and expense incurred and evidenced by the Member or Officer to the satisfaction of the Chief Officer & Director of Corporate Services or nominee.

(4) The indemnity will not cover any loss or expense in respect of which the Member or Officer can obtain reimbursement from any other source, including any policy of insurance whether taken out by the Council or the Member or Officer or by any other person.

(5) This Deed of Indemnity will not apply if a Member or Officer, without the express permission of the Council or of the Chief Officer & Director of Corporate Services or nominee, 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.

6. INSURANCE

In addition to providing the indemnity, the Council may secure the insurance of its Members and Officers. The following provisos are to be noted:

- (a) insurance cover does not apply to an error committed by a Member independently of Officer advice;
- (b) an insurance claim must be capable of being made against the Council itself. There is therefore no cover where an activity amounts to Members or Officers acting in capacities other than as Members or Officers;
- (c) where the Council arranges insurance to cover its liability under this Deed of Indemnity, the requirement to reimburse the Council in section 5(2) above, will apply as if references to the Council were references to the insurer.

7. OUTSIDE BODIES & JOINT COMMITTEES

- (1) The Council will provide an indemnity where a Member or Officer:
 - (a) acts solely on behalf of the Council, within the terms of reference laid down by the Council and solely in pursuance of the Council's statutory powers;
 - (b) acts solely in an advisory capacity in connection with the Council's functions;
 - (c) occupies an observational role on the board or committee of an Outside Body, representing the Council's interests (excluding in a decision-making capacity);
 - (d) acts on behalf of a joint committee established by two or more local authorities.
- (2) In circumstances where a Member or Officer has been nominated to and is clearly representing or acting solely on behalf of the Outside Body, such nomination is subject to the requirement that the Outside Body must satisfy the Council that appropriate insurance cover is maintained, so as to protect the Member or Officer against personal liability.