



Cabinet

Tuesday, 11 February 2025

Officer and Member Indemnity

Report of the Monitoring Officer and Head of Chief Executive's Department

Cabinet Portfolio Holder for Finance, Transformation and Governance – Councillor D Virdi

1. Purpose of report

- 1.1. This report sets out arrangements for granting of indemnities to officers and Members to cover the risks of claims which may be made against them personally or other losses or liabilities they might incur when representing the Council on outside bodies or when carrying out special roles on behalf of the Council.
- 1.2. The aim for providing the indemnity is that officers and Members should not be deterred from seeking public office or participating in outside bodies or carrying out special roles by the personal liability they might incur while acting on behalf of the Council.

2. Recommendation

It is **RECOMMENDED** that Cabinet approves the grant of an indemnity for officers and Members at Appendix 1 of this report.

3. Reasons for Recommendation

To ensure Members and officers have appropriate protection from personal liability in relation to Council's appointments and positions. Failure to indemnify Members and officers may result in individuals being reluctant to work for or with or be appointed to outside bodies or other external organisations if there is a potential associated personal liability

4. Supporting Information

- 4.1. The Council regularly nominates elected Members and officers to a number of outside bodies, which can include private companies and charitable organisations or trusts. Council Members and officers act as directors, trustees, members of the management committees of outside bodies and/or otherwise play an active role in the affairs of the body in question, often because such bodies' constitutions require the Council to nominate officers or Members to act in such capacities or to ensure there is Council representation on outside bodies.

- 4.2. Those who act as directors, trustees or members of management committee may owe various statutory duties and/or fiduciary responsibilities to the outside body(ies) in question. For example, a company's director owes a duty to the company which he/she is a director, and a trustee has the fiduciary responsibility and liability to use the trust assets according to the provisions of the trust instrument. In certain, very limited circumstances, they may be personally liable for the debts of the bodies on which they serve, or in relation to third party claims brought against those bodies. In the case of a limited company, they may be personally liable for the company's business liabilities and be fined, prosecuted or disqualified as a company director if they do not discharge their directors' responsibilities.
- 4.3. Company directors, trustees or members of the management committee can generally avoid personal liability by being careful to take appropriate professional advice before making decisions and/or by hiring other people to manage some of their responsibilities on a day-to-day basis for example, an accountant may file a company tax return. However, officers and Members acting as such remain legally responsible for the discharge of their duties
- 4.4. The risk of personal liability may deter potentially suitable candidates from seeking election to the Council or seeking appointment to responsible posts supported by the Council because of concerns over possible personal liabilities. This report therefore recommends that the Council gives an indemnity in respect of such risks as it lawfully may to both officers and Members. This is common practice by many local authorities.
- 4.5. It is proposed that the Cabinet approves the indemnity at Appendix 1 to this report to ensure the Council has a formal written indemnity adopted for clarity for both Members and officers. The proposed wording makes clear that the indemnity would not apply to deliberate or reckless breaches of trust, nor any deliberate wrongdoing or recklessness. For the avoidance of doubt, the indemnity would not apply in respect of Members or officers serving on outside bodies in their private capacities. Examples of recent officer and councillor involvement with outside bodies includes the Development Corporation and the East Midlands Freeport.

5. Alternative options considered and reasons for rejection

Not to provide the indemnity. Failure to do so may result in individual officers and members not being covered for personal liabilities arising from their conduct or decisions when acting on behalf of or pursuant to any appointment agreed by the Council in circumstances where they would otherwise be covered by the indemnity, as set out in the report. Failure to indemnify officers and Members may result in individuals being reluctant to work for or with or be appointed to outside bodies or other external organisations if there is a potential associated personal liability.

6. Risks and Uncertainties

Providing the indemnity proposed will allow the Members and officers to undertake their roles and responsibilities fully, and in the knowledge that they will not incur personal, civil and criminal liability whilst acting on behalf of the Council. This will provide comfort to both Members and officers when undertaking their roles and responsibilities.

7. Implications

7.1. Financial Implications

Reliance on the indemnity is likely to be rare but could have significant consequences if a claim were made. The Council has Officials Indemnity insurance which covers legal liability for negligent acts, accidental errors or omissions committed in good faith by Council Members, officials or employees in relation to Council business. This has a maximum limit of £5m. In the remote scenario that an issue arose and exceeded this limit or there was a breach in policy conditions that invalidated the policy then Council Reserves would be called upon.

7.2. Legal Implications

7.2.1 Where Members and officers act within their own local authority, within their powers and acting in good faith, they have statutory immunity against personal liability under Section 265 of the Public Health Act 1875 (as amended by Section 39 of the Local Government (Miscellaneous Provisions) Act 1976). This covers any civil liabilities and costs associated with such liabilities that may be incurred but does not afford protection where other than Council business is being conducted and therefore does not apply where they act on outside bodies and in the circumstances set out in this report.

7.2.2 Local authorities in England can provide an indemnity to its Members and officers under the Section 111(1) of the Local Government Act 1972 and Local Authorities (Indemnities for Members and Officers) Order 2004. The Order permits local authorities to provide an indemnity for personal liabilities incurred by Members and officers when acting on behalf of their authority.

7.2.3 The Order restricts the provision of indemnities so that they cannot enjoy cover for any finding of criminal liability or liability arising from fraud, deliberate wrongdoing, recklessness, or the cost of pursuing a defamation claim.

7.2.4 This statutory power and the proposed indemnity at Appendix 1 seek to remedy the injustice that would otherwise occur if a Member or officer engaged in Council business incurred personal liability for legal costs.

7.3. Equalities Implications

There are no equalities implications as a result of this report as the indemnity will apply equally to all elected Members and officers. The protection afforded by the indemnity may encourage individuals to stand for office who would be deterred by the risk of personal liability.

7.4. Section 17 of the Crime and Disorder Act 1998 Implications

None identified.

7.5. Biodiversity Net Gain Implications

None identified.

8. Link to Corporate Priorities

The Environment	The recommendations in this report support the functions and administration of the Council which in turn contributes towards the Council's Corporate Priorities.
Quality of Life	
Efficient Services	
Sustainable Growth	

9. Recommendation

It is RECOMMENDED that Cabinet approves the grant of an indemnity for officers and Members at Appendix 1 of this report.

For more information contact:	Sara Pregon Monitoring Officer and Head of Chief Executive's Department 0115 914 8480 spregon@rushcliffe.gov.uk
Background papers available for Inspection:	None
List of appendices:	Appendix 1 – Indemnity

INDEMNITY FOR OFFICERS AND MEMBERS OF
RUSHCLIFFE BOROUGH COUNCIL

1. Rushcliffe Borough Council (“the Council”) confirms it indemnifies its employees (“Officers”) and elected members, co-opted members, independent members and independent persons (“Members”), against any costs, claims or expenses (“Costs”), subject to the conditions set out below, where such Costs arise from activities carried out on behalf of the Council where the Member or Officer was acting in good faith and honestly believed that the act or omission complained of was within their power and that their duty as a Member or Officer or (in the case of functions exercised otherwise than in the capacity of Member or Council employee) performer of the function in question with the approval or at the request or for the purposes of the Council, required or entitled them to do or omit to do it. Such Indemnity shall apply to any liability of any Member or Officer acting as the Council’s representative or nominee on an outside body and to any Officer who in connection with their employment with the Council provides an administrative, technical, professional or other service to any person or body outside the Council on behalf of or on instruction of the Council.
2. The indemnity is effective to the extent that the Officer or Member in question:
 - a) having not received advice from an officer to the contrary, believed that the action, or failure to act, was within the powers of the Council; or
 - b) where the 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

PROVIDED ALWAYS THAT it was reasonable for that Officer or Member to hold that belief at the time when he or she acted or failed to act.

3. The Costs are those which arise from, or in connection with, any action of, or failure to act by, the Officer or Member in question, 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 Officer or Member, as a consequence of any function being exercised by that Officer or Member (whether or not when exercising that function he or she does so in his or her capacity as an Officer or Member of the Council) at the request of, or with the approval of, the Council.

4. The Council will not provide an indemnity in the following circumstances:
 - a) Where any action or failure to act on the part of any Officer or Member:

- (i) constitutes a criminal offence (except where the criminal offence is an offence under the provisions of the Health and Safety at Work Act etc 1974 or relevant statutory provisions within the meaning of that Act in which case the indemnity will continue to apply); or
 - (ii) is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that Officer or Member; or
 - (iii) is a failure by the Member to comply with the Code of Conduct for Members or a failure by the Officer to comply with the Code of Conduct for Officers.
- b) This indemnity will not extend to any advice or representation in respect of any claim or threatened claim in defamation to be brought by a Member or an Officer.
- c) The indemnity will 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.

5. Decisions on the granting of all indemnities:

- a) The Director for Finance and Corporate Services (Section 151 Officer) has delegated authority to make decisions on the granting of indemnities and in the case of a requirement of an indemnity for the Director for Finance and Corporate Services, this will be granted by the Monitoring Officer.
- b) The indemnity is subject to the Officer or Member notifying the Council's Director for Finance and Corporate Services (Section 151 Officer) and Monitoring Officer immediately of any claim being made or intimated against him or her, and of any circumstances arising which may give rise to a claim.
- c) The indemnity will only extend to cover actual loss and expense incurred and evidenced by the Officer or Member to the satisfaction of the Director for Finance and Corporate Services (Section 151 Officer) and Monitoring Officer.
- d) The indemnity will not automatically apply if the Officer or Member without the written authority of the Director for Finance and Corporate Services (Section 151 Officer) or Monitoring Officer and the Council's insurers, as appropriate, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of this indemnity.
- e) The indemnity shall not extend to any loss or damage directly or indirectly arising from any motor vehicle claims in which an Officer or Member using his or her own private vehicle on the Council's business has been involved in an accident.

- f) The Council or its insurers will be entitled to take over and conduct in the name of the Officer or Member the defence of any proceedings brought against the Officer or Member.
6. This indemnity is without prejudice to the rights of the Council to take disciplinary action against an officer in respect of any act or failure to act.
 7. This indemnity applies retrospectively to any act or failure to act which may have occurred before this date and shall continue to apply after the Member or Officer has ceased to be a Member or Officer of the Council for any acts or omissions which took place at a time when they were a Member or Officer of the Council.