

Appendix 8

Revised indemnity policy

Indemnity provided to members and Officers under Section 101 Local Government Act 2000 and the Local Authorities (Indemnities for Members and Officers) Order 2004.

Summary

An indemnity is provided in respect of financial liabilities incurred by a Member or Officer of Brighton & Hove City Council (“the Authority”) who is acting in good faith as a Member or Officer of the Council or as an authorised representative working outside the Council, provided that the act or default falls within paragraphs a) or b) and subject to the requirements and exclusions in paragraphs 1) to 4).

Indemnity

For the purposes of this indemnity, “Member” shall include all elected Members of the Authority as well as any persons who are co-opted onto any committee or subcommittee of the Authority and are entitled to vote on any question that falls to be determined by that body. It shall also include the Council’s Independent Persons, who are appointed to the Council pursuant to section 28 of the Localism Act 2011. “Officer” shall include all employees of the Authority.

The Authority shall indemnify each Member and Officer of the Authority against any claim, liability, loss and/or damage in relation to any action of, or failure to act which:-

- a) is authorised by the Authority; 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 this is done in their capacity as a Member or Officer of the authority)–
 - i) at the request of, or with the approval of the Authority, or
 - ii) for the purposes of the Authority.

Such indemnity is subject to the following requirements and exclusions:-

1. Obligation to believe action to be within powers or that statements made were true

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 Authority; or

- b) where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the Authority, 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 that Member or Officer to hold that belief at the time when they acted or failed to act.

2. Criminal Offences, Fraud, etc and Defamation

2.1 This indemnity shall not apply in relation to any action by, or failure to act by, any Member or Officer which constitutes a criminal offence, but an indemnity may be provided in relation to:-

- a) the defence of criminal proceedings brought against the Officer or Member, subject to part 3, below, of this indemnity; and

- b) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

2.2 This indemnity shall not apply in relation to any action by, or failure to act by, any Member or Officer which is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that Member or Officer.

2.3 This indemnity may apply to the defence by a Member or Officer of any allegation of defamation made against them, but does not extend to the making by a Member or Officer of any claim in relation to an alleged defamation of that Member or Officer.

3. Repayment of Costs upon Criminal Conviction and/or Finding of Breach of the Code of Conduct

3.1 Where a Member or Officer relies upon this indemnity in relation to the defence of either any criminal proceedings; or 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:-

- a) 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

- b) in the case of Part 3 proceedings

- i) 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

- ii) if the Member admits that they have failed to comply with the Code of Conduct,

that Member or Officer shall reimburse the Authority for any sums expended by the Authority in relation to those proceedings pursuant to this indemnity.

- 3.2 Where a Member or Officer is obliged to reimburse the Authority pursuant to the terms of this indemnity, those sums may be recoverable by the Authority as a civil debt.

4. Application of the indemnity

The indemnity shall continue to apply after the Member or Officer has ceased to be a Member or Officer as well as during their membership of or employment by the Council.

The indemnity shall only extend to actual loss and expense incurred. It does 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 or organisation

An application for an indemnity received from a Member or Officer should be processed in accordance with paragraph 5. below

5 Notification of a claim, approval of expenditure etc

Any Member or Officer wishing to take advantage of this indemnity shall

- notify the Monitoring Officer at the Authority of this fact as soon as reasonably practicable after the circumstances giving rise to an entitlement claim have come to their attention
- take reasonable steps to mitigate the amount that might otherwise be claimed under the indemnity
- not incur expenditure without the approval of the Authority, which approval shall not be unreasonably delayed, and the Authority shall be entitled to limit the amount it is liable to reimburse such Member or Officer if the proposed expenditure reasonably appears to the Authority to be greater than is necessary in the circumstances
- permit the Authority reasonable access to any information or advice, such as legal advice, relevant to the matter and comply with all other reasonable requests of the Authority in the conduct of the matter
- not be entitled to any indemnity from the Authority for any sum(s) which are discharged by the external body or by insurance cover (whether arranged by or for the external body, the Authority or otherwise), or which would have been so discharged but for the unreasonable actions or omissions of the Member or Officer.

6. Insurance

To assist in discharging this indemnity, the Authority may, at its absolute discretion, arrange insurance. There may also be other insurance which could be used to cover the liability of the Member or Officer, for example arranged by the external body. In any case where insurance cover is available, any Member or Officer claiming to be indemnified by the Authority shall use all reasonable endeavours to abide by any requirements of the insurance / insurer and to assist in claiming and securing payment(s) under the insurance policy.

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