

REPORT TO CABINET

Open/Exempt		Would any decisions proposed:			
Any especially affected Wards	Mandatory/ Discretionary/ Operational	Be entirely within Cabinet's powers to decide		YES/ NO	
		Need to be recommendations to Council		YES /NO	
		Is it a Key Decision		YES /NO	
Lead Member: Cllr Terry Parish, Leader E-mail: cldr.terry.parish@west-norfolk.gov.uk		Other Cabinet Members consulted:			
		Other Members consulted: Cllr Alexandra Ware, Director of two Council companies			
Lead Officer: Alexa Baker, Monitoring Officer E-mail: alexa.baker@west-norfolk.gov.uk Direct Dial: 01553 616270		Other Officers consulted: Michelle Drewery, Section 151 Officer			
Financial Implications YES/ NO	Policy/ Personnel Implications YES /NO	Statutory Implications YES/ NO	Equal Impact Assessment YES /NO If YES: Pre-screening/ Full Assessment	Risk Management Implications YES/ NO	Environmental Considerations YES /NO
If not for publication, the paragraph(s) of Schedule 12A of the 1972 Local Government Act considered to justify that is (are) paragraph(s)					

Date of meeting: 5 MARCH 2024

Subject: Indemnity for Members and Officers appointed to Outside Bodies, including the Council's wholly owned companies

Summary

This report proposes the granting of indemnities to Members and officers to cover any loss, damages, costs or legal expenses which they may be ordered to pay or may reasonably incur arising from their action or failure to act during the course of their appointment to an outside body, including the Council's wholly owned companies.

An indemnity is a promise to be responsible for another's loss in advance of any such loss occurring. It is proposed that the indemnity be subject to specified exclusions, including any fraud, dishonesty, deliberate wrongdoing or recklessness, or a convicted criminal offence on the part of the Councillor or Officer

The aim for providing the indemnity is that officers and Members are assured that, by supporting the Council by participating in outside bodies or its wholly owned companies, they will not render themselves personally liable in relation to any claims that may be made against them. Whilst insurance is in place to cover these duties, such insurance is provided by a third party with detailed exclusions and limitations. If, for any reason outside the Council's control, the insurance company decided that cover was not payable under the insurance policy, the Council's indemnity would apply.

Recommendation

Cabinet resolves:

1. An indemnity is granted to Members and officers, both current and former, who are or have been appointed by the Council to an outside body, including the Council's wholly owned companies, in the form set out in Appendix 1.
2. The section 151 officer in consultation with the Portfolio Holder for Finance is authorised to make changes from time to time provided, they are non-material, with reference to the content of this report.
3. The Chief Executive, or in the event of their absence or a conflict arising, the Monitoring Officer, in consultation with the Leader, or in the event of their absence or a conflict arising, the Deputy Leader, is authorised to determine on a case-by-case basis whether an exclusion under the indemnity applies.

Reason for Decision

To provide assurance to Members and officers who are asked to take on the responsibility of acting on an outside body, including the Council's wholly owned companies, that they will not be personally liable for any financial loss they may suffer as a consequence of carrying out their duties.

1 Background

- 1.1 The council periodically nominates Members and officers as council representatives to a number of outside bodies, including the Council's wholly owned companies.
- 1.2 Members and officers play an active role in the affairs of the body in question. For example, a company director owes a duty to the company which they are a director of and must always act in the best interest of that company.
- 1.3 In certain, very limited circumstances (which is not known to have previously occurred in this Council), the officers or Members may become personally liable for claims against themselves in their personal capacity in relation to their alleged actions or inactions, or may be alleged to be responsible for claims against the bodies on which they serve.
- 1.4 Council Members or officers appointed to act as directors, trustees or similar positions on outside bodies are exposed to different risks arising mainly from their role and nature of the body for which they act. 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. Officers and Members are increasingly concerned about the personal liability that may be attached to them from performing their duties.

- 1.5 It is not in the council's interests to deter potentially suitable candidates agreeing to their appointment to outside bodies because of concerns over possible personal liabilities. This report therefore recommends that an indemnity be granted in the terms sets out in Appendix 1 to address such concerns.
- 1.6 Although there is a statutory form of protection under section 265 of the Public Health Act 1875 for councillors and local authority officers, this relates to actions taken whilst acting under the direction of the Council, for example entering a contract approved by Cabinet. This will not necessarily extend to work carried out on outside bodies, as not every single act taken by an officer or Member on the outside body is specifically authorised by the Council.
- 1.7 Insurance is in place in relation to officers and Members acting on outside bodies, including the Council's wholly owned companies, however such insurance is provided by a third party with detailed exclusions and limitations. If, for a reason outside the Council's control, the insurance company decided that cover was not payable under the insurance policy, the Council's indemnity will serve to provide assurance in advance of a loss event occurring that a Member or officer would not be left personally liable.

2 Options Considered

- 2.1 Members and officers representing the Council on outside bodies or appointed as directors of the Council's wholly owned companies have expressed concern in regard to carrying out roles which give rise to personal liability over and above the exercise of their other responsibilities. The Council does not wish to deter Members or officers from carrying out these roles either presently or in the future. If a Member or officer refused to act in the capacity of a company director or appointee to an outside body, the Council may not be able to make such appointments which may result in Council companies and outside bodies being inquorate and unable to conduct business.

3 Policy/Personnel Implications

- 3.1 There are no policy implications.

4 Financial Implications

- 4.1 It is expected that claims against this indemnity will be very rare. It is not possible to estimate the average annual cost of the indemnity. In most years it would be expected that the actual call on the indemnity would be nil but, in theory, it would be possible for substantial claims to be made on it at any time.
- 4.2 It is important to note that the granting of indemnities does not in itself create new risks. The indemnities specified in the report are for

activities that council officers and members already carry out and the Council is already insured against these risks.

- 4.3 Where the Council is not able to recover against its insurance policy, this will mean the Council will have to self-fund the indemnity. In these circumstances, were it not for the indemnity, that cost would have fallen on the Member or officer concerned.

5 Personnel Implications

- 5.1 None.

6 Environmental Considerations

- 6.4 None

7 Statutory Considerations

- 7.1 The Local Authorities (Indemnities for Members and Officers) Order 2004 applies to any indemnity provided by the Council.

8 Equality Impact Assessment (EIA)

(Pre-screening report template attached)

No direct impact.

9 Risk Management Implications

- 9.1 By taking on an appointment on an outside body, an officer or Member is taking on the responsibility of potentially having a claim instigated against them by virtue of their position on that outside body. Members and officers will be provided with training and advice in relation to their roles where relevant and risk of personal liability will be mitigated by ensuring appropriate professional advice is taken whilst acting in the capacity of a company director on a Council owned company.
- 9.2 The Council, by way of the Shareholder Committee is responsible for the oversight of the business conducted by the council's wholly owned companies. Scrutiny of the operations of the Council's wholly owned companies will mitigate the potential risk of error or omission which could give rise to a claim against a company director.
- 9.3 The Board of the council companies may consult with their legal representatives on any matter they have concerns about.

10 Declarations of Interest / Dispensations Granted

None

11 Background Papers

None