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## APPENDIX

### Draft **FORM OF INDEMNITY FOR MEMBERS AND OFFICERS**

**Note: Items in bold are not covered by the Council's current insurance arrangements.**

#### 1. **Indemnity**

1.1 North Yorkshire County Council ('the Council') will indemnify ('the indemnity') each member and officer of the Council against any costs 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 or duties placed on that member or officer, as a consequence of any function being exercised by him/her (whether or not when exercising that function s/he does so in the capacity of member or officer of the Council) and the function is being exercised at the request of, or with the approval of the Council, or for the purposes of the Council.

1.2 The terms of the indemnity shall be incorporated into the contract of employment of all Council officers

#### 2 **Restrictions on Indemnities**

2.1 The indemnity shall not apply in relation to any action by, or failure to act by, any member or officer which 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 However, the indemnity may be provided in relation to:

- (a) **the defence of criminal proceedings arising in relation to the undertaking of functions (excluding motoring offences) brought against the officer or member, subject to paragraph 5 of this indemnity below;**
- (b) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

2. No indemnity is provided in relation to the pursuit by a member or officer of any claim for alleged defamation of that member or officer. The indemnity may be provided in relation to the costs of defending a claim of defamation made against a member or officer.

### 3. **Conditions of Indemnity**

3.1 A member or officer seeking the indemnity from the Council must:

- (a) where the act or failure to act falls outside the powers of the Council, s/he must have believed that the action or failure to act in question was within the powers of the Council;
- (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, believe that the contents of that statement were true; and

it must be reasonable for the member or officer to hold that belief at the time when s/he acted or failed to act.

3.2 The 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 powers at the time when s/he acted.

### 4. **Acting as Member or Officer**

4.1 Where the member or officer is acting on behalf of another organisation then the activities covered will be deemed to have arisen in the capacity as a "member or officer of the authority" where:

- (a) the appointment to that outside body was made by the authority; or
- (b) the nomination to that outside body was made by the authority; or
- (c) such appointment to that outside body was specifically approved for the purpose of these indemnities.

### 5. **Repayment of and Approval of Costs of Legal Representation**

5.1 Where a member or officer seeks the indemnity in relation to:

- (a) **the defence of any criminal proceedings, or,**
- (b) the defence of an action for defamation, or
- (c) **the defence of any proceedings pursuant to Part 3 of the Local Government Act 2000 relating to alleged failure to comply with the Member's Code of Conduct ("Part 3 Proceedings").**

the indemnity shall be subject to the terms that if:-

- a) in the case of criminal proceedings, 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 civil proceedings for defamation the member or officer in question is found to have acted out of malice

- c) in the case of Part 3 proceedings:
  - (i) a finding is made 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) the member admits that he has failed to comply with the Code of Conduct,

the member or officer shall reimburse the Council for any sums expended by the Council in relation to those proceedings pursuant to this indemnity.

- 5. Where a member or officer is obliged to reimburse the Council pursuant to the terms of the indemnity, those sums shall be recoverable by the Council as a civil debt.
- 5. The level of fees which will be reimbursed will be those which are deemed reasonable.
- 5. The Monitoring Officer must be consulted prior to any legal advice being sought under the terms of the indemnity, with regard to the prevailing level of fees that are deemed acceptable.

#### **6. Relationship with Other Insurances**

- 6.1 The indemnity shall not apply to the extent that an external body in respect of which the member or officer is carrying out any function at the request of, or with the approval, or for the purposes of the Council, indemnifies or insures such member or officer itself.
- 6.2 The indemnity will not apply in respect of claims falling within the cover provided to members and officers under any insurance policy taken out by the Council or otherwise, or any motor insurance taken out by the member or officer.

#### **7. Notification of a claim, approval of expenditure etc.**

- 7.1 The indemnity will have no effect if the member or officer fails to:
  - (a) notify the Monitoring Officer as soon as reasonably practicable after the member or officer is aware that a claim might be made,
  - (b) take reasonable steps to mitigate the amount that might otherwise be claimed under the indemnity, or
  - (c) permit appropriate Council officers access to any information or advice, such as legal advice, relevant to the matter and comply with all other requests of the Council in the conduct of the matter.
- 7.2 The indemnity will not apply if a member or officer, without the express permission of the Council or the Monitoring Officer acting on behalf of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the indemnity.
- 7.3 The 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.

#### **8. Insurance**

8.1 To assist in discharging the indemnity, the Council may at its discretion, arrange insurance.

8.2 In any case where insurance cover is available, any member or officer claiming to be indemnified by the Council shall use all reasonable endeavours to abide by any requirements of the insurer and to assist the Council in claiming and securing payment(s) under the insurance policy.

9. **Lawfulness**

9.1 The indemnity shall not extend to any situation where it would be unlawful for the Council to give an indemnity.