

SURREY COUNTY COUNCIL**CABINET****DATE: 26 FEBRUARY 2013****REPORT OF: MR DAVID HODGE, LEADER OF THE COUNCIL****LEAD OFFICER: ANN CHARLTON, HEAD OF LEGAL AND DEMOCRATIC SERVICES****SUBJECT: MEMBER AND OFFICER DIRECTOR INDEMNITIES****SUMMARY OF ISSUE:**

1. To consider formal arrangements for indemnifying Members and Officers who are appointed on behalf of the Council as company directors
2. It is essential for effective governance that Members and Officers, have protection from personal liability in the course of their duties, and are not deterred from participating in new business and service delivery vehicles. These proposals would provide such assurance to Members and Officers when they are acting as appointed directors of companies on behalf of the Council.

RECOMMENDATIONS

3. It is recommended that Cabinet agrees to provide the indemnities to Members and Officers set out in the Appendix to this report and authorise the Chief Finance Officer to place any additional insurance cover needed to protect the Council from any claims made under the indemnities.

DETAILS:

4. Surrey County Council has a successful track record of finding innovative ways of delivering services. Over recent months there has been a renewed focus on innovation, as a result of which Council Members and Officers are taking on new roles with outside bodies which are being created to deliver benefits for the Surrey taxpayer, frequently in partnership with others. More proposals are likely to be brought forward as the Council continues to develop its innovation agenda. The Council has already set up a new joint venture with Woking Borough Council and may want to appoint more people to act as directors of companies, some of which could have substantial budgets.
5. Council Members and Officers are already protected by statute from personal liability where they take decisions or actions in pursuance of any statutory power or duty of the Council, so long as they act with proper authority and in good faith. However when they are involved in the governance of an outside body, such as a company, even one that is controlled or owned by the Council, they do not have the statutory immunity from personal liability which

they enjoy when they are acting within the authority.

6. Companies may purchase insurance policies designed to protect directors and officers of a company from personal loss resulting from claims made against them in relation to the discharge of their duties. This is not however compulsory, and there may be some circumstances where the insurance available does not provide comprehensive personal asset protection.
7. Members and Officers appointed as company directors by the Council do not benefit personally from their involvement with the company to which they are appointed and are in a similar position to non executive directors. As such it is reasonable for the Council to provide them with further assurance by exercising the powers it has to provide indemnities to them.

Section 151 Officer Commentary

The Chief Finance Officer will ensure that each new business delivery business case proposal includes the costs for any appropriate insurance cover necessary to give Members and Officers confidence to be willing and able to participate in the new business delivery vehicles. It is expected that the level of cover, and therefore cost, will vary for each business proposal.

Legal Implications – Monitoring Officer

8. The Local Authorities (Indemnities for Members and Officers) Order 2004 enables a local authority to provide an indemnity for its Members and Officers, including provisions for securing indemnity insurance. An indemnity can cover Members and Officers in respect of any personal liability arising from action taken by virtue of their membership of or employment by the Council. This can include liability for any debt or obligation of an outside body to which the Member or Officer had been appointed by the Council and any legal claim made against the individual in respect of the performance of his or her duties as a director of a company to which the Member or Officer had been appointed by the Council.
9. The Order restricts the power to indemnify to circumstances where the Member or Officer has acted honestly and in good faith, so the Council cannot provide an indemnity (or the securing of insurance) in relation to criminal acts, or any other intentional wrongdoing, fraud, or recklessness. An indemnity may be provided in relation to the defence of any criminal proceedings, or in relation to any civil liability arising from an action, or failure to act, which also constitutes a criminal offence, but any sums expended by the Authority, or by an insurer must be reimbursed by the Member or Officer if he or she is convicted of a criminal offence. An indemnity would not of course cover any Member or Officer acting in a personal capacity

Financial and Value for Money Implications

10. Members and Officers appointed as directors to companies controlled by the Council are not able to receive remuneration in excess of normal Members' Allowances or staff salaries respectively. Providing indemnities is a cost

effective way of ensuring that perceived risk to personal assets is not a disincentive to the Council tapping the potential of those individuals

11. In order to ensure that the Council does not become an insurer by default it should as a precondition to appointing directors establish what arrangements the company has in place to indemnify and insure its directors.

RISK MANAGEMENT AND IMPLICATIONS:

12. The Council will want to ensure that its Members and Officers are willing and able to participate in new business delivery vehicles and in order to create the necessary climate those people will need to be reassured that their personal liability is dependably mitigated.
13. The Chief Finance Officer will explore whether the Council itself requires further insurance in order to protect the Council's corporate assets from claims resulting from these indemnities.

WHAT HAPPENS NEXT:

14. Officers and Members appointed as directors of companies by the Council will be provided with details of the agreed indemnity
15. The Chief Finance Officer will explore whether the Council requires further insurance in order to protect the Council's corporate assets and will put in place the most cost effective method of providing protection.

**Contact Officer: Ann Charlton, Head of Legal and Democratic Services
Tel.no: 020 8541 9088**

Consulted: The Chairman of the Overview and Scrutiny Select Committee

Member and Officer Indemnity

1. This indemnity applies to any Member or employee of the Council who accepts an appointment or nomination by the Council as a director of a company ("the Appointee"), whether or not the Council has the right or power to make the appointment or nomination, provided that the Appointee reasonably believed that the appointment or nomination was within the powers of the Council.
2. Appointment or nomination will be carried out by the Leader or as otherwise provided in the Constitution and the appointment will be recorded in writing.
3. The indemnity will operate in subordination to any indemnity/insurance policy taken out by a company to which the Appointee has been appointed or nominated by the Council.
4. The indemnity shall also apply after the retirement of the Appointee concerned as an officer or Member as well as during his/her employment or membership of the Council.
5. The Council, will indemnify its Appointees against any liability, damages, loss, claim or proceedings, costs or legal expenses which they may be ordered to pay or may reasonably have incurred as a result of any action of, or failure to act, by the Appointee arising from the discharge of an appointment under paragraph 1 above.
6. The indemnity will only be provided if the Appointee acted in good faith and reasonably believed that the act or inaction complained of was within his or her powers and that his/her duty as an Appointee required or entitled him/her to do or to omit to do it.
7. The Council will indemnify an Appointee in relation to the defence of any criminal proceeding where such proceedings arise through the discharge of their appointment by the Council. The Appointee will reimburse the Council for any sums expended by the Council in relation to such proceedings where the Appointee is convicted of a criminal offence and the conviction is not overturned following any appeal.
8. The Appointee must inform the Council's Monitoring Officer immediately he/she becomes aware of any circumstances likely to form the basis of any claim against the Council or likely to result in any financial loss to the Council, and will follow the advice of the Monitoring Officer and Chief Finance Officer.
9. The Appointee shall also be under a duty to co-operate with and assist the Council in the conduct of any legal proceedings to which the indemnity relates including, where required, giving evidence.
10. The indemnity does not extend to any fine imposed upon an Appointee personally by any court or any award made against an Appointee personally by a Court or a Tribunal.

11. The indemnity will not apply if the Appointee, without the express permission of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the indemnity.

Exceptions

12. The indemnity will not extend to loss or damage directly or indirectly caused by:-
 - any criminal offence committed by the Appointee, (except in relation to any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence) and/or
 - fraud, or other deliberate wrongdoing or recklessness on the part of the Appointee;
13. The indemnity shall not cover acts or omissions carried out by an Appointee as a result of him/her obtaining a position on an outside body in a personal capacity without the Council making the appointment.
14. In pursuance of the indemnity above, the Council undertakes not to sue (or join others in action against) an Appointee in respect of any neglect, error, or omission in his/her capacity as an Appointee but subject to the same exceptions as above.

This page is intentionally left blank