

Meeting: Council

Date: 20 September 2023

Wards affected: All Wards

Report Title: Constitution Amendment Local Protocol – Indemnity and Insurance for Members and Officers

When does the decision need to be implemented? As soon as possible

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1. Purpose of Report

- 1.1 This report sets out a proposed new Local Protocol on Indemnity and Insurance for Members and Officers which has been prepared, having regard to a Local Government Association briefing issued to Local Authority Chief Executives and Council Leaders. The briefing referenced legal liabilities in relation to placing children in care in unregistered placements and the wider consideration of insurance and indemnity for Councillors and Officers in the course of exercising their proper powers and duties as an Elected Member or Officer of Torbay Council.
- 1.2 This Local Protocol follows the same format of the Local Protocol adopted by Devon County Council, which was seen as good practice.

2. Reason for Proposal and its benefits

- 2.1 The adoption of this Protocol provides an opportunity to regularise the current situation, reflecting both existing practice and legislation, and to provide indemnity for Members and Officers acting on behalf of the Council; to safeguard and protect their position in such cases.

- 2.2 Councils have a discretionary power in certain circumstances to provide an indemnity or insurance against Members and Officers incurring personal liability. The power applies to Members and Officers whose actions, or failure to act, are authorised by the Council, or who undertake a function at the request of, or with the approval of the Council, or for the purposes of the Council. In addition, where a Member or Officer has exceeded their power or that of the Council, an indemnity or insurance may be given, providing that the Member or Officer reasonably believed that the act or omission was within the power of the Council, or the Member or Officer as the case may be
- 2.3 An indemnity or insurance cannot be provided for a criminal offence, or conduct that amounts to fraud, deliberate wrongdoing, or recklessness. However, an indemnity or insurance can be provided for the defence of criminal proceedings and for any civil liability that also constitutes a criminal offence, and for the defence of an investigation into alleged breach by a Member of the Code of Conduct. Providing that Member or Officer is not guilty of the criminal offence, or the breach of the Code of Conduct, as the case may be, in which case the Member or Officer is obliged to repay any sums expended by the Council or the Insurer. Furthermore, no indemnity or insurance may be provided under the order for a Member or Officer to pursue defamation actions, but one can be provided to defend an allegation of defamation.

3. Recommendation(s) / Proposed Decision

- 3.1 That the Council approves the Local Protocol - Indemnity and Insurance for Members and Officers, as set out at Appendix 1 to this report, and determines that it be incorporated into the Council's Constitution.
- 3.2 That the Director of Finance and Head of Legal Services and Monitoring Officer (or their deputies) be authorised to determine requests for indemnities, in consultation with the Cabinet Member for Housing, Finance and Corporate Services. Or in consultation with the Leader of the Council, where the matter relates to the Cabinet Member for Housing, Finance and Corporate Services.

Appendices

Appendix 1: Local Protocol – Indemnity and Insurance for Members and Officers

Background Documents

Revised Article 13 – Review and Revision of the Constitution -

<https://www.torbay.gov.uk/DemocraticServices/documents/s140230/14%20Article%2013%20-%20Review%20and%20Revision%20Appendix%202.pdf>

Supporting Information

1. Introduction

- 1.1 At the meeting of Council held on 20 July 2023 (minute 27/7/23 refers) the Council approved amendments to Article 13 requiring the Monitoring Officer to keep the Constitution under review and authorising her to make changes which were required for technical or legal reasons. The Monitoring Officer was also authorised to make other changes to the Constitution that she believes were in the best interests of the Council and/or local people provided they were made in consultation with the Leader of the Council and Group Leaders; if any of them object, the Monitoring Officer will report the matter to Council for decision.
- 1.2 This is a new Local Protocol which is therefore beyond technical or legal reasons, and Liberal Democrat Group Leader has determined that the matter should come before the Council to approve, as the sovereign body.

2. Options under consideration

- 2.1 To adopt, or not to adopt the new Local Protocol - on Indemnity and Insurance for Members and Officers.

3. Financial Opportunities and Implications

- 3.1 The Council's insurance policy will indemnify Members and Officers up to £5million per incident, subject to a policy excess of £25,000 per claim, with sums up to that amount coming from our own internal insurance fund.

4. Legal Implications

- 4.1 None

5. Engagement and Consultation

- 5.1 The new Local Protocol has been circulated to the Council Leadership Group.

6. Purchasing or Hiring of Goods and/or Services

- 6.1 Not applicable

7. Tackling Climate Change

7.1 Not applicable.

8. Associated Risks

8.1 Not adopting the new Local Protocol - on Indemnity and Insurance for Members and Officers, would leave Members and Officers unprotected.

9. Equality Impacts - Identify the potential positive and negative impacts on specific groups

	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
Older or younger people			There is no differential impact.
People with caring Responsibilities			There is no differential impact.
People with a disability			There is no differential impact.
Women or men			There is no differential impact.
People who are black or from a minority ethnic background (BME) (Please note Gypsies / Roma are within this community)			There is no differential impact.
Religion or belief (including lack of belief)			There is no differential impact.
People who are lesbian, gay or bisexual			There is no differential impact.
People who are transgendered			There is no differential impact.
People who are in a marriage or civil partnership			There is no differential impact.
Women who are pregnant / on maternity leave			There is no differential impact.

Socio-economic impacts (Including impact on child poverty issues and deprivation)			There is no differential impact.
Public Health impacts (How will your proposal impact on the general health of the population of Torbay)			There is no differential impact.

10. Cumulative Council Impact

10.1 None

11. Cumulative Community Impacts

11.1 None