

Indemnities for Members and Officers

1. Executive Summary

- 1.1 This reports sets out the current powers available to local authorities in relation to the provision of indemnities to elected Members and Officers. The report proposes that Council agrees that Members and officers (and other persons appointed, or nominated by the Authority to outside bodies) be appropriately indemnified.

2. Background

- 2.1 Members and officers make decisions and take action in what they believe to be the public interest. In addition, every year, Council approves the appointment of a large number of Members, officers and others to represent the authority on outside bodies. These appointees do valuable work and contribute to many outcomes that benefit the public. However, sometimes these appointments are to positions as directors of companies, or as trustees. These latter sorts of appointment, in particular, place on the appointees onerous legal duties to act in the best interest of the Company, or the beneficiaries of the trust.
- 2.2 On the rare occasions when things go wrong it is possible that legal claims might be brought against individuals, particularly where they have acted as company directors or trustees. In the current economic climate where public and third sector funding is increasingly uncertain, the likelihood of outside organisations getting into difficulties has probably increased. In this situation, it is recommended that Council recognises the need for Members and Officers when they are properly and lawfully going about pursuing the public interest to be protected by indemnities, including when they are acting in roles to which they have been appointed by the Authority.
- 2.3 Following some concerns about local authorities indemnifying members and officers in bringing defamation actions, councils were given express powers to grant indemnities to Members and officers under sections 101 and 105 of the Local Government Act 2000 ('the 2000 Act', subject to conditions and limitations set out in the Local Authorities (Indemnities for Members and Officers) Order 2004 ('the 2004 Order'). The 2004 Order thus provided a framework for those circumstances in which the authority may provide an indemnity to any of their Members or officers. However, the powers in the 2000 Act and the 2004 Order are in addition to any other pre-existing powers that local authorities had, including, in particular, Section 111 of the Local Government Act 1972. This power permits a local authority to do anything that is 'calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions'. This latter power is relevant in relation to ensuring that indemnity protection can be extended to those who are acting within the extent of their delegated authority on behalf of the authority but who are neither Members nor Officers and who have

been appointed to act as a representative of the authority on an outside body. It is recommended that any indemnity agreed include these individuals.

- 2.4 A copy of the text of the 2004 Order is reproduced as Appendix 1 to this report. Article 4 of the 2004 Order makes it clear that an indemnity may be provided by means of the authority securing the provision of an insurance policy for the Member or officer. It is recommended that the Director of Finance be given delegated authority to put in place such insurance arrangements as he considers being in the Council's best interest in relation to the Council indemnifying Members and officers (and other persons appointed by or nominated to outside bodies by the authority).
- 2.5 Article 5 of the 2004 Order sets out the cases in which indemnities (including those provided by insurance) may be provided. This Article restricts the power to cases in which the Member or Officer is carrying on any function at the request of, with the approval of, or for the purposes of, the authority. However, it does also extend to cases when exercising the function in question, the Member or Officer does so in a capacity other than that of a Member or Officer of the authority. So, this would permit an indemnity, for example, to cover a case where a Member or Officer acts as a Director of a company at the request of the authority, and thus is acting in a capacity as a Director/Trustee.
- 2.6 Article 6 of the 2004 Order prevents the provision of an indemnity (or securing of insurance) in relation to criminal acts, any other intentional wrongdoing, fraud, recklessness, or in relation to the bringing of (but not the defence of) any action in defamation.
- 2.7 Article 7 of the 2004 Order gives a limited power to provide an indemnity (including any indemnity provided by insurance) where the action or inaction complained of is outside the powers of the authority itself or outside the powers of the Member or Officer who acts. It also covers cases in which a Member or Officer makes a statement that certain steps have been taken or requirements have been fulfilled but it later becomes clear that this is not the case. This power is, however, limited to cases in which the person indemnified:
 - (a) reasonably believes that the matter in question was not outside the powers in question, or
 - (b) where a document has been issued containing an untrue statement as to the authority's powers, or as to the steps taken or requirements fulfilled, reasonably believed that the statement was true when it was issued or authorised.
- 2.8 Articles 5, 6 and 7 of the 2004 Order impose reasonable limitations on the provision of indemnity and it is recommended that these limitations are applied to all indemnities given.
- 2.9 Article 8 of the 2004 Order gives the authority freedom to negotiate such terms for any indemnity or policy of insurance as it thinks appropriate but requires that those terms include repayment for sums expended by the authority or the insurer in cases where a Member has been found to be in breach of the Code of Conduct applicable to him as a Member of the Authority (following proceedings instituted as a result of a complaint to the authority or Standards for England (formerly the Standards Board)) or if a Member or Officer has been convicted of a criminal offence (if the indemnity or

insurance policy will otherwise cover the proceedings leading to that finding or conviction). Any sums recoverable by the Council may be recovered as a civil debt.

3. Financial implications

- 3.1 The provision of an indemnity is a contingent liability and so at this stage cannot be quantified, as it is dependent upon whether qualifying events arise at some stage in the future.

4. Staffing implications

- 4.1 If approved, these recommendations will ensure that an appropriate arrangement is made to indemnify employees of the authority when acting in good faith in the best interest of local people.

5. Equal Opportunities implications

- 5.1 None directly arising from this report.

6. Community Safety implications

- 6.1 None directly arising from this report.

7. Local Agenda 21 implications

- 7.1 None directly arising from this report.

8. Planning implications

- 8.1 None directly arising from this report.

9. Anti-poverty implications

- 9.1 None directly arising from this report.

10. Human Rights implications

- 10.1 None directly arising from this report.

11. Social Inclusion implications

- 11.1 None directly arising from this report.

12. Local Member Support implications

- 12.1 If approved, these recommendations will ensure that an appropriate arrangement is made to indemnify Members of the authority when acting in good faith in the best interest of local people.

13. Background Papers

- 13.1 None.

14. Recommendations

- 14.1 That Council agrees that Members, officers (and other persons appointed to or nominated by the Authority to outside bodies) be indemnified with immediate effect in relation to any claims brought after 12 July 2010 to the maximum extent permitted by law (including by virtue of the Local Government Act 2000, the Local Authorities (Indemnities for Members and Officers) Order 2004 and Section 111 of the Local Government Act 1972) subject in all cases to the limitations set out in Articles 5, 6 and 7 of the 2004 Order.
- 14.2 That the Director of Finance be given delegated authority to put in place such insurance arrangements as he considers to be in the Council's best interest in relation to the Council indemnifying Members and officers (and other persons appointed by or nominated to outside bodies by the authority).

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