

DELEGATED DECISION NOTIFICATION

REF NO ¹ D

DECISION MAKER	The Director of Resources	AUTHORITY BY REFERENCE TO SCHEME OF DELEGATION: ²	Officer Delegation Scheme (Executive Functions)
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SUBJECT ³	Indemnities for Members and Officers
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DECISION ⁴	COUNCIL FUNCTION <input type="checkbox"/> NOT SUBJECT TO CALL IN	EXECUTIVE DECISION (KEY) <input type="checkbox"/> ⁵ EXEMPT FROM CALL IN: NO	EXECUTIVE DECISION (MAJOR) <input type="checkbox"/> ⁵ EXEMPT FROM CALL IN: NO	EXECUTIVE DECISION (OTHER) <input checked="" type="checkbox"/> NOT SUBJECT TO CALL IN
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It was noted that the current indemnity provided to officers by the Council dates back to 1978, and that it does not currently include elected Members. It was also noted that the Local Authorities (Indemnities for Members and Officers) Order 2004 provides a clear statutory basis for the scope of indemnities, or equivalent insurance cover. It was decided the Council should give an indemnity to its elected Members and officers, as set out in Appendix 5 of the attached Report, reflecting the terms of the Order, and thereby providing the maximum protection which is legally permissible, for officers and Members against any personal liabilities they might otherwise incur in carrying out their duties.

AFFECTED WARDS	None.
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ADVICE SOUGHT	<table style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">YES</td> <td style="text-align: center;">NO</td> </tr> <tr> <td>Legal</td> <td style="text-align: center;">X <input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Finance</td> <td style="text-align: center;">X <input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Personnel</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Equal Opportunities</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td>Other Please Specify</td> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/> _____</td> </tr> </table>		YES	NO	Legal	X <input type="checkbox"/>	<input type="checkbox"/>	Finance	X <input type="checkbox"/>	<input type="checkbox"/>	Personnel	<input type="checkbox"/>	<input type="checkbox"/>	Equal Opportunities	<input type="checkbox"/>	<input type="checkbox"/>	Other Please Specify	<input type="checkbox"/>	<input type="checkbox"/> _____
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Other Please Specify	<input type="checkbox"/>	<input type="checkbox"/> _____																	

DECLARED OFFICER / MEMBER INTERESTS ⁶	
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¹ This reference number will be assigned by Governance Services and notified to you

² The relevant paragraph within the decision makers delegated powers should be identified.

³ A brief heading should be inserted

⁴ Brief details of the decision should be inserted. This note must set out the substance of the decision, options considered and the reason for deciding upon the chosen option, although care must be taken not to disclose any confidential or commercially sensitive information. Guidance on the substance of the note is available from Governance Services

⁵ For Key and Major decisions only. If exempt from Call In details to be provided in the report. The Call In period expires at 5.00 pm on the **5th** working day after publication. Scrutiny Support will notify decision makers of matters called in by no later than 12.00 noon on the **6th** day.

⁶ No officer having a pecuniary interest in any matter should take a decision in relation to that matter. Other interests of a non-disqualifying nature should be recorded here.

DISPENSATION BY STANDARDS COMMITTEE

DATE:

BACKGROUND PAPERS⁷

Report of the Assistant Chief Executive (Corporate Governance), and the Director of Resources.

EXEMPT/ CONFIDENTIAL APPENDIX

YES NO X RULE NO 10.4⁸ ()

DETAILS OF CONSULTATION UNDERTAKEN (OTHER REASONS/ ORGANISATIONS CONSULTED)

	Yes	No	Date
Executive Member	<input type="checkbox"/>	<input type="checkbox"/>	_____
Ward Councillors	<input type="checkbox"/>	<input type="checkbox"/>	_____
Chief Officers Affected	<input type="checkbox"/>	<input type="checkbox"/>	_____
Others (Specify)	<input type="checkbox"/>	<input type="checkbox"/>	_____
Member Management Committee	_____		

CONTACT PERSON

CONTACT NO:

AUTHORISED SIGNATORY⁹

AS Gay (Name:) DATE: 5/2/11

	KEY	MAJOR	OTHER
¹⁰ *First publication (5 day notice)			
Commencement for Call In			
Last date for Call In			
Implementation Date			

* If key decision not on Forward Plan, the reason and need that the decision be taken are that:-

⁷ A separate Index should be prepared if necessary. ALL DOCUMENTATION UPON WHICH THE DECISION WAS BASED MUST BE RETAINED AND BE READILY ACCESSIBLE SO IT CAN BE PRODUCED SHOULD THE DECISION BE CHALLENGED

⁸ Relevant Access to Information Procedure Rules to be quoted if there is an exempt appendix

⁹ The signatory must be duly authorised by the Director to make the decision in accordance with the Department's scheme. It is not acceptable for the signature to be 'pp' for an authorised signatory. For Key Decisions only, the date of the authorised signature signifies that, at the time, the Officer was content that the decision should be taken. However, should representations be received following public availability of reports the signatory will consider the effect which such representations should have upon the final decision.

¹⁰ Governance Services will enter these dates



Originator:

Tel:

Report of the Assistant Chief Executive (Corporate Governance), and the Director of Resources

Executive Board

Date:

Subject: Insurance and Indemnities for Members

Electoral Wards Affected:

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In
(Details contained in the report)

EXECUTIVE SUMMARY

This report sets out the insurance protection provided specifically for Members, and the indemnity provided by the Council to officers. It has been identified that the current insurance arrangements still leave potential liability issues for Members, and officers reported this matter to the Member Management Committee. The Committee has approved a proposal for this report to be brought to the Executive Board. The Council's legal powers in relation to providing such indemnities (or the equivalent insurance cover) are now governed by the Local Authorities (Indemnities for Members and Officers) Order 2004. The Board is asked to approve widening the scope of the current Council indemnity to include Members, and updating the terms of the indemnity to reflect the terms of the Order.

1.0 Purpose Of This Report

- 1.1 To seek the Board's approval for widening the scope of the current Council indemnity for officers to include Members, and for updating the terms of the indemnity to reflect the terms of the 2004 Order.

2.0 Background Information

The current insurance arrangements for Members are as follows.

Personal Accident Insurance

- 2.1 Members will be paid a lump sum benefit on the occurrence of death or injuries as set out in the policy whilst engaged in the following activities:
- 2.1.1 Official duties in connection with the business of the Council including journeys directly connected with that business.
 - 2.1.2 Direct travel between private residence and place of duty.
 - 2.1.3 Attending meetings of and duties carried out for the Association of County Councils, the Association of District Councils, the Local Government Association or the Convention of Scottish Local Authorities.
 - 2.1.4 Service on behalf of or by appointment by the Council on committees of other authorities or bodies provided that no other personal accident insurance applies in respect of such service.
 - 2.1.5 Attendance at surgeries of any Member and any other complementary activities
- 2.2 The benefit is paid where Members sustain bodily injury by accident as a result of which death or disablement occurs independently of any other cause within 24 months of sustaining such injury.
- 2.3 There are certain exclusions (e.g. suicide and pre-existing medical conditions) where the policy does not operate and benefits are subject to medical certification.
- 2.4 The level of benefits payable are as set out in Appendix 1. Benefits are payable under the policy irrespective of whether or not legal liability for the injury falls upon a third party and payments under the policy do not affect the Members' legal rights to recover damages from any third party who may have caused, or contributed towards, the injury.
- 2.5 The annual cost of this insurance is £1,222.

Motor Vehicle – Loss Of No Claims Discount Insurance

- 2.6 Insurance cover is provided for Members' loss of no claims discount up to £500 in any one incident and also reimbursement of policy excess up to £100, where the incident giving rise to the insurance claim occurred whilst the Member's car was in use on Council business.
- 2.7 Certain conditions apply as set out in the annual letter to Members (see Appendix 2).

- 2.8 This cover is included within the existing insurance covers provided by our main insurers, Zurich Municipal, and no separate charge is made.
- 2.9 No other insurance is provided for Members' cars. Members must ensure that their motor insurance includes use of their cars on Council business.

Legal Expenses Insurance – Members Code Of Conduct Enquiries

- 2.10 This provides legal representation up to a maximum cost of £50,000 for any one occurrence for any member who is subject to a Members Code of Conduct enquiry.
- 2.11 The insurance is placed by Zurich Municipal acting as an intermediary for DAS, a long established legal expenses insurer.
- 2.12 The insurance policy provides (as it is required to under the terms of the relevant regulations) that a Member found to be in breach of the Code has to repay the amount expended for legal representation.
- 2.13 The annual cost is £3,066.

Travel Insurance

- 2.14 An annual policy, which covers both Members and officers is arranged.
- 2.15 Cover is provided for travel on the business of the Council outside Great Britain.
- 2.16 Full details of the limits of cover are set out in Appendix 3.
- 2.17 The annual cost (Members and officers) is £14,000.

3.0 Main Issues

- 3.1 Appendix 4 sets out the current indemnity provided to officers by the Council.
- 3.2 The indemnity dates back to 1978, and does not currently include Members.
- 3.3 Before the introduction of the 2004 Order, both Members and officers were given a measure of statutory immunity from personal liability by sec 265 of the Public Health Act 1875, as extended. In addition, in one or two cases the courts had held that specific indemnities given to Members or officers by their authorities were within the scope of the authorities' powers under sec 111 of the Local Government Act 1972. However, the scope of both the statutory indemnity and what was permissible under sec 111 was uncertain in a number of respects. In particular, there were perceived to be problems whether an indemnity might apply where Members participated in community partnerships.
- 3.4 The 2004 Order now provides a clear statutory basis for the scope of indemnities, or equivalent insurance cover.
- 3.5 The current insurance arrangements do not cover the full range of liabilities which could be incurred by Members. In addition, as mentioned above there is a potential liability issue arising where Members are appointed by the Council to outside bodies. Where outside bodies are companies, there is a lower risk as the members and directors of a company are not normally personally liable in respect of corporate

acts. However, there remain circumstances where directors can be held personally liable, particularly where companies get into financial difficulties. In addition, Members are frequently appointed to unincorporated outside bodies as trustees, and in principle trustees are liable personally for all their decisions and actions as trustees.

- 3.6 It has been generally expected that such companies and trusts will arrange their own insurance against such eventualities (as for example, is the case with the ALMOs) although this is not checked as a matter of routine and, indeed, the Council is unable to purchase insurance to cover such eventualities. However, the 2004 Order provides the powers for the Council to indemnify Members in relation to an action or failure to act where this forms part of, or arises from, duties arising from a function exercised at the Council's request, or with the Council's approval.
- 3.7 It is therefore proposed to extend the indemnity arrangements to Members, and to update the indemnity to reflect the terms of the 2004 Order. It is to be noted that in the case of both officers and Members, the Order does not permit an indemnity for actions or failures to act which amount to a criminal offence or which are the result of fraud, or other deliberate wrongdoing or recklessness. The Order does permit an indemnity to cover the defence against criminal proceedings, but only on the basis that the Member or officer must reimburse the Council in the event of a conviction.
- 3.8 The proposed new indemnity for officers and Members is set out in Appendix 5.

4.0 Implications For Council Policy And Governance

- 4.1 The proposed new indemnity will provide the maximum protection which is legally permissible, for officers and Members against any personal liabilities they might otherwise incur in carrying out their duties.

5.0 Legal And Resource Implications

- 5.1 The legal implications of the proposed new indemnity are set out above.

6.0 Conclusions

- 6.1 The 2004 Order gives the Council the opportunity to remove the previous uncertainties around the scope for indemnities, and clearly to provide cover for those Members and officers who are appointed by the Council to outside bodies.

7.0 Recommendations

- 7.1 It is recommended that the Board approves the proposed new indemnity set out in Appendix 5.

**MEMBERS PERSONAL ACCIDENT INSURANCE
(UNDERWRITTEN BY ZURICH MUNICIPAL INSURANCE)**

See policy documents for full terms

		AGE	
1	Sum payable for Death, loss of sight of one/both eyes, total loss by physical severance or complete loss of use of one or both hands/feet. Permanent total and absolute disablement.	Under 80 £100,000	80-85 £50,000
2	Scale of compensation based on above sum for less severe injuries e.g. loss of hearing in both ears 60%.	Benefit based on £100,000	Benefit based on £50,000
3	(i) Temporary total disablement from engaging in or attending to usual occupation.*	£150.00 per wk for 104 wks	£75.00 per wk for 104 wks
	(ii) Temporary partial disablement.	£75.00 per wk for 104 wks	£37.50 per wk for 104 wks
4	Benefit under paragraphs 1, 2 and 3 above are paid to Members who suffer an assault because of their status as a Member of Council even though at the time of the assault the Member was not engaged on Authority business.		
5	Personal effects if damaged or destroyed:		
	(i) At the same time as bodily injury covered by the policy.	£5000	
	(ii) At any other time whilst engaged on Council business.	£1000	

* If not in remunerative employment benefit is payable if unable to attend to Council business.

Appendix 2

Dear Councillor

MEMBERS PERSONAL INSURANCE COVER - ANNUAL REMINDER

I am writing to remind all Members of the insurance cover provided to you by LCC. Brief details are set out below. For full terms and conditions please refer to the policies which can be inspected in Democratic Services.

(A) PERSONAL ACCIDENT INSURANCE

- 1 Members are covered whilst engaged in the following activities:
 - (a) Official duties in connection with the business of LCC including journeys directly connected with that business.
 - (b) Direct travel between private residence and place of duty.
 - (c) Attending meetings of and duties carried out for the Association of County Councils, the Association of District Councils, the Local Government Association or the Convention of Scottish Local Authorities.
 - (d) Service on behalf of or by appointment by LCC on committees of other authorities or bodies provided that no other personal accident insurance applies in respect of such service.
 - (e) Attendance at surgeries of any member and any other complementary activities where they sustain bodily injury by accident as a result of which death or disablement occurs independently of any other cause within 24 months of sustaining such injury.
- 2 There are certain exclusions (eg suicide and pre-existing medical conditions) where the policy does not operate and benefits are subject to medical certification.
- 3 Benefits are as set out in the attachment to this letter
- 4 Section 140(2) of the Local Government Act 1972 requires deduction of any expenses incurred by the Authority, in dealing with a claim under the policy, from the benefit payable.
- 5 Benefits are payable under the policy irrespective of whether or not legal liability for the injury falls upon a third party and payments under the policy do not affect the Members' legal rights to recover damages from any third party who may have caused, or contributed towards, the injury.

If you have any queries in connection with this matter please contact Mr Frank Morrison, the Council's Insurance Manager (telephone number 247 4407).

(B) MOTOR VEHICLE – LOSS OF NO CLAIMS DISCOUNT INSURANCE

It is important that you ensure that if you use a vehicle in connection with Council business, that your own motor vehicle insurance policy provides the necessary cover. If you are unsure of your position, you should check with your insurer. The Council has no insurance cover for Members' vehicles.

However, insurance cover is provided for Members' loss of no claims discount up to £500 in any one incident and also reimbursement of policy excess up to £100, where the incident giving rise to the insurance claim occurred whilst the car was in use on Leeds City Council business. You must contact the Insurance Section, Corporate Services as soon as possible after the accident if you wish to make a claim.

(C) LEGAL EXPENSES INSURANCE – MEMBERS CODE OF CONDUCT ENQUIRIES

This provides legal representation up to a maximum cost of £50,000 for any member who is subject to a Members Code of Conduct enquiry, who does not already have in place insurance cover for legal expenses. The main points to note are:

- You must notify the insurers by contacting Nicole Jackson, Assistant Chief Executive (Corporate Governance) tel. 247 4537 as soon as you know that an enquiry is to be conducted. Once the required information is submitted to the insurer, they will appoint a solicitor.
- You must not appoint your own solicitor or incur any costs without the insurers prior written permission.
- Insurers may decline to pay for you to be represented if they feel that there is no reasonable prospect of a successful defence.
- The Local Authorities (Indemnities for Members and Officers) Order 2004, requires that where the enquiry concludes that the member has failed to comply with the Code of Conduct, the cost of legal representation must be repaid.

A copy of the policy wording is available for inspection in Democratic Services.

Appendix 3

Leeds City Council – Travel Insurance

Persons insured:

All persons travelling outside the UK **on the business of LCC** (including those accompanying them) **excluding persons aged 75 and over unless special arrangements have been made.**

Summary of Cover:

Medical Expenses	Unlimited
Personal Accident – Members	See separate arrangements
Personal Accident – Employees and others	Death/permanent disablement £50,000 (less serious injuries – percentage of £50,000) N.B. Cover is limited to £20,000 for persons aged under 18 years or 23 if in Full Time Education
Baggage/money/credit cards	£10,000/£5,000/ £3,000 respectively per person
Cancellation/curtailment	£10,000 maximum per person
Personal Liability (injury or damage to others)	£5,000,000 maximum per event
Travel Delay	£50 after 4 hours & £50 for each hour thereafter, maximum £500 for any one journey
Hijack	£500 per day, per person, maximum 50 days
Legal Expenses	£50,000 maximum any one claim

A copy of the policy is available in the insurance section for inspection or copying by persons travelling abroad. An individual can also make their own arrangements for travel insurance, if they so wish.

Emergency Contact: In the event of an emergency occurring whilst travelling, a 24 hour helpline is available by calling ACE Rescue on **+44 207 173 7796**. You will need to quote the policy no. **53UK476262**.

Excess: Medical Expenses, Travel & Accommodation Expenses Personal Baggage, Money, Credit Cards, Cancellation, Curtailment - £25. All other sections - NIL.

Appendix 4

Extract from the minutes of a meeting of Policy and Finance Committee 4 July 1978

Indemnity to Employees

The Committee considered representations received from UNISON and a report of the Director of Administration in connection with an indemnity to Council employees in respect of acts of negligence committed by them in the course of their duty.

RESOLVED - That the indemnity be adopted in the following terms:

Subject to the exceptions set out below, the Council will indemnify its employees against claims (including costs) in respect of any loss or damage other than claims covered by an insurance policy taken out by the Council, arising out of any neglect, error or omission by the employees in the course of their duties on behalf of the Council and within the scope of their authority.

The indemnity will not extend to loss or damage directly or indirectly arising out of :

- (a) fraud, dishonesty or criminal offence on the part of the employee
- (b) libel or slander
- (c) surcharges under the Local Government Act 1972.

The indemnity will not apply to any claim in respect of which the employee concerned admits liability or negotiates or attempts to negotiate a settlement without the written authority of the Council.

Appendix 5

New Indemnity to Members and officers

1. Pursuant to the Local Authorities (Indemnities for Members and Officers) Order 2004, the Council indemnifies its Members and officers against claims (including costs) in respect of any loss or damage (other than claims covered by an insurance policy taken out by the Council) in relation to any action of, or failure to act by, the Member or officer in question, which

(a) is authorised by the Council; or

(b) forms part of, or arises from, any powers conferred, or duties placed, upon that Member or officer, as a consequence of any function being exercised by that Member or officer (whether or not when exercising that function he does so in his capacity as a Member or officer of the Council) -

(i) at the request of, or with the approval of the Council, or

(ii) for the purposes of the Council.

2. This indemnity does not extend to loss or damage directly or indirectly relating to any action by, or failure to act by, any Member or officer which -

(a) constitutes a criminal offence; or

(b) is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that Member or officer; or

(c) in relation to the making by a Member or officer of any claim in relation to an alleged defamation of that Member or officer.

3. Notwithstanding 2(a) above, this indemnity extends to -

(a) the defence of any criminal proceedings brought against the officer or Member; and

(b) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

4. Notwithstanding 2(c) above, this indemnity extends to the defence by a Member or officer of any allegation of defamation made against him.

5. (1) Notwithstanding any limitation on the powers of the Council, the Council provides this indemnity to the extent that the Member or officer in question -

(a) believed that the action, or failure to act, in question was within the powers of the Council, or

(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, believed that the contents of that statement were true,

and it was reasonable for that Member or officer to hold that belief at the time when he acted or failed to act.

(2) This indemnity is provided in relation to any 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 at which he acted.

6. For the avoidance of doubt, but subject always to the terms of the said Order, this indemnity extends to acts or omissions of any Member or officer in their capacity as a member, director, trustee, governor, or member of a board of management (or in any similar capacity), of any company, trust, charity, partnership or unincorporated association (or of any similar body) to which the Member or officer in question was appointed by the Council. This indemnity does not extend to any claims covered by an insurance policy taken out by any such body, or by the Member or officer in question.

7. (1) Paragraph (2) below applies to this indemnity (and to any insurance secured for that Member or officer) in relation to the defence of -

(a) any criminal proceedings; or

(b) any investigation, report, reference, adjudication, or any other proceeding pursuant to Part 3 of the Local Government Act 2000 ("Part 3 proceedings").

(2) Where this paragraph applies, this indemnity is provided, and any insurance secured, on the terms that -

(a) in the case of criminal proceedings, if 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 Part 3 proceedings -

(i) if a finding is made in those proceedings that the Member in question has failed to comply with the Members' Code of Conduct and that finding is not overturned following any appeal, or

(ii) if the Member admits that he has failed to comply with the Members' Code of Conduct,

that Member or officer shall reimburse the Council or the insurer (as the case may be) for any sums expended by the Council or insurer in relation to those proceedings pursuant to this indemnity or to such insurance.