



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

Member Management Committee

Date: 18th November 2008

Subject: Members' Legal Expenses Insurance

Electoral Wards Affected:

Specific Implications For:

Ethnic minorities

Women

Disabled people

Narrowing the Gap

Executive Summary

This report is an update to the report dated 8th October 2008 to the Member Management Committee which advised Members of the Committee of the current policy in place to indemnify Members against the legal costs of defending themselves from allegations of misconduct and the insurance arrangements in place relating thereto. In addition, the 8th October report mentioned difficulties in communicating with the insurers which have been experienced by some Members who approached the insurers to obtain legal representation. Finally, alternatives to the current arrangements are discussed.

1. Purpose Of This Report

- 1.1 To advise Members of the Committee of further developments in relation to the insurance arrangements for legal representation and to set out possible alternatives to the current insurance arrangements. Members of the Committee are asked to consider the contents of the report and consider if alternative arrangements are merited.

2. Background Information

- 2.1 The **Local Authorities (Indemnities for Members and Officers) Order 2004** (see appendix), inter alia, permits local authorities to provide an indemnity to Members who have been notified that they are to be subjected to a code of conduct enquiry, either by a self funded arrangement or by way of purchasing an insurance policy.

- 2.2 Any indemnity provided by the Council, whether self funded or insured externally is subject to the requirement in 2004 Order which states that the “member or officer shall reimburse the authority or the insurer (as the case may be) for any sums expended by the authority or insurer in relation to those proceedings pursuant to the indemnity or insurance”.
- 2.3 The Council currently purchases legal expenses insurance from DAS so that Members who so wish may have legal representation if they are subjected to a Code of Conduct enquiry.

3. Main Issues

- 3.1 As detailed in the 8th October 2008 report, insurance has been arranged with DAS, a legal expenses insurer, who will pay for Members to be represented by a solicitor following a decision to proceed with a Code of Conduct enquiry.
- 3.2 The Assistant Chief Executive (Corporate Governance) and the Insurance Manager met with DAS to discuss the problems referred to in the 8th October 2008 report and to agree new procedures designed to avoid a recurrence of those problems. The Assistant Chief Executive (Corporate Governance) advised the insurers that Members facing a Conduct enquiry, which could potentially lead to their suspension or disqualification in serious cases, find it a stressful time and therefore the process to obtain legal support needed to be easy and one in which Members had confidence that they would get the support they needed.
- 3.3 It was accepted by DAS that communication to date by Members with their “call centre” operation had led to difficulties given that the staff concerned did not know of this particular policy or the specialised nature of the situation for which the policy provides an indemnity. DAS have now agreed to supply separate and specific contact details for Members to use. The new contacts will be more familiar with the service required and will be able ensure that the Member is put in contact with a firm of solicitors who specialise in this area of work.
- 3.4 DAS also accepted that their choice, of a firm based in Cardiff, was not convenient to Leeds City Council Members. The Assistant Chief Executive (Corporate Governance) has provided DAS with the names of firms in Leeds (and nationally) who have experience of Member Code of Conduct matters who should be added to the insurers legal panel for this work.
- 3.5 The Assistant Chief Executive (Corporate Governance) advised DAS of the process required by the legislation in relation to conduct matters and the insurance policy is to be redrafted to reflect the new regime.

4. Possible Alternatives to the Insurance Arrangements

- 4.1 Prior to 2004, there were no arrangements put in place by Leeds City Council to provide legal representation to Members.
- 4.2 The current arrangement is that the Council purchases an insurance policy at a cost of £3,066.53 per annum which provides legal advice and representation to Members subject to a code of conduct enquiry. Legal representation is funded up to £50,000

any one claim. The insurance premium of £3,066 is funded from within Council budgets along with other insurance covers specifically arranged for Members.

- 4.3 Members of the Association of Labour Councillors (ALC) have access to free legal advice provided by a firm of London solicitors. Officers are not aware of any similar arrangements in other political groups
- 4.4 As an alternative to the current insurance arrangements, it would be possible for the Council to self-insure. This would entail the procurement of the services of a firm or firms of solicitors. The cost would obviously vary dependent on the number of Code of Conduct enquiries each year. Due to the unpredictability of the cost each year, there may be difficulties in dealing with those costs within existing budgets. Consequently, this alternative might require funding to be by way of a recharge to the relevant party groups.
- 4.5 If the above option were to be considered then control arrangements would need to be put in place both in terms of maximum expenditure on any matter and in terms of reasonableness of expense in a similar way to the insurance policy, to ensure that council tax payers money is not being spent on a case that has no possibility of being defended.
- 4.6 Further, whilst the 2004 Order gives the Council the freedom to negotiate such terms for any indemnity or policy of insurance as it thinks appropriate, it requires that those terms must include provision for re-payment of sums expended by the authority or the insurer in cases in which a member has been found to be in breach of the Code of Conduct. Therefore any self insuring arrangement would need to reflect this.
- 4.7 The possibility of using another insurer as an alternative to the existing insurer has been investigated. Our brokers, Marsh UK, confirm that there are no other insurance products available to local authorities which provide legal expenses insurance for Council Members.

5. Implications for Council Policy And Governance

- 5.1 There may be such implications if alternative arrangements to replace the existing insurance policy are to be put in place.

6. Legal And Resource Implications

- 6.1 There are no legal implications but as stated above, there are likely to be resource implications not currently budgeted for if it is considered that an alternative other than the insurance option is considered. Procurement of an external firm specialising in this area of work is likely to incur hourly charges in the region of £200-250 and therefore is likely to be significantly more expensive than the current insurance premium of £3,066 per annum.

- 6.2 On a separate note, in researching this matter, it appears that the Council has not formally adopted an indemnity for Members other than in relation to Conduct matters although various insurance arrangements are in place for Members. It is therefore suggested that a report be brought to a further meeting to advise Members of the current insurance cover and any necessary action required re the general question of indemnities.

7. Conclusions

- 7.1 Alternatives are clearly available, but the Assistant Chief Executive (Corporate Governance) considers that the costs would be prohibitive particularly bearing in mind the current premium. There is no budget provision for any increase in costs. However, the cost of the insurance policy needs to be monitored to see what effect, if any, there is on the premium due to this year's activity regarding investigations. Further, following discussion with DAS regarding improvements required, it is anticipated that the improved service will meet the needs of Members. It should also be noted that one political group has arrangements which have the advantage of not requiring repayment of legal costs by a member subjected to a Code of Conduct enquiry who is not cleared which is a mandatory clause in any arrangements provided by the Council..

8. Recommendations

- 8.1 It is recommended that
- a) the current insurance arrangements are maintained as the most cost effective way of providing legal representation to Members, with appropriate monitoring of the performance of the insurers and the premium.
 - b) a report is brought to a future Committee regarding the general question of Members indemnity and insurance arrangements to cover Members when acting in their official capacity.

Appendix

The Local Authorities (Indemnities for Members and Officers) Order 2004

Made 22nd November 2004

Coming into force 23rd November 2004

The First Secretary of State, in exercise of the powers conferred upon him by sections 101 and 105 of the Local Government Act 2000^[1] and having consulted representatives of relevant authorities, representatives of employees of relevant authorities and such other persons as he considered appropriate hereby makes the following Order, of which a draft has been laid before, and approved by, resolution of, each House of Parliament:

Citation, commencement and interpretation

1. - (1) This Order may be cited as the Local Authorities (Indemnities for Members and Officers) Order 2004.

(2) It shall come into force on the day after that on which it is made.

(3) In this Order -

"Part 3 proceeding" means any investigation, report, reference, adjudication or any other proceeding pursuant to Part 3 of the Local Government Act 2000; and

"secure", in relation to any indemnity provided by means of insurance, includes arranging for, and paying for, that insurance and related expressions shall be construed accordingly.

Application

2. This Order applies to relevant authorities in England^[2] and to police authorities in Wales^[3].

Indemnities

3. The authorities to whom this Order applies may, in the cases mentioned in article 5 below, provide indemnities to any of their Members^[4] or officers.

Insurance

4. In place of, or in addition to, themselves providing an indemnity under article 3 above, any authority to whom this Order applies may, in the cases mentioned in article 5 below, provide an indemnity by securing the insurance of any of its Members or officers.

Cases in which an indemnity may be provided

5. Subject to article 6 below, an indemnity may be provided in relation to any action of, or failure to act by, the member or officer in question, which -

(a) is authorised by the authority; 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 authority) -

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

(ii) for the purposes of the authority.

Restrictions on indemnities

6. - (1) No indemnity may be provided under this Order in relation 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.

(2) Notwithstanding paragraph (1)(a), an indemnity may be provided in relation to -

- (a) subject to article 8 below, 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.

(3) No indemnity may be provided under this Order in relation to the making by the member or officer indemnified of any claim in relation to an alleged defamation of that member or officer but may be provided in relation to the defence by that member or officer of any allegation of defamation made against him.

Matters that exceed the powers of the authority or member or officer

7. - (1) Notwithstanding any limitation on the powers of the authority which grants an indemnity, the authority may provide an 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 authority, or
- (b) where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the authority, 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) An indemnity may be provided in relation 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 at which he acted.

Terms of indemnity or insurance

8. - (1) Subject to paragraphs (2) and (3) below, the terms of any indemnity given (including any insurance secured), under this Order may be such as the authority in question shall agree.

(2) Paragraph (3) applies where any indemnity given to any member or officer (including any insurance secured for that member or officer) has effect in relation to the defence of -

- (a) any criminal proceedings; or
- (b) any Part 3 proceedings.

(3) Where this paragraph applies, the indemnity shall be 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 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 Code of Conduct,

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

(4) Where a member or officer is obliged to reimburse an authority or insurer pursuant to the terms mentioned in paragraph (3) above, those sums shall be recoverable by the authority or insurer (as the case may be) as a civil debt.

Signed by authority of the First Secretary of State.

Nick Raynsford
Minister of State in the Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for circumstances in which a relevant authority in England or a police authority in Wales may provide an indemnity to any of their Members or officers. The Local Authorities (Elected Mayors) (England) Regulations 2004 (S.I. 2004/1815) provide that the term "member" shall, in this context, include any elected mayor. These powers are in addition to any existing powers that such authorities may have (such as powers under section 111 of the Local Government Act 1972). The relevant authorities in England are -

county councils;

district councils;

London borough councils;

parish councils;

the Greater London Authority;

the Metropolitan Police Authority;

the London Fire and Emergency Planning Authority;

the Common Council of the City of London (in its capacity as a local or police authority);

the Council of the Isles of Scilly;

a fire authority constituted by a combination scheme under the Fire Services Act 1947;

a police authority;

a joint authority established by Part IV of the Local Government Act 1985;

the Broads Authority;

a National Park Authority established under section 63 of the Environment Act 1995.

Article 4 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.

Article 5 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 employee is carrying on any function at the request of, with the approval of, or for the purposes of, the authority. However, it does extend to cases in which 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. This would permit an indemnity, for example, to cover a case where the member or officer acts as a director of a company at the request of his authority, and thus is acting in his capacity as a director.

Article 6 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.

Article 7 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 fulfilled but it later becomes clear that this is not the case. This power is limited to cases in which the person indemnified -

reasonably believed that the matter in question was not outside those powers, or

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.

Article 8 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 provision for re-payment of sums expended by the authority or the insurer in cases in which a member has been found to be in breach of the Code of Conduct applicable to him as a member of the authority, or a member or officer has been convicted of a criminal offence (if the indemnity or insurance policy would otherwise cover the proceedings leading to that finding or conviction). Any sums recoverable may be recovered as a civil debt.

A regulatory impact assessment has been prepared in relation to these Regulations. A copy may be obtained from Local Government Legislation Division, Office of the Deputy Prime Minister, Zone 5/D1, Eland House, Bressenden Place, London, SW1E 5DU (telephone 020 7944 4148; [e-mail lgl@odpm.gsi.gov.uk](mailto:lgl@odpm.gsi.gov.uk)).

Notes:

[1] 2000 c. 22.

[2] For the meaning of "relevant authority", *see* section 49(6) of the Local Government Act 2000.

[3] For powers in relation to relevant authorities in Wales, *see* section 105(2) of the Local Government Act 2000.

[4] For the meaning of "member", *see* sections 49(6) and 101(5) of the Local Government Act 2000 and, in relation to elected mayors, the Local Authorities (Elected Mayors) (England) Regulations 2004 (S.I. 2004/1815).
