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

**Member Management Committee**

**Date: 4<sup>th</sup> March 2009**

**Subject: Insurance and Indemnities for Members**

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**Electoral Wards Affected:**

**Specific Implications For:**

Equality and Diversity

Community Cohesion

Narrowing the Gap

**Introduction**

This report sets out the insurance protection provided specifically for Members and the indemnity provided by Leeds City Council to Officers. The Member Management Committee is asked to consider widening the scope of the Leeds City Council indemnity to include members.

**1. Personal Accident Insurance**

1.1 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:

1.1.1 Official duties in connection with the business of Leeds City Council including journeys directly connected with that business.

1.1.2 Direct travel between private residence and place of duty.

1.1.3 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.

1.1.4 Service on behalf of or by appointment by Leeds City Council on committees of other authorities or bodies provided that no other personal accident insurance applies in respect of such service.

1.1.5 Attendance at surgeries of any member and any other complementary activities

1.2 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.

- 1.3 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.
- 1.4 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.
- 1.5 The annual cost of this insurance is £1,222.

## **2. Motor Vehicle – Loss Of No Claims Discount Insurance**

- 2.1 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 Leeds City Council business.
- 2.2 Certain conditions apply as set out in the annual letter to Members (see Appendix 2)
- 2.3 This cover is included within the existing insurance covers provided by our main insurers, Zurich Municipal, and no separate charge is made.
- 2.4 No other insurance is provided for Members cars. Members must ensure that their motor insurance includes use of their cars on Leeds City Council business.

## **3. Legal Expenses Insurance – Members Code Of Conduct Enquiries**

- 3.1 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.
- 3.2 The insurance is placed by Zurich Municipal acting as an intermediary for DAS, a long established legal expenses insurer.
- 3.3 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.
- 3.4 A further report on this matter is included elsewhere on this agenda
- 3.5 The annual cost is £3,066.

## **4. Travel Insurance**

- 4.1 An annual policy, which covers both Members and Officers is arranged.
- 4.2 Cover is provided for travel on the business of Leeds City Council outside Great Britain.
- 4.3 Full details of the limits of cover are set out in Appendix 3.
- 4.4 The annual cost (Members and Officers) is £14,000.

## **5. Indemnity Provided by Leeds City Council**

- 5.1 Appendix 4 sets out the blanket indemnity currently provided to Officers by Leeds City Council.
- 5.2 The wording, which dates from 1978, does not currently include Members.
- 5.3 Following the introduction of the Local Authorities (Indemnities for Members and Officers) Order 2004 (Appendix 5), local authorities are permitted to provide an indemnity to Members. It is therefore proposed that the Assistant Chief Executive (Corporate Governance) should submit a report to the Executive Board with recommendations to amend the wording of the current indemnity to bring it into line with the above Order and, specifically, to include Members.
- 5.4 It has been identified that there is a potential liability issue arising from Members sitting on Outside Bodies, particularly where they do so in the capacity of director.
- 5.5 If such an organisation were to get into financial difficulties, and the directors of the body were to be held to be liable, then there is the possibility of an Elected Member in this position becoming personally liable.
- 5.6 It has been generally expected that such companies will arrange their own insurance against such eventualities (e.g. as 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 Local Authorities (Indemnities for Members) Order 2004 provides the facility for Members to be indemnified in circumstances which include actions undertaken at the request of, or with the approval of, the authority.
- 5.7 It is therefore proposed to indemnify those Members appointed to an Outside Body by the Council in accordance with the Appointments to Outside Bodies Procedure Rules and in circumstances where the outside body does not itself provide an indemnity (either by insurance or by other means). This would be subject to the restriction that the Council can only indemnify Members (or, for that matter, officers) on the basis that they are acting in good faith. It would be necessary for the Member to reimburse the Council in the case of any action by them which constituted a criminal offence or was the result of fraud, other wrongdoing or recklessness.
- 5.8 Subject to any views expressed by the Member Management Committee, therefore, it is proposed that the proposed report to the Executive Board should also recommend approval of an indemnity for Members sitting on Outside Bodies as detailed above.
- 5.9 It is further proposed that the Council's position regarding indemnities be clarified in correspondence to Elected Members upon appointment or reappointment to Outside Bodies.

## **6. Recommendation**

- 6.1 Member Management Committee is asked to note the contents of this report and the intention of the Assistant Chief Executive (Corporate Governance) to report to Executive Board on the matter of indemnities and to give such guidance as it considers appropriate.

## Appendix 1

### 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 eg 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:

<b>Medical Expenses</b>	Unlimited
<b>Personal Accident – Members</b>	See separate arrangements
<b>Personal Accident – Employees and others</b>	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
<b>Baggage/money/credit cards</b>	£10,000/£5,000/ £3,000 respectively per person
<b>Cancellation/curtailment</b>	£10,000 maximum per person
<b>Personal Liability</b> (injury or damage to others)	£5,000,000 maximum per event
<b>Travel Delay</b>	£50 after 4 hours & £50 for each hour thereafter, maximum £500 for any one journey
<b>Hijack</b>	£500 per day, per person, maximum 50 days
<b>Legal Expenses</b>	£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

### 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<sup>[1]</sup> 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<sup>[2]</sup> and to police authorities in Wales<sup>[3]</sup>.

#### 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<sup>[4]</sup> 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

22nd November 2004

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## 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)).

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*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).