



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

Member Management Committee

Date: 14th April 2009

Subject: Members' Legal Expenses Insurance

Electoral Wards Affected:

Specific Implications For:

Ethnic minorities

Women

Disabled people

Narrowing the Gap

Executive Summary

A further report on the subject of Members' legal expenses insurance for Members subject to a Code of Conduct enquiry, detailing the sequence of events leading to the arrangement of the insurance, difficulties encountered in dealing with the insurers, choice of solicitors, alternatives to the insurance arrangements and the possibility of setting up an alternative arrangement .

1 Purpose of the Report

- 1.1 To advise Members of the Committee of the current position in relation to the insurance arrangements for legal representation and to set out possible alternatives .

2. Background Information

- 2.1 The **Local Authorities (Indemnities for Members and Officers) Order 2004** (see appendix 1) permits local authorities to provide an indemnity to Members who have been notified that they are to be subject 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 the 2004 Order which states that if a Member is found to be in breach of or admits to failing to comply with the Code the **"member 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 subject to a Code of Conduct enquiry.

3. Sequence of Events Leading to Current Insurance Arrangements

3.1 Prior to the implementation of the 2004 Order, which took effect in November 2004, local authorities were not permitted to provide a personal indemnity to Members. However, a consultation process initiated by central government leading up to the 2004 Order raised the issue to the extent that Members wished to make some arrangements in anticipation of the Order, although such arrangements would have to be fully funded by the Members.

3.2 After research, involving advice from the Council's insurance brokers and contact with other local authorities, it was clear that there was only one insurance product available specifically to fund legal expenses for Members facing a Code of Conduct enquiry. This was only available via Zurich Municipal, an insurance company which specialises in local authority business, who act as an intermediary for DAS, a long established legal expenses insurer.

3.3 In a report to the Group Whips dated 2nd April 2004, the Council's Insurance Manager set out the position. Consultation by way of a letter to all Members was carried out and following a Whips' meeting on 25th June 2004, it was agreed to purchase this insurance policy with members paying their respective share of the premium

3.4 However, later that year the 2004 Order was published and this changed the position to allow the Council to pay the insurance premium.

3.5 This insurance policy has been renewed each year since 2004.

3.6 In September 2008, the Council's Insurance Manager made further enquiries with the Council's insurance brokers as to the availability of this kind of insurance cover. They advised that there was no similar insurance product on the market and DAS was the only insurer offering legal expenses cover for councillors.

3.7 Enquiries were made of the West and South Yorkshire authorities and Core Cities authorities and this revealed that they either did not insure at all (and had no arrangements for funding) or they bought the same insurance product as Leeds. None of those authorities who had arranged the insurance cover had made any claims on their policies.

4. Difficulties in Dealing With the Insurers

4.1 As previously reported, it became clear that when Members contacted DAS in order to register a claim under the policy, DAS staff receiving the telephone calls were unaware of this special insurance policy and had some difficulty in identifying Leeds City Council as a customer on their computer systems. In addition, DAS staff were not particularly helpful and in some cases repeated telephone calls ended with matters remaining completely unresolved.

- 4.2 To represent Members who are subject to a Code of Conduct investigation, DAS use a firm of solicitors based in Cardiff. This is not particularly convenient for a local authority in West Yorkshire.
- 4.3 Following these problems, the Assistant Chief Executive (Corporate Governance) and the Insurance Manager met with DAS to discuss the problems 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.
- 4.4 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 to ensure that the Member is put in contact with a firm of solicitors who specialise in this area of work.
- 4.5 DAS also accepted that their choice of a firm based in Cardiff was not convenient to Leeds 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 insurer’s legal panel for this work. This was accepted by DAS.

5. Appointment of Solicitor

- 5.1 DAS have agreed to allow Members to choose a local firm subject to any nominated solicitor being able to agree hourly rates for their work in line with the maximum hourly rate which DAS are willing to pay, currently £174 per hour. This figure is arrived at by reference to guidelines issued by the Advisory Committee on Civil Costs.

However, there have recently been some difficulties in arranging for a local firm of solicitors to represent Members the subject of an investigation, with DAS funding the cost. This arose because the maximum hourly rate which DAS are prepared to pay is not sufficient to cover the cost of engaging local solicitors known to have relevant expertise. Leeds firms have indicated hourly rates in the region of £250/£300 per hour for a partner with a solicitor rate of £185. DAS were not prepared to fund at these levels. There are firms further afield (Manchester and Lincolnshire) who will work within the DAS rate but those firms have recently been used to conduct investigations and so are not always available.

Further discussions will take place with DAS to ask them to procure local firms at the rate they appear willing to pay. In the meantime, if any investigations arise, officers will endeavour to assist in sourcing appropriate legal representation at the hourly rate permitted by the insurance cover. It would also be open to a Member, in this interim period, to select a solicitor of choice and to pay the difference between the DAS maximum and the actual charge at their own expense.

6. Cost of Current Insurance Cover

- 6.1 As from 1st April 2009, the insurance premium charged by Zurich Municipal, who act as an intermediary for DAS, is £3,314.32 per annum. This is funded from within Council budgets along with other insurance covers specifically arranged for Members.
- 6.2 There have been four claims on the policy during 2008, of which three have not yet been finalised. The total costs in terms of legal bills is estimated to be around £5,000 to £6,000.
- 6.3 Discussions with DAS about the level of cover and hourly rates they will pay have now taken place. In respect of the level of cover, which is currently set at a maximum of £50k any one claim, they will increase this to £100k for an additional 25% increase in premium. This would increase the current premium from £3,314 to £4,143 per annum which would still seem to represent good value.
- 6.4 DAS have indicated they would consider an arrangement whereby Leeds City Council may use a solicitor who charges a higher hourly rate than they will currently agree to pay. This would require an agreement with one nominated firm. Terms of business must be agreed between DAS and the nominated firm in advance. If such an agreement were reached, they would charge a higher premium. However, it is not possible to say at what level the higher premium would be until a detailed proposal were made to them. DAS have also said that they do not want to be in the position of having to negotiate terms of business every time Leeds City Council has a claim under their policy. As a consequence, we would need to carefully select one firm of solicitors should we wish to pursue this possibility.

7. Existing Alternative Arrangements for Legal Representation of Members

- 7.1 Members of The Association of Labour Councillors are able to access a scheme arranged by the Labour Party with a firm of solicitors in London. and the scheme is funded from annual subscriptions. This scheme has the advantage that Members using it will not be subject to the requirement that they repay the legal costs incurred if they lose their case. Members of other political groups may wish to consider raising this at national level with their political parties.
- 7.2 It has not been possible to discover the cost of the Association of Labour Councillors scheme at the time of drafting this report, but the cost to individual Members is almost certainly modest, when considering the amount of Association of Labour Councillors Members subscription levels. Obviously, on a national basis, a large number of Labour Councillors paying into a fund guarantees a sufficient pool of money to make the scheme financially viable.

8. Other Possible Arrangements - self insure

- 8.1 The Local Government (Indemnities to Members & Officers) Order 2004 permits local authorities to indemnify members or officers either by way of arranging external insurance or by funding the costs of providing the indemnity. Whichever choice a local authority makes, it is subject to the normal requirements to achieve best value.
- 8.2 It would be possible for the Council to procure the services of a firm or firms of solicitors to provide legal representation to Members who are the subject of a code of conduct matter. There are costs issues in this approach, however, which are set out in paragraph

5.1 above. The Assistant Chief Executive (Corporate Governance) currently engages legal firms to carry out the investigations in Conduct matters and if it is proposed to procure a firm/firms to provide legal representation for Members, care would need to be taken that in procuring a firm, no conflict would arise .

The Council could either seek a self insured arrangement to act as a “top up” to any expenses not covered by the £174 per hour allowed by the insurance policy or alternatively as a total replacement to the existing insurance policy.

However, in order to ensure the Council’s fiduciary duties to the Council taxpayers were protected, any such self insured arrangement would need to include a maximum allowed on each claim. Further, as in insurance policies, a decision would need to be taken on each individual case as to whether the Council was willing to spend resources on providing legal representation. To use an extreme example, a Member may have been convicted of a criminal offence which is clearly a breach of the Code. In such circumstances, the Council’s fiduciary duty to council tax payers needs to be considered as to whether it would be appropriate for legal representation at council tax payers expense to be provided.

Further, any self insured arrangement as required, by the 2004 Order, must include a provision, that a Member found to be in breach or who has admitted a breach of the Code would need to reimburse any monies expended.

8.3 It is not possible to budget accurately for the annual costs of either a “top up” or complete self insured arrangement. In some financial years there may be no requirement for a Member to be provided with legal representation and in other financial years there may be several cases where representation is required.

8.4 In the years 2004 to 2007 inclusive, no claims were made on the insurance policy. Since then four claims have been made, but three are on going and the costs involved are not yet known. Consequently it is not possible to make any direct cost comparison between buying insurance or Leeds City Council making its own arrangements other than to make the point that the legal costs of the three cases currently the subject of investigations are likely to cost substantially more in total than the current insurance premium of £3314. Assuming an average hourly rate of £250, the current resources spent on the premium would pay for approximately 13 hours legal advice in total, which in the professional view of the Assistant Chief Executive (Corporate Governance) does not represent value for money as compared against the current insurance arrangements.

The Assistant Chief Executive (Corporate Governance) considers that in the light of the above, the Council should continue with the existing insurance scheme, as it represents best value for money but that she will discuss with the insurers whether the maximum hourly rate can be increased and will continue to assist the insurers in sourcing appropriate legal firms who fall within their maximum hourly rate.

Costs will continue to be monitored by Officers and the position reviewed if the costs indicate that a self insured scheme would provide better value.

8.5 In the event that a self-insured scheme were to be put in place it is envisaged that the processes for dealing with any claims under the arrangement would be similar to the processes currently in place under the externally arranged insurance policy. Briefly, this would involve a Member who receives a Decision Notice that he or she is to be

investigated for a possible breach of the Code of Conduct contacting the Assistant Chief Executive (Corporate Governance) who will arrange for the Insurance Manager to organise an initial consultation with the selected firm of solicitors. The solicitors would provide a preliminary report of the situation with a view on the possibility of a successful defence. If, in their view, the possibility of a successful defence was minimal, as in the example described above of a criminal conviction, the Council would reserve the right to terminate the legal assistance at that point in order to avoid ineffective use of Council funds. A decision would need to be made as to who ought to take such a decision. Bearing in mind the role of the Assistant Chief Executive in standards matters, it is not considered it is appropriate for this to be a decision of that postholder, due to perceptions of conflict.

9. Decision making

As an executive function, any decisions regarding this matter fall to the Executive Board or to the Director of Resources under his delegated authority.

10. Recommendations

- 10.1 Members of the Association of Labour Councillors should consider using their own existing scheme detailed in paragraph 7.1 above. Subject to the terms of that particular scheme, that may remove any requirement for the Member concerned to refund the cost of legal representation from his or her own personal funds.

Members of other political groups may wish to consider raising the above scheme with their respective political associations to establish whether a similar scheme could be provided.

- 10.2 Members are asked to advise whether they wish to continue with the existing insurance arrangements or to ask officers to prepare a report for consideration by the Executive Board / Director of Resources to consider a self insured arrangement.

Appendix 1

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

22nd November 2004

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).