



Report to: Standards Committee, 5th September 2018

Report of: Monitoring Officer

Subject: MEMBERS' AND OFFICERS' INDEMNITIES AND INSURANCE

1. Recommendation

1.1 That the Committee note the contents of this report.

2. Background

2.1 At previous meetings of the Standards Committee, information has been requested relating to the indemnity and insurance position in respect of Members and Officers of the Council.

2.2 This report sets out the legal framework relating to indemnity and insurance for Members and Officers of the Council. It also sets out the current insurance position for Members and Officers as provided by the Council's insurers, Zurich.

3. Legal Framework Relating to Indemnity and Insurance for Members and Officers of the Council

3.1 There are a number of statutory provisions which provide immunity against personal liability for both members and officers.

3.2 The starting point for understanding indemnity and insurance for Members and Officers of the Council is The Local Government (Miscellaneous Provisions) Act 1976. This Act extends to local authorities in the execution of the statutory powers and duties provisions in s.265 of the Public Health Act 1875 which provide that members and officers, when acting in the course of their duties and in good faith, have statutory immunity and are not personally liable for the actions they take. The Act provides for an indemnity in relation to potential liabilities and costs.

3.3 Furthermore, section 111(1) of the Local Government Act 1972 provides powers to local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions. Case law has established that the Council can indemnify members and officers in relation to particular decisions or acts if to do so would facilitate, or is incidental, or conducive to, the discharge of a function of the authority.

3.4 These general powers are supplemented by the Local Authorities (Indemnities for Members and Officers) Order 2004 ("the Order") which gives a specific power for local authorities to grant indemnities and/or take out insurance to cover the potential liability of members and officers in a wider range of circumstances. Each local authority has the discretion to decide whether to use the powers, and to decide the extent of such indemnities and insurance.

- 3.5 Under the Order an indemnity can be granted to cover “any act or omission by a member or officer which is authorised by the council, or forms part of, or arises from any powers conferred or duties placed, as a consequence of a function being exercised by the member or officer at the request of, or with the approval of, or for the purposes of the council”.
- 3.6 However, the Order provides that no indemnity can be provided “in relation to any action by, or failure to act by, any member or officer which constitutes a criminal offence or is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that member or officer”. Notwithstanding this point, an indemnity may be provided in relation to the defence of any criminal proceedings brought against a member or officer. However if the member or officer is subsequently convicted, then the member or officer must repay any sums expended by the authority (or insurer) in relation to those proceedings. This principle also applies in respect of any investigation, report, reference, adjudication or any other proceeding relating to a breach of the Council’s Code of Conduct for Members.
- 3.7 The Order also provides that an indemnity may be provided to a member or an officer in relation to the defence by that member or officer of any allegation of defamation. However an indemnity cannot be provided to any member or officer in relation to a claim in relation to an alleged defamation of that member or officer.
- 3.8 Finally, the Order provides that an indemnity may be granted to the extent that a member of officer believed that the action, or failure to act, in question was within the powers of the authority and it was reasonable for that member or officer to hold that belief at the time when he acted or failed to act. An indemnity may also 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 of officer reasonably believed that the act or omission in question was within his powers at the time at which he acted.

4. Insurance Position

- 4.1 As noted above any indemnity provided by the Council can be supported by insurance and the Council has in place a comprehensive Officer Indemnity Policy.
- 4.2 The Council’s insurers, Zurich, provide cover for members and officers as summarised below.
- 4.3 Members and officers are covered under our Officer indemnity policy if they are:
- Acting explicitly on the Council’s behalf in pursuance of its statutory powers;
 - Acting in an advisory capacity in connection with the Council’s functions; or
 - Representing the Council’s interests as an observer on an outside body, board or Committee.
 - Acting on behalf of a Joint Committee established by 2 or more local authorities.
- 4.4 Members and officers are not covered under our policy if they are:
- Acting solely on behalf of an outside body;
 - Acting outside their delegated powers; or
 - Acting outside the Council’s statutory powers.

- 4.5 As a general rule, Zurich advise that cover is provided where the outside body work is in an advisory rather than decision making capacity. If the latter, our insurers would expect the outside body to provide cover in its own right to our Members. Members who are appointed in a decision making capacity should ensure adequate cover is in place when they take up any such appointment. It is for the body to ensure, as far as they are able within their powers, that their representatives are covered by insurance.
- 4.6 Where a Member or officer is acting as a director or trustee, insurance should be obtained by that body to cover the Member.
- 4.7 No indemnity can be granted to any Member or officer in relation to "outside" work, which is unconnected with the work of the Council. It would not therefore cover any Member or officer acting in a private capacity.
- 4.8 The indemnity extends to include independent Members of the Audit and Governance and Standards Committees, where such appointments have been made.

Ward(s): All
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Background Papers: None