

Meeting of: STANDARDS COMMITTEE

Date: 16TH JUNE 2005

Report of: CORPORATE DIRECTOR (CENTRAL SERVICES)

Reference: CDCS/HLS

Title: INDEMNITIES REGULATIONS

PUBLIC/EXEMPT ITEM

This item is for consideration in the public part of the meeting.

PURPOSE OF THE REPORT

To advise the Committee of the content of new Regulations which specify the circumstances in which councils may provide indemnities to members and officers.

RECOMMENDATIONS

The Committee is asked to note the report.

REPORT

Introduction

Members may recall that at the last meeting of the Committee on the 19th November 2004, it was reported that draft Regulations had been published dealing with the provision of indemnities for members and officers, and that a further report would be submitted once the Regulations had been made. Minute 22(II) refers.

The Local Authorities (Indemnities for Members and Officers) Order 2004 was made on the 22nd November 2004, and came into force on the following day. The Order gives local authorities (including parish councils) specific power to grant indemnities and/or take out insurance to cover the potential liability of members and officers in a wide range of circumstances. It is for each individual authority to decide whether to grant such indemnities, or take out insurance, and to decide the extent of such indemnities and insurance.

Indemnities available under the Order

An indemnity may be provided by the Council in relation to any action 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), at the request of or with the approval of the Council, or for the purposes of the Council.

An indemnity may be provided in relation to an act or omission which is subsequently found to be beyond the powers of the Council or of the member or officer in question, but only to the extent that the member or officer reasonably and genuinely believed that the act or omission was within his or the Council's powers at the time when he acted.

No indemnity may be provided in relation to the making by the member or officer of any claim in relation to an alleged defamation of that member or officer. However, an indemnity may be provided in relation to the defence by a member or officer of any allegation of defamation made against him.

No indemnity may 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 the member or officer. However, an indemnity may be provided in relation to the defence of any criminal proceedings brought against the member or officer (although this must be reimbursed if the member or officer is subsequently convicted), and in relation to any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

Of particular interest to this Committee will be the fact that the Order provides that an indemnity can be granted to Members in respect of legal representation in "Part 3 Proceedings", that is, in respect of any investigation, hearing or other proceedings for an alleged failure to comply with the Code of Conduct. However, if the member is found to have breached the Code, and that finding is not overturned on any appeal, then the member is required to reimburse the costs incurred in relation to those proceedings.

An indemnity under the Order can be made available either directly by the Council, or through an insurance policy obtained by the Council. Any reimbursement required by the Order would therefore be to the Council or the insurer as appropriate, and, if not paid, would be recoverable as a civil debt.

Provision of Indemnity

It will be for the Council, through the Cabinet, to consider the provision of indemnities by the Council under the Order.

Like most authorities, the Council already has in place an insurance policy in respect of Officials' Indemnity. This covers the Council against loss occasioned by an error by an officer or member in or about their duties on behalf of the Council, and the Council's insurers have confirmed that liability arising from an ultra vires action is covered under this policy. The Council's Risk and Insurance Manager routinely advises the Council's insurer of outside bodies on which members represent the Council, and the insurance covers the Council for claims in respect of members' actions whilst so representing the Council. There is also cover for claims in respect of slander or libel against a member or officer in the course of their official duties.

If a claim is brought against an individual Member or Officer rather than the Council, it would be for the Council to consider whether or not to claim under the Council's insurance on the Member or officer's behalf. Clearly, any claim could have an effect on future premiums payable by the Council.

The main areas where insurance cover is not currently provided but where indemnities may now be given under the Order are:

- (1) defence costs of criminal proceedings for members and officers, and
- (2) defence costs of any "Part 3 Proceedings" against a Member.

The Council's Risk and Insurance Manager has not found it possible to obtain legal expenses cover for defending prosecutions. However, the Zurich Insurance Company has provided a quote for cover for the defence costs of Part 3 proceedings. The cost of such insurance would be £30.98 per annum for each member of the Council.

It will be for Cabinet to consider whether, and if so, in what form, an indemnity should be provided to members of the Council in respect of legal representation in Part 3 proceedings. Such an indemnity could be provided by the provision of insurance cover as identified above, or by the Council itself providing the indemnity on an ad hoc basis.

It should be noted that any indemnity for parish councillors would need to be provided by the individual parish council.

It should also be noted that, in making any decision on the matter of indemnities, all Members of the Cabinet will have a personal and prejudicial interest (as indeed would all other members of the Council). This means that, if any decision is to be taken on the subject, it will be necessary for each Cabinet Member to submit a request to this Committee for a dispensation. There is a separate item on the agenda relating to this.

FINANCIAL IMPLICATIONS/SECTION 151 OFFICER'S COMMENTS

It will be for Cabinet to consider whether it is appropriate for the Council to take out additional insurance cover, or whether, if indemnities are to be provided, a contingency fund should be set aside to meet the cost of indemnities. The Section 151 Officer has no further comments at this stage.

LEGAL IMPLICATIONS/MONITORING OFFICER'S COMMENTS

The report has been prepared in conjunction with the Head of Legal Services, and there are no further comments.

BACKGROUND PAPERS

None.