



ISLINGTON

Law and Public Services
Town Hall, Upper Street, London N1 2UD

Report of : Director of Law and Public Services

Meeting of	Date	Agenda Item	Ward(s)
Standards Committee	11 th January 2005	7	

Delete as appropriate	Exempt	Non-exempt
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If exempt under paragraph 10.4, category (1-15) of the Access to Information rules give reasons. Because: (please delete if not required)

Subject: INDEMNITIES FOR MEMBERS AND OFFICERS

1. Synopsis

This report advises the committee of a new statutory instrument which took effect from 23rd November 2004 which would allow local authorities to provide indemnities to members and officers for personal financial liability when carrying out actions on behalf of the authority.

2. Recommendation

That the Committee consider whether they wish to make any recommendations to the Corporate Services Committee on this matter.

3. Background

3.1 Following consultation with local government early in 2004, the Government have now issued legislation which enables local authorities to provide an indemnity to Members and Officers in certain circumstances.

3.2 The Local Authorities (Indemnities for Members and Officers) Order 2004 clarifies and extends the existing law on when authorities are able to provide an indemnity for personal liabilities incurred by Members and Officers when acting on behalf of the authority.

3.3. Up to now, there has been a statutory restriction on liability if Members and Officers are acting in good faith in pursuance of a statutory function or power of the authority in some limited circumstances. In addition, the authority has taken the view that it has power under Section 111(1) of the Local Government Act 1972 to offer an indemnity, if that would facilitate or be incidental or conducive to the discharge of a function of the authority.

3.4 Following representations made by this committee, the Corporate Services Committee at their meeting on 18th September 2003 agreed to take out insurance on behalf of Members to cover legal costs they may incur in defending themselves against allegations of breaches of the Code of Conduct.

3.5 This cover is currently provided by a policy with Zurich Municipal.

3.6 The new order enables an authority to provide an indemnity in relation to any personal financial liability arising from an action or failure which:

- is authorised by the authority, or
- forms part of any powers or duties as a consequence of any function being exercised by that Member or Officer either at the request of or with the approval of the authority, or for the purposes of the authority.

3.7 It will therefore permit the indemnification of Members or Officers who are acting as, for example, a trustee of a charity or a director of a company where they have taken on that role in connection with their functions with the authority, but it will not allow an authority to indemnify liability in relation to outside work which is unconnected with the authority's work. It would cover costs incurred in defending allegations of breach of the Code.

3.8 There are some restrictions placed on this power; an indemnity cannot cover:

- an action which constitutes a criminal offence
- an action which results from fraud or other deliberate wrong doing or recklessness
- any claim relating to an alleged defamation brought by a Member or Officer. However, an indemnity may be provided to defend a defamation claim made against them.

3.9 The indemnity can cover an act or omission which is subsequently found to be ultra vires, provided that the Member or Officer reasonably believed at the time that the act or omission was within their powers.

3.10 Authorities will also be able to indemnify costs incurred in defending Code of Conduct allegations, but the Member must reimburse the authority if they are found to have breached the code or they admit that they failed to comply with it. This is different from the provisions of the insurance cover currently in place.

3.11 Officers have approached Zurich Municipal to see if they would be willing to extend the current insurance policy to cover both members and officers for personal financial liability as set out above.

3.12 Zurich have replied that they have no plans to extend their policy in this respect. However, the current policy would have to be amended in any event to take on board the point set out in paragraph 3.10 above.

3.13 The Council would still be able to indemnify officers and members for financial liability, but it would have to do this out of its own funds, rather than relying on insurance cover in cases which do not relate to alleged breaches of the Code of Conduct. A report will be submitted to the Corporate Services Committee on 25th January 2005 asking them to consider this issue.

4. Implications

4.1 Financial Implications

If the Corporate Services Committee were minded to provide indemnities this would have to be funded from within the Council's budgets. It is very difficult to predict the likely demand for such indemnities in advance. Consideration could be given to limiting the numbers of claims per individual or the amount payable in respect of any such claims.

4.2 Legal Implications

These are set out in the body of the report.

Background papers:

(Insert details here)

None other than published papers.

Final Report Clearance

Signed by

Director of Law and Public Services

Date

Received by

Head of Scrutiny and Democratic Services

Date

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