



# ISLINGTON

**Corporate Resources**  
Town Hall, Upper Street, London N1 2UD

**Report of : Director of Corporate Resources**

Meeting of	Date	Agenda Item	Ward(s)
Standards Committee	19 June 2006	11	

Delete as appropriate	<del>Exempt</del>	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: INDEMNIFICATION OF COSTS**

### **1. Synopsis**

1.1 In January this year a Case Tribunal cleared five Liberal Democrat Councillors of all allegations that they had breached the Code of Local Government Conduct in connection with the appointment of the current Chief Executive. The purpose of this report is to seek the view of the Committee on a proposal to indemnify those five Councillors and the Complainant (who subsequently faced such allegations itself) in respect of the legal costs incurred by them in connection with those proceedings. It also asks the Committee to consider whether a similar indemnity should be given the Chief Executive who was also represented in the proceedings.

### **2. Recommendations**

- 2.1 To consider whether to recommend to the Executive that it indemnifies Councillor Vaja and ex-Councillors Hitchins, Dunn, Fox Valery and Creagh in respect of their legal costs and, if so, on what basis.
- 2.2 To consider whether to recommend to the Executive that it indemnifies the Chief Executive in respect of her legal costs and, if so, on what basis.

### **3. Background**

3.1 In August 2002, an Ethical Standards Officer appointed by the Standards Board for England commenced an investigation into allegations that the then Councillors Hitchin and Dunn had acted in a way which amounted to a breach of the Code of Conduct during the course of the appointment of the current chief executive, Helen Bailey. During

the early stages of the investigation, the ESO formed the view that there may also be a case to answer in respect of the three other administration Councillors who had been on the personnel sub committee responsible for the appointment, Councillors Fox, Valery and Vaja.

- 3.2 The investigation took over two years and culminated in the ESO making a referral to a Case Tribunal convened by the Adjudication Panel for England for determination. By that time, the ESO had also added a number of additional “charges” to the original allegations. One was that the councillors, including by this time the complainant, Councillor Mary Creagh, had been guilty of race and sex discrimination. This allegation was the subject of a preliminary hearing in May 2005 at which hearing it was dismissed. As a result of this, the only Councillors against whom charges were pursued were the liberal democrat members referred to above.
- 3.3 The hearing in respect of them took place over three weeks in September and October 2005, with judgement being given in January 2006. The conclusion of the Tribunal was that none of the allegations were upheld and there had been no breach of the Code of Conduct on the part of any of the Councillors.

#### **4. Costs**

- 4.1. Under S77(6)(e) of the Local Government Act 2000, the Secretary of State may make an Order giving case tribunals the power to award costs against unsuccessful parties in tribunal proceedings. It is normal practice in litigation for the unsuccessful party to be ordered to pay the reasonable legal costs of the successful party, for obvious reasons. However the Secretary of State has not made such an Order and accordingly it was not open to the case tribunal to make an order for costs in favour of the five Councillors.
- 4.2. In September 2003, after the investigation had commenced, the Council's Corporate Services Committee resolved to take out insurance to cover the legal costs of Members and Officers caught up in such proceedings. The cover taken out would pay up to £50,000 for any individual Councillor up to a maximum of £500,000 in any one financial year. However, because the insurance cover was not taken out until after the events which led to the legal costs being incurred had taken place, it is not applicable in this instance. The legal costs incurred by the Councillors, which include both solicitors fees and the costs of counsel instructed to represent them at the lengthy hearing, amount to £350,400. Clearly this is a significant amount for individuals to find from their own funds. Ex-Councillor Creagh will no doubt also have incurred some expenses in connection with the preliminary hearing although the amount of these is not known at present.
- 4.3. Notwithstanding the fact that the insurance cover is not available in these circumstances, however, the authority does have the power to reimburse members in respect of their costs from its own funds. This power derives from Local Authorities (Indemnities for Members and Officers) Order 2004. Any exercise by the authority of this power would have to be reasonable. Relevant factors for the Committee to take into account when deciding whether it would be reasonable to pay such costs are:-
- 4.3.1. The fact that all councillors were cleared of all allegations. Indeed, under the terms of the Order, Members would be required to reimburse any sums paid to them under the indemnity should they be found guilty of or admit to a breach of the code.

4.3.2. The Standards Board themselves have expressed the view that individuals should not be left to bear the burden of costs incurred in proceedings when they have been fully cleared. In a letter from Anthony Holland the Chair of the Standards Board to ex-Councillor Steve Hitchins dated 20<sup>th</sup> March he stated that

“The Board’s view is that the unfortunate situation in which you and your fellow Councillors now find yourselves is the sort of situation that was intended to be covered by the Indemnities Order. It is most undesirable that Members, who have been cleared of any wrong doing, should be left with a large personal financial burden by virtue of their public office”

The letter goes on to state that had the Tribunal had the power to make the Order and had done so, the Standards Board would not have challenged the making of such an Order.

4.3.3. Following the issuing of the judgement, the Standards Board itself carried out a report into its own processes and concluded that:-

- a. the investigation should have been completed more quickly;
- b. aspects of the investigation could, and should have been handled differently and better;
- c. prolonged uncertainty was caused for which, the Board apologises

As a result a number of changes have been introduced into the investigation process.

4.3.4. The investigation took an exceptionally long period of time and the case tribunal was highly critical of the Ethical Standards Officer’s conduct of it. Set out below is an extract from the conclusions of the Tribunal:-

“It must be obvious from those findings of fact that although the Tribunal is in no doubt that an investigation into the Respondents’ conduct in the appointment of Helen Bailey was entirely warranted, the Tribunal has serious reservations about the rigour and objectivity of the investigation process which was undertaken. This was nothing to do with any political motive underlying the complaint. The Tribunal accepts that it is inevitable that many entirely valid allegations will be made where the motive is a political one. What the Tribunal has concerned was lacking in the investigation of this case was firstly, an adequate investigation of sources of evidence, which would have assisted in establishing the true facts. At times, the investigation seemed calculated to prove a preconceived view rather than to establish all the relevant facts. *The Tribunal has much sympathy with the view expressed by the Respondents that but for them, the Tribunal would not have had the benefit of much vital evidence. That is plainly unsatisfactory.* Secondly, the Tribunal is concerned at the apparent lack of rigorous balance and objective assessment of those parts of the evidence where there was a conflict. *Such an assessment, coupled with a more thorough investigation would, in the Tribunal’s view, have considerably narrowed the scope of the allegations”*

It is clear from these comments that the Tribunal felt that firstly, the Respondents were put to a great deal more effort in terms of compiling their case than ought to have been necessary and, secondly, had the investigation been carried out properly the breadth of the allegations and by implication the length of the case, would have been considerably reduced.

- 4.4.4 The Council would wish to promote participation in public life; the possibility that individual Councillors, whom a Case Tribunal has exonerated, should be exposed to significant financial bills by virtue of their public office is not likely to encourage further people to come forward for such office.

## **5. Chief Executive's Position**

- 5.1 During the course of the investigation, the ESO took the view, based, as it turned out, on an erroneous interpretation of the legal provisions governing his powers, that the Chief Executive could not be told anything about the process of the investigation. Indeed, he did not interview her until some nine months after the event. He had also required that the Monitoring Officer not share any information with the Chief Executive about the process. Partly because of this, but also in light of the impact which any adverse findings against Councillors involved in her appointment would have on her role in the Council and also because of the potentially destabilising effect of any such adverse findings on the Council both internally and reputationally, Helen Bailey took the view that she ought to be legal advised, both during the course of her interviews with ESO and the course of the proceedings.

- 5.2 Accordingly, she made an application to the Tribunal to be represented and they agreed that she should be, adding that "it would hope to be assisted by hearing submissions on her behalf in relation to any findings of fact or inferences to be drawn from her conduct and on the interpretation of the code" and "that her contribution would aid the determination of the matter". Because the matter related to her appointment, the Council is not able to rely on the terms of the Indemnities Order in order to reimburse Ms Bailey's costs which amount to approximately £130,000. However, leading Counsel has advised that the Council may invoke the general power of competence contained in S111 of the Local Government Act 1972 to make those payments.

## **6. Quantum**

### **Ex- Councillors Dunn, Fox, Hitchins Valery and Councillor Vaja**

- 6.1 Should the Council form the view that it would be reasonable, per se to reimburse Members in respect of their costs, it will also need to be satisfied that the costs in themselves were reasonable. This will involve a close examination of the invoices themselves by the Director of Corporate Resources.
- 6.2. The sums paid to the solicitors instructed on behalf of the Councillors have been administered, by and large through the Liberal Democratic Group. A sum of money is still outstanding. So far as the debt to the solicitors is concerned, all five Councillors involved in the case are what it known as jointly and severally liable for the sum. Accordingly, in relation to the balance (approximately £78,000) outstanding this could be sought from all or any of the five Members. In respect of the other payments, they fall into a number of categories; -

- a. sums paid from the Liberal Democrat Group from its own funds (approx £29,500)
  - b. sums emanating from individuals but which were administered through the group and then paid onto the solicitors (approx £210,000) These payments in range from £25, - £50,000. It is currently unclear as to whether those payments were donations or loans.
  - c. Sums paid directly to the Solicitors Bates Wells Braithwaite by external donors. Again, some of these were loans and others were donations.
- 6.3. Accordingly, it is open to the authority to agree in principle to reimburse all the costs (subject to the Director of Corporate Resources being satisfied that the costs themselves were reasonable) **except:**
- 6.3.1. that sum (£29,500) paid directly from the group funds in respect of which the authority should take the view that it was a legitimate payment by the group in respect of its members and that public money ought not to be used to refund the group itself.
  - 6.3.2. those sums which represent a genuine donation by the contributor. Leading Counsel advises that a distinction should be drawn between those cases where it is clear that the money was given as a loan (or in circumstances in which the person advancing the money had a clear and legitimate expectation that it would be repaid) and those situations where the money was a genuine donation. Leading Counsel is of the view that, on balance, only the former should be repaid. This would be on the basis that the ex-councillors are liable in respect of the loans but are not required to repay donations and therefore a balancing exercise needs to be carried out between the donors who could be seen as receiving a windfall should they now receive money which they were not expecting be refunded and the interests of the public purse. It is recommended that the decision as to which sums fall into which category be delegated to the Director of Corporate Resources, based on an examination of the evidence available to her and in light of Counsel's advice.

### **Ex-Councillor Creagh**

For a period of time, until it was dismissed in May 2005, ex-Councillor Mary Creagh was facing an allegation that she had acted on a discriminatory manner by not including a particular candidate on the short list for the post of Chief Executive. Accordingly she was represented at the preliminary hearing in May 2005. It is not clear whether she incurred personal liability for such costs but, if she did, then an offer ought also to be made by the Council to indemnify her in respect of them. Again, this would be subject to those costs being reasonable.

- 6.4. So far as the Chief Executive is concerned, the complications in relation to the distinction between loans and donations does not arise so the question which arises is whether the costs which were incurred were reasonable. Again, this will be a question for the Director of Corporate Resources, based on an examination of the invoices submitted by the solicitors.

