

Meeting: Executive

Date: 26 January 2005

INDEMNITIES FOR MEMBERS AND OFFICERS

(Chief Executive's Department)

NON-KEY DECISION

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1 PURPOSE

- 1.1 To consider the terms of indemnities provided to Officers and Members and insurance to cover these indemnities.

2 RECOMMENDATIONS

- 2.1 That Full Council be recommended to adopt the terms of the proposed Indemnity for Members and Officers, as detailed in Appendix 1 to this report.
- 2.2 That officers, as far as is practical and subject to the Assistant Chief Executive (Finance) being satisfied as to the cost, secure insurance cover for the indemnities to be provided to Members and officers

3 BACKGROUND

- 3.1 Members and Officers of local authorities can incur personal, civil and criminal liability as a result of their actions, both within the authority and as a result of their actions carried out on behalf of a wide range of outside bodies.
- 3.2 For a number of years there has been some uncertainty over the extent to which local authorities could indemnify their members and officers against personal liability and also powers to place insurance to cover these indemnities. This problem has been highlighted in notorious cases where officers have been found liable for very large sums of money and their councils prevented from honouring the express indemnities given to those officers.
- 3.3 There is existing legislation under the Public Health Act 1875 (as amended) which provides some statutory indemnities for officers carrying out the proper functions of the authority but the issue is complicated, particularly where members and officers are working with outside bodies, albeit with the approval and possibly on the instructions of the Council.
- 3.4 During the time that SLL was established, the Council put in place a very full indemnity for officers though there remained some uncertainty over the validity of these indemnities, particularly where officers are involved in more adventurous arrangements with outside bodies.

4 REASONS FOR RECOMMENDED COURSE OF ACTION AND OTHER OPTIONS

- 4.1 The Government introduced enabling provisions within the Local Government Act 2000 (Sections 101 and 105) to provide indemnities and insurance to both officers and members to clarify the legal position. A Statutory Instrument made under these sections came into force on 23 November 2004 (The Local Authorities (Indemnities for Members and Officers) Order 2004).
- 4.2 This Instrument expressly permits (but does not oblige) local authorities to indemnify their officers and members against liability even where they are acting on an outside body providing that it is at the request of or with the approval of the authority or for the purposes of the authority.
- 4.3 There are however restrictions on the indemnity as it obviously cannot cover an action which constitutes a criminal offence or is a result of fraud and although an indemnity may cover negligent actions it will not cover matters which are the result of deliberate wrongdoing or recklessness. In the case of criminal proceedings the indemnity (and insurance) may cover the cost of defending the action but if the officer or member is convicted there will be a statutory obligation to reimburse the cost of that defence.
- 4.4 As much discussed, the indemnity may not cover defamation actions instituted by officers or members for defamation actions though could cover them for the defence against such actions.
- 4.5 The indemnity may also cover "Part 3 Proceedings"; these are investigations and hearings that a member has breached the Code of Conduct. However, as is the case with criminal proceedings (see 3.7 above) if the member is found to have breached the Code or admits to having done so the member will be required to reimburse the cost either to the Council or the insurer.
- 4.6 There are also some "safe harbour" provisions which will cover an officer, for instance, giving certificates under the Local Government (Contracts) Act (mainly designed for PFI and other long-term service contracts) – these are unlikely to affect Stevenage.
- 4.7 There are several implications arising from this Order:
- 4.7.1 Indemnities and insurance are discretionary and raises the slightly disturbing possibility that in partnership workings involving more than one authority some officers may be indemnified and others not.
- 4.7.2 The exclusion of "recklessness" might also cause some problems. The legal meaning of the word is not particularly easy to pin down but means roughly that a person has acted without regard to the possible consequences. It is possible that the officers in at least one of the reported cases (who, as directors, allowed an outside company to trade while insolvent) would still be unable to rely on a council indemnity.
- 4.7.3 Clearly officers and members facing criminal charge (or in the case of Members a Code of Conduct investigation) may have a difficult choice in seeking to rely on the indemnity for the costs of defending themselves as those costs may have to be repaid if their defence is unsuccessful.

- 4.8 The terms of the Council's existing indemnities and insurance are arguably wider than those permitted under this Order and to the extent that they are wider maybe *ultra vires*. Given the potentially serious personal implications for any members or officers affected, the Council may wish to put the matter beyond any doubt by redrafting the indemnities in line with the Statutory Instrument.
- 4.9 A form of indemnity is attached which takes full advantage of the Council's statutory powers under the Order.

Insurance

- 4.10 Several months ago the draft Order was sent to our insurers though so far they have not raised any difficulties.
- 4.11 The current insurance relating to officer and member indemnities is considered to be widely drawn and generally is thought to cover the arrangements set out in the Appendix.
- 4.12 However, the existing policies do not contain general legal expenses cover and therefore may not cover the legal costs of members or officers charged with a criminal offence or members' defence in the case of an alleged breach of the Code of Conduct. Officers are currently discussing this with the Council's insurers.

General

- 4.13 This legislation is essentially a technical clarification of the law. With the possible exception of the legal costs indemnity for members subject to a Code of Conduct investigation, the proposed indemnity does not contain any significant change in the Council's policy and there does not appear to be any reason to alter this.

IMPLICATIONS

5.1 Financial Implications

There is unlikely to be any significant additional cost for insuring against the proposed indemnity over that currently adopted by the Council.

There clearly would be potential but unquantifiable financial implications if the Council provides the indemnity for legal expenses but does not take out insurance cover. The Assistant Chief Executive (Finance) will advise Members of the outcome of the discussions with the Council's insurers and the practicalities of securing insurance cover for the legal expenses of individual Members and officers.

BACKGROUND DOCUMENTS

- Stevenage Borough Council's Combined Insurance Policies

APPENDICES

- Draft Indemnity for Members and Officers.