

Item 4

REPORT TO CABINET

19th JANUARY 2006

REPORT OF SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

INDEMNITIES FOR MEMBERS AND OFFICERS : IMPACT OF THE LOCAL AUTHORITIES (INDEMNITIES FOR MEMBERS AND OFFICERS) ORDER 2004

1. SUMMARY

- 1.1 This report considers the impact of the Local Authorities (Indemnities for Members and Officers) Order 2004 which came into force on the 23rd November 2004. Many members and officers conduct functions and responsibilities in circumstances beyond their legal capacity as members and officers of the Sedgefield Borough Council, i.e. where appointments to outside bodies may have or might occur, or where they have responsibility in circumstances which might give rise to certain civil claims. In addition to assessing the impact of the regulations, this report advises on the steps which it is considered need to be taken in order to afford appropriate protections for those members and officers, and sets out the basis for the terms of that protection.
- 1.2 This report serves to recognise the issues involved and the appropriate steps that ought to be taken to deal with them.

2. RECOMMENDATIONS

- 2.1 That Cabinet approve the report, and approve the action of the Director of Resources in arranging cover.
- 2.2 That Standards Committee be appraised of the report as it relates to Local Hearings and Determinations under Part III of the Local Government Act 2000.
- 2.3 To note that Council will be advised to amend the Officer Scheme of Delegation in the Constitution to give the Director of Resources power to provide appropriate insurance cover.

3. DETAIL

- 3.1 The regulations provide for those circumstances in which a Local Authority may provide an indemnity for any of their members or officers. Article 4 makes it clear that an indemnity may be provided by means of the authority securing the provision of an insurance policy for the member or officer.

- 3.2 Article 5 sets out the cases in which indemnities (including those provided by insurance) may be provided. Provision is restricted to cases in which the member or employee is carrying on any function at the request of, with the approval of, or for the purposes of the authority. However, it does extend to cases in which, when exercising the function in question, the member or officer does so in a capacity other than that of a member or officer of the authority. This would permit an indemnity, for example, to cover a case where the member or officer acts as a director of a company at the request of the authority, and that he is acting in his capacity as a director.
- 3.3 Article 6 prevents the provision of an indemnity (or securing of insurance) in relation to criminal acts, any other intentional wrongdoing, fraud, recklessness, or in relation to the bringing of (but not the defence of) any action in defamation.
- 3.4 Article 7 gives a limited power to provide an indemnity (including any indemnity provided by insurance) where the action or inaction complained of is outside the powers of the authority itself or outside the powers of the member or officer who acts. It also covers cases in which a member or officer makes a statement that certain steps have been taken or requirements fulfilled but it later becomes clear that this is not the case. This power is limited to cases in which the person indemnified:-
- reasonably believed that the matter in question was not outside those powers, or
 - where a document has been issued containing an untrue statement as to the authority's powers, or as to the steps taken or requirements fulfilled, reasonably believed that the statement was true when it was issued or authorised.
- 3.5 Article 8 gives the authority freedom to negotiate such terms for any indemnity or policy of insurance as it thinks appropriate but requires that those terms include provision for repayment of sums expended by the authority or the insurer in cases in which a member has been found to be in breach of the Code of Conduct, applicable to him as a member of the authority, or a member or officer has been convicted of a criminal offence (if the indemnity or insurance policy would otherwise cover the proceedings leading to that finding or conviction). Any sums recoverable may be recovered as a civil debt.
- 3.6 It is considered that it would be appropriate for the Council to exercise the powers in these regulations to provide cover for both Members and Officers in the circumstances outlined in this report.

4. FINANCIAL IMPLICATIONS

- 4.1 The Council's existing Officials Indemnity Insurance Policy with Zurich Municipal generally provides cover for all employees and members when undertaking activities on behalf of the Council in connection with outside organisations but only where the Council is legally entitled:-
- to approve such activities
 - to indemnify the employees and members in respect of the activities

- 4.2 The existing cover provides an indemnity to the Council in respect of all sums which the Council may become legally liable to pay as damages and claimants' costs and expenses for financial loss arising as a result of a negligent act or accidental error or accidental omission committed by an employee whilst carrying out their duties.
- 4.3 The policy also covers all costs and expenses incurred in defending any claim, which may be the subject of an indemnity.
- 4.4 However, the Council has an excess amounting to £60,000 in respect of any claim under all of its liability policies, including this policy, as well as the employers and public liability policies. The Council is therefore effectively 'self-insuring' all but the most serious claims made against it.
- 4.5 With regard to investigations conducted by an Ethical Standards Officer, following a written allegation that a member had failed or may have failed to comply with the Code of Conduct, arrangements have been made for additional cover to meet any legal expenses in legally representing a member throughout the investigation.
- 4.6 There is a maximum limit for this cover amounting to £50,000 per annum and the premium is £29.50 per member, giving a total annual premium of £1,550 including Insurance Premium Tax.

5. CONSULTATION

- 5.1 This report has been considered by Management Team and, in particular, by the Statutory Officers, the Chief Executive, the Solicitor to the Council and Monitoring Officer and the Director of Resources, in his role as Section 151 Officer.
- 5.2 It is intended that Standards Committee be appraised of the terms of the report.

Contact Officer: Dennis A. Hall
Telephone No: (01388) 816166, Ext 4268
Email Address: dahall@sedgefield.gov.uk

Background Papers

Local Authorities (Indemnities for Members and Officers) Order 2004

Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Council's Head of the Paid Service or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Council's S.151 Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SCHEDULE

List of Members and Officers to be covered by Indemnity Provisions

1. All Council Members.
2. The Chief Executive, Directors, Section 151 and Monitoring Officer and their deputies or substitutes (where applicable).
3. Such other appointments as may from time to time be notified to the Head of Financial Services.