

## **11. Indemnities for Members and Officers**

### **Purpose of report**

1. To invite Members to consider the provisions of the Local Authorities (Indemnities for Members and Officers) Order 2004, which has clarified and extended the powers of the Authority to give indemnities to Members and officers in respect of liabilities arising during the course of their duties.
- 

### **Recommendations**

*The Chief Fire Officer, Clerk and Treasurer recommends that:*

- 1. The Authority approve the granting of indemnities to Members and officers in the terms set out in Appendix 1 to this report.*
- 2. The Treasurer is authorised to take steps to secure insurance to cover the Authority's liability under this indemnity, in so far as in his opinion such insurance would be financially practicable.*

### **Introduction and Background**

2. This report sets out the legal position in relation to the Authority's powers to indemnify its Members and officers out of public funds for any personal liability arising from actions or decisions taken by them in the course of their official duties.
3. 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 as a representative of the Authority on outside bodies. However, in certain circumstances a Member or officer may be immune from such liability or may be indemnified against such liability.
4. The difference between an immunity and an indemnity is one of effect: in the case of an immunity no liability attaches to the Member or officer, whereas in the case of an indemnity liability attaches to the Member or officer but someone else discharges the liability. Typically the authority itself (on a self-insured basis) or its insurer.
5. Local Authorities have relied in the past on various statutory provisions that either exclude liability or permit some indemnities to be granted.
6. Members and officers of local authorities (including Fire Authorities) enjoy statutory immunity from civil liability where they act within the powers of the Authority in good faith and without negligence (section 265 of the Public Health Act 1875 (as amended)). But this immunity does not apply where they go beyond the powers of the Authority or act in bad faith or negligently, or where

they are acting on outside bodies to which they have been appointed by the Authority, and it does not protect them from criminal liability, for example for fraud or for example corporate killing where they exercise managerial responsibilities. The issue in such circumstances is whether the local authority can grant an indemnity.

7. Section 111(1) of the Local Government Act 1972 provides ancillary powers to local authorities that may permit them to indemnify Members and officers in relation to particular decisions or acts if to do so would facilitate or is incidental or conducive to the discharge of a function of the Authority.
8. Doubts have existed however about the extent to which authorities can provide indemnities, particularly where individuals incur personal liability for their actions on outside bodies to which they have been appointed by the Authority and the scope to provide indemnities for actions where an officer or Member acts beyond their powers (“*ultra vires*”) or negligently.
9. The Local Government Act 2000 made provision for the Secretary of State to introduce Regulations permitting the indemnification of both Members and officers. Such Regulations have been made in the form of the Local Authorities (Indemnities for Members and Officers) Order 2004. The powers granted by the Order are discretionary and permit local authorities to provide indemnities to Members and officers in certain circumstances either through a local authority’s own resources or funded by an insurance policy.

#### **Circumstances in which an indemnity may be provided**

10. The circumstances in which the Authority can grant an indemnity under the terms of the Order can be summarised as follows:

(A) where the officer or Member is carrying on any function at the request of, with the approval of or for the purposes of, the Authority;

(B) where the exercise of functions stated in (A) involves officers or Members acting in capacities other than as officers or Members of the Authority (for example where a Member or officer is acting as a Director or Trustee or Authority representative on a company or outside body at the request of the Authority).

(C) where the action or inaction complained of is outside the powers of the Authority itself or outside the powers of the officer or Member individually (*ultra vires*), provided the officer or Member reasonably believed the matter was not outside those powers; and

(D) where an officer or Member makes a statement that certain steps have been taken or requirements fulfilled, but it later becomes clear that this is not the case. Again the Member or officer must reasonably believe that the statement was true when it was made.

11. Outside the scope of the power to indemnify are the following circumstances:
  - criminal acts;
  - any other intentional wrong doing;
  - fraud;
  - recklessness; and
  - defamation (but not the defence of an accusation).
12. An indemnity may be provided to cover the cost of defending criminal proceedings, but must be reimbursed if the Member or officer is convicted.
13. Under the Order the Authority may also indemnify Members against the cost of defending allegations that they have acted in breach of the Code of Conduct. As with criminal charges, any expenditure must be reimbursed if the Member is found or admits to have breached the Code.
14. The power extends to circumstances where the Member or officer is acting in a capacity other than as Member or officer. This would cover the situation where a Member or officer is acting as a director or trustee or Authority representative on an outside body in connection with his or her role with the Authority.
15. No indemnity can be granted to any Member or officer in relation to “outside” work, which is unconnected with the work of the Authority. It would not therefore cover any Member or officer acting in a private capacity. It would cover situations where as a result of designation by the Authority, an individual has specific statutory powers or responsibilities e.g. the Monitoring Officer or the Section 151 Officer.

### **Terms of Indemnity or Insurance**

16. The Authority has the freedom to negotiate such terms for any indemnity or policy of insurance as it thinks appropriate but the Regulations require that those terms include provision for re-payment of sums expended by the Authority or the insurer in cases in which a Member admits, or is found to be in, breach of the Code of Conduct applicable to him or her as a Member of the Authority; or a Member or officer has been convicted of a criminal offence. Any sums recoverable may be recovered as a civil debt.

### **Insurance**

17. It is recommended the Treasurer investigate the possibility of obtaining insurance to cover the costs of providing such indemnities; the Authority's current policies have an excess of £100,000 for each individual claim so that, in such cases where a claim is below that level the Authority self-insures from their reserves.

18. Once given, an indemnity will cover any claim arising, (subject to statutory limitations) at any time, and may continue to apply after the Member or officer has left office or employment with the Authority in respect of their actions or omissions during the term of their office or employment.
19. A draft form of indemnity is attached at Appendix 1 for consideration by the Authority.

### **Conclusion/Summary**

20. That Members approve the recommendation.

### **Financial Considerations**

Consideration	Yes/No	Reference in Report i.e paragraph no.
There are no immediate financial implications arising from this report but there may be additional insurance costs if the Treasurer determines insurance provision is appropriate.	Y	

### **Legal Considerations**

Consideration	Yes/No	Reference in Report i.e paragraph no.
The statutory provision relating to the powers of the Authority to grant indemnities are addressed in the main section of the report.	Y	All the report

### **Additional Considerations**

21. The table below sets out any additional issues arising from the proposals contained in this report and identifies the relevant paragraphs in the report where such issues are addressed.

Consideration	Yes/No	Reference in Report i.e paragraph no.
<b>Resources</b> (e.g. Assets, ICT, Human Resources, Training & Development, Sustainability).	Y	
<b>Strategic Policy Links</b> (e.g. IRMP, Authority Plan, Equality & Diversity, Partnerships, Environmental Impact).	N	
<b>Risk Management / Health &amp; Safety</b> (e.g. risk management and control measures, risk register score).	Y	
<b>Consultation with Representative Bodies</b>	N	

## Supporting Information

Appendix 1 – Draft indemnity

## Contact Officer

Anne Brown, Clerk to the Authority  
Tel: 0845 12 24454  
Email: [Abrown@hwfire.org.uk](mailto:Abrown@hwfire.org.uk)