

# CHESHIRE EAST

## Governance and Constitution Committee

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**Date of meeting:** 14 July 2008  
**Report of:** Governance Group  
**Title:** Indemnities for Members and Officers

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### **1.0 Purpose of Report**

- 1.1 This reports sets out the current powers available to local authorities in relation to the provision of indemnities to elected Members and Officers and proposes that the Shadow Council prior to Vesting Day, agree an indemnity.

### **2.0 Decision Required**

- 2.1 The Committee agree that Members and those acting in a representative capacity on behalf of the Authority be indemnified to the maximum extent permitted by the Local Authorities (Indemnities for Members and Officers) Order 2004 and Section 111 of the Local Government Act 1972.

### **3.0 Financial Implications for Transition Costs**

- 3.1 The provision of an indemnity is a contingent liability and so at this stage cannot be quantified, dependent upon whether events arise which would require the giving of such an indemnity at some stage in the future. Insurance provision has already been put in place for Members and Officers as part of the preparations for Vesting Day following a tendering exercise which has recently been completed.

### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 As stated above, the provision of an indemnity is a contingent liability which at this stage cannot be quantified either now or in future years depending on events. The premia required to be payable to sustain the policies of insurance for Members and Officers will continue to be payable and will need to be factored into the budget for the new Council.

### **5.0 Legal Implications**

- 5.1 Power to give an indemnity arises by virtue of regulations made under sections 101 and 105 of the Local Government Act 2000, section 111 of the Local Government Act 1972, the Local Authorities (Indemnities for Members and Officers) Order 2004, and the Cheshire (Structural Changes) Order 2008.

### **6.0 Risk Assessment**

- 6.1 The need for Members and Officers to be protected by indemnities is important, bearing in mind the range of activities that Members and Officers, both in the run up to Vesting Day and after Vesting Day (once all of the Local Government

functions are vested in the new Council) will be undertaking. Proper public administration dictates that Members and Officers should be so protected when they are acting on behalf of their Authority and properly and lawfully going about pursuing the business of the Authority.

## **7.0 Background and Options**

- 7.1 The Local Authorities (Indemnities for Members and Officers) Order 2004 provides for circumstances in which a relevant authority in England (which includes the Shadow Council and the Council post Vesting Day) may provide an indemnity to any of their Members or Officers. The powers are in addition to any other existing powers that such authorities may have, such as powers under Section 111 of the Local Government Act 1972 – which is relevant in relation to ensuring that any indemnity is extended to those who are acting within the extent of their delegated authority on behalf of the authority (eg individuals who may not be Members or Officers but who have been appointed to act as a representative of the authority most commonly on any outside bodies with which the Shadow Authority or the Unitary Authority post Vesting Day have an involvement). It is proposed that any indemnity agreed include these individuals.
- 7.2 A copy of the text of the Order is reproduced in Appendix 1 to this report.
- 7.3 Article 4 of the Order 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. As stated, insurance arrangements have already now been put in place in anticipation of a formal agreement that an indemnity be introduced.
- 7.4 Article 5 sets out the cases in which indemnities (including those provided by insurance) may be provided. This Article restricts the power to cases in which the Member or Officer is carrying on any function at the request of, with the approval of, or for the purposes of, the authority. However, it does also extend to cases 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. So, this would permit an indemnity, for example, to cover a case where a Member or Officer acts as a Director of a company at the request of the authority, and thus is acting in a capacity as a Director/Trustee. This is particularly relevant in the case of Members who are nominated to serve on outside bodies on behalf of the Council.
- 7.5 Article 6 prevents the provision of an indemnity (or securing of insurance) in relation to criminal acts, any other intentional wrong doing, fraud, recklessness, or in relation to the bringing of (but not the defence of) any action in defamation.
- 7.6 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 have been fulfilled but it later becomes clear that this is not the case. This power is, however, limited to cases in which the person indemnified:

- a. reasonably believes that the matter in question was not outside the powers in question, or
  - b. 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.
- 7.7 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 repayment for sums expended by the authority or the insurer in cases where a Member has been found to be in breach of the Code of Conduct applicable to him as a Member of the Authority (following proceedings instituted as a result of a complaint to the Standards Board/the authority) or if a Member or Officer has been convicted of a criminal offence (if the indemnity or insurance policy will otherwise cover the proceedings leading to that finding or conviction). Any sums recoverable by the Council may be recovered as a civil debt.
- 7.8 The Councils constitution has delegated the power to approve the details of arrangements for Members to be indemnified and insured in these circumstances to this Committee. It is suggested that this Committee agree that Members should be indemnified to the maximum extent permitted by the 2004 Order and that similar arrangements be extended to those individuals who act on behalf of the authority and represent the authority's interests (other than Officers or employees of the authority). In relation to Officers/employees, the Council's constitution requires the agreement of the Executive to the giving of such an indemnity and a report in similar terms to this report will be submitted to the Executive separately to seek their authorisation to provide a similar indemnity to Officers/employees.

## **8.0 Overview of Day 1, Year 1, and Term 1 Issues**

- 8.1 It is not considered that this is relevant.

## **9.0 Reasons for Recommendation**

- 9.1 So as to ensure that an appropriate arrangement is made to indemnify Members and those acting on behalf of the authority in a representative capacity.

### ***For further information:***

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### ***Background Documents:***

None.

2004 No.3082

**LOCAL GOVERNMENT, ENGLAND AND WALES**

The Local Authorities (Indemnities for Members and Officers) Order 2004

*Made* 22nd November 2004

*Coming into force* 23rd November 2004

The First Secretary of State, in exercise of the powers conferred upon him by sections 101 and 105 of the Local Government Act 2000<sup>[1]</sup> and having consulted representatives of relevant authorities, representatives of employees of relevant authorities and such other persons as he considered appropriate hereby makes the following Order, of which a draft has been laid before, and approved by, resolution of, each House of Parliament:

**Citation, commencement and interpretation**

1. - (1) This Order may be cited as the Local Authorities (Indemnities for Members and Officers) Order 2004.

(2) It shall come into force on the day after that on which it is made.

(3) In this Order -

"Part 3 proceeding" means any investigation, report, reference, adjudication or any other proceeding pursuant to Part 3 of the Local Government Act 2000; and  
"secure", in relation to any indemnity provided by means of insurance, includes arranging for, and paying for, that insurance and related expressions shall be construed accordingly.

**Application**

2. This Order applies to relevant authorities in England<sup>[2]</sup> and to police authorities in Wales<sup>[3]</sup>.

**Indemnities**

3. The authorities to whom this Order applies may, in the cases mentioned in article 5 below, provide indemnities to any of their members<sup>[4]</sup> or officers.

## **Insurance**

**4.** In place of, or in addition to, themselves providing an indemnity under article 3 above, any authority to whom this Order applies may, in the cases mentioned in article 5 below, provide an indemnity by securing the insurance of any of its members or officers.

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

**5.** Subject to article 6 below, an indemnity may be provided in relation to any action of, or failure to act by, the member or officer in question, which -

(a) is authorised by the authority; or

(b) forms part of, or arises from, any powers conferred, or duties placed, upon that member or officer, as a consequence of any function being exercised by that member or officer (whether or not when exercising that function he does so in his capacity as a member or officer of the authority) -

(i) at the request of, or with the approval of the authority, or

(ii) for the purposes of the authority.

## **Restrictions on indemnities**

**6.** - (1) No indemnity may be provided under this Order in relation to any action by, or failure to act by, any member or officer which -

(a) constitutes a criminal offence; or

(b) is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that member or officer.

(2) Notwithstanding paragraph (1)(a), an indemnity may be provided in relation to -

(a) subject to article 8 below, the defence of any criminal proceedings brought against the officer or member; and

(b) any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.

(3) No indemnity may be provided under this Order in relation to the making by the member or officer indemnified of any claim in relation to an alleged

defamation of that member or officer but may be provided in relation to the defence by that member or officer of any allegation of defamation made against him.

**Matters that exceed the powers of the authority or member or officer**

7. - (1) Notwithstanding any limitation on the powers of the authority which grants an indemnity, the authority may provide an indemnity to the extent that the member or officer in question -

(a) believed that the action, or failure to act, in question was within the powers of the authority, or

(b) where that action or failure comprises the issuing or authorisation of any document containing any statement as to the powers of the authority, or any statement that certain steps have been taken or requirements fulfilled, believed that the contents of that statement were true,

and it was reasonable for that member or officer to hold that belief at the time when he acted or failed to act.

(2) An indemnity may be provided in relation to an act or omission which is subsequently found to be beyond the powers of the member or officer in question but only to the extent that the member or officer reasonably believed that the act or omission in question was within his powers at the time at which he acted.

**Terms of indemnity or insurance**

8. - (1) Subject to paragraphs (2) and (3) below, the terms of any indemnity given (including any insurance secured), under this Order may be such as the authority in question shall agree.

(2) Paragraph (3) applies where any indemnity given to any member or officer (including any insurance secured for that member or officer) has effect in relation to the defence of -

(a) any criminal proceedings; or

(b) any Part 3 proceedings.

(3) Where this paragraph applies, the indemnity shall be provided, and any insurance secured, on the

terms that -

(a) in the case of criminal proceedings, if the member or officer in question is convicted of a criminal offence and that conviction is not overturned following any appeal, and

(b) in the case of Part 3 proceedings -

(i) if a finding is made in those proceedings that the member in question has failed to comply with the Code of Conduct and that finding is not overturned following any appeal, or

(ii) if the member admits that he has failed to comply with the Code of Conduct,

that member or officer shall reimburse the authority or the insurer (as the case may be) for any sums expended by the authority or insurer in relation to those proceedings pursuant to the indemnity or insurance.

(4) Where a member or officer is obliged to reimburse an authority or insurer pursuant to the terms mentioned in paragraph (3) above, those sums shall be recoverable by the authority or insurer (as the case may be) as a civil debt.

Signed by authority of the First Secretary of State.

*Nick Raynsford*

Minister of State in the Office of the Deputy Prime Minister

22nd November 2004

A regulatory impact assessment has been prepared in relation to these Regulations. A copy may be obtained from Local Government Legislation Division, Office of the Deputy Prime Minister, Zone 5/D1, Eland House, Bressenden Place, London, SW1E 5DU (telephone 020

7944 4148; [e-mail lgl@odpm.gsi.gov.uk](mailto:lgl@odpm.gsi.gov.uk) ).

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*Notes:*

[1] 2000 c. 22. [back](#)

[2] For the meaning of "relevant authority", see section 49(6) of the Local Government Act 2000. [back](#)

[3] For powers in relation to relevant authorities in Wales, see section 105(2) of the Local Government Act 2000. [back](#)

[4] For the meaning of "member", see sections 49(6) and 101(5) of the Local Government Act 2000 and, in relation to elected mayors, the Local Authorities (Elected Mayors) (England) Regulations 2004 (S.I. 2004/1815). [back](#)

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ISBN 0 11050395 3



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*Prepared 26  
November 2004*