

Standards Committee : 17 November 2009

Title of report: Indemnifying Members for Standards Complaints

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	N/A
Is it in the Council's Forward Plan?	N/A
Is it eligible for "call in" by Scrutiny?	N/A
Cabinet member portfolio	Corporate

Electoral wards affected and ward councillors consulted: All

Public or private: Public

1. Purpose of Report

On 3 September 2008 Joint Cabinet/Personnel Committee considered a report on indemnities for councillors and officers. The purpose of that report was to seek approval for the previous scheme of indemnities for officers to be updated and for a new scheme of indemnities and insurance for councillors to be introduced. The committee adopted the recommendations of that report which did not include offering an indemnity or insurance cover to members in relation to standards matters. The purpose of this report is to provide Standards Committee with relevant information to enable it to decide whether invite Joint Cabinet/Personnel Committee to reconsider whether members should be offered an indemnity or insurance in relation to standards matters.

2. Key Points

The Local Authorities (Indemnities for Members and Officers) Order 2004 Order enables a local authority to grant an indemnity, including an indemnity via insurance cover, to its members in respect of the cost of defending "Part 3 Proceedings", which means in respect of any investigation, report, reference, adjudication or any other proceeding pursuant to Part 3 of the Local Government Act 2000. Part 3 of that Act governs the conduct of local authority members.

However the Order provides that any such indemnity must be subject to a requirement for the member to reimburse the authority, or the insurer, for any

any sums expended by the authority or insurer in relation to those proceedings pursuant to the indemnity or insurance in the event that

- There is a finding that the member has failed to comply with the Code of Conduct and that finding is not overturned on appeal, or
- The member admits that they have failed to comply with the Code of Conduct.

It must be noted that the power to grant an indemnity applies only to members of this authority, so that members of Town and Parish Councils who might be subject to investigation by this authority's Monitoring Officer and the Standards Committee would not be covered by any indemnity offered by this Council to its own members. There is no provision in the standards regime for either a Standards Committee or the Adjudication Panel for England to make a costs order in favour of a member who is found to not be in breach of the Code of Conduct.

The Council's insurers do provide a policy to cover members for the cost of defending standards proceedings. The premium is £29.50 p.a. for each member to be covered. A neighbouring authority has been able to negotiate with the insurer to enable members to take advice from a specified local law firm.

In the absence of such insurance cover members against whom standards complaints are made are left in the potentially difficult position of having to decide whether to incur what could be significant expense in obtaining legal advice and/or representation in relation to a standards complaint made against them or to deal with the issues themselves with the risk that a finding that they have breached the Code of Conduct may have important consequences for their reputations and future as members.

The factors in favour of obtaining specific insurance cover for members against whom standards complaints are made would include:

- Removing the risk that members will not be able defend themselves properly in such proceedings because they cannot afford legal representation.
- Potential gains in the efficiency of the investigation and hearing process if members are represented.
- Any members who are ultimately found to be in breach of the Code of Conduct would have to reimburse the insurer for any funding already received.

The factors in favour of not obtaining the specific insurance cover would include:

- The risk that what should, in many cases, be a relatively simple and straightforward procedure could become overly legalistic and expensive.

- Complainants who wished to take legal advice or be represented would have to do so at their own expense, which could create a perception of inequality in the standards system if members are insured.
- The standards system is about individual members' conduct rather than about the conduct of the Council, it could be argued that members should be responsible for their own personal conduct and for defending any complaints about it.

There are also practical issues which would arise if the specific insurance were obtained:

- If a member was insured but was subsequently found to be in breach of the Code of Conduct and required to reimburse the insurer this could cause difficulties if the sums involved were substantial and if the member was not in a position to repay them.

3. Implications for the Council

The cost of the specific insurance would be £29.50 p.a. for each member to be covered.

4. Consultees and their opinions

N/a

5. Officer recommendations and reasons

It is recommended that Standards Committee consider whether to invite the Joint Cabinet/Personnel Committee to consider the issue of whether the indemnity scheme for members should be extended to cover standards complaints and specific insurance obtained, subject to the limitations imposed by the Local Authorities (Indemnities for Members and Officers) Order 2004.

6. Cabinet portfolio holder recommendation

N/a

7. Next steps

If Standards Committee wished Joint Cabinet/Personnel Committee to reconsider the issue then a report would be taken to that committee.

8. Contact officer and relevant papers

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Background Papers:

Report to Joint Cabinet/Personnel Committee on 3 September 2008 entitled "Indemnities for Councillors and Officers".