

TONBRIDGE & MALLING BOROUGH COUNCIL

STANDARDS COMMITTEE

22 November 2005

Joint Report of the Director of Finance and the Chief Solicitor

Part 1- Public

Matters for Recommendation to Cabinet and Council

1 INDEMNITIES FOR MEMBERS AND OFFICERS

This report informs Members of the Council's position in relation to The Local Authorities (Indemnities for Members and Officers) Order 2004.

1.1 Introduction

- 1.1.1 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 an outside body.
- 1.1.1 Members and Officers enjoy statutory immunity from civil liability where they act within the powers of the authority, in good faith and without negligence. However this immunity does not apply in instances where Members and Officers go beyond the powers of the authority, act in bad faith or negligently, or where they are acting on behalf of an outside body to which they have been appointed. In addition it does not offer protection from criminal liability or for corporate manslaughter where they have exercised managerial responsibilities.
- 1.1.2 The Government has now introduced new regulations, The Local Authorities (Members and Officers) Order 2004, which clarify and extend the powers that local authorities have to provide an indemnity to Members and Officers in respect of their personal liability whilst undertaking activities connected with their local authority.
- 1.1.3 The Order allows an indemnity to be provided in the following circumstances:
- Where a Member or Officer is carrying out a function at the request of, with the approval of or for the purposes of, the local authority.
 - Where, when exercising the above mentioned function, the Member or Officer does so in a capacity other than that of a Member or Officer of the local authority e.g. where acting as a director of a company at the request of the authority, but acting in their capacity as a director.

- Where the action or inaction complained of is outside the powers of the local authority itself or outside the powers of the Member or Officer (*ultra vires*), provided the Member or Officer reasonably believed that the matter in question was not outside those powers.
- Where a Member or Officer makes an untrue statement as to the local authority's powers or as to the steps taken or requirements fulfilled when reasonably believing that the statement was true when made

1.1.4 There are some restrictions placed on this power; an indemnity cannot be provided for:

- an action which constitutes a criminal offence
- an action which results from fraud or deliberate wrongdoing or recklessness
- Breaches of the Code of Conduct

However, an indemnity can be provided to defend criminal proceedings and against allegations of breaches of the Code of Conduct, provided that the indemnity requires as a condition, re-payment of sums expended by the authority in the event the Member or Officer is convicted or if the Member is found to have breached the code.

1.1.5 In respect of actions for defamation, the Order confirms that an indemnity can be provided to defend defamation actions but not to initiate them. It is not required that the indemnity contains a repayment condition.

1.1.6 Following the introduction of this Order the Council's insurer has confirmed that insurance cover will continue to be provided for activities flowing from the 'business' of the insured. In connection with outside bodies this is defined as "activities of Members and Officers approved by the authority in connection with outside organisations but only where the authority is legally entitled to (a) approve such activities and (b) indemnify such members and Officers in respect of such activities."

1.1.7 This Council currently offers indemnity to Members and Officers on the proviso that the indemnity can be supported by appropriate insurance cover arrangements. Various working relationships that Members and Officers may encounter when working on behalf of outside bodies together with clarification as to whether or not they would be insured/indemnified for that activity under the Council's existing insurance arrangements are noted at **[Annex 1]** to this report.

1.1.8 We have not attempted to include within Annex 1 all potential working relationship scenarios. However, we shall be happy to obtain further clarification on any queries that Members may have in relation to their specific situations.

1.2 Exclusions Within Insurance Arrangements

1.2.1 Although the Order extends the indemnity that an authority can offer, Members and Officers should be aware that our insurance arrangements do not provide cover in the following circumstances:

- Where the cause of a claim originates outside of the normal 'business' activities of the council.
- Where a Member of Officer is acting as a director of a company at the request of the authority and a claim is received which is not capable of being made against the authority itself.
- Contractual disputes/claims.
- Criminal act defence costs except those brought under the relevant sections of the Health & Safety at Work Act.
- Where a Member makes an error which is independent of Officer advice. Members should be aware that it is important to use the technical advice of Officers in the decision making process.

1.3 Recommendation

1.3.1 We recommend that Members endorse the Council's stance to offer indemnities to Members and Officers only in those circumstances in which the risk is underwritten by insurance arrangements.

Background papers:

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Nil

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