

Indemnities for Members and Officers

Report of the Chief Fire Officer

For further information about this report please contact Paul Raymond, Chief Fire Officer, on 01743 260205 or Sharon Lloyd, Corporate Services Manager, on 01743 260210.

1 Purpose of Report

This report examines the current position regarding indemnities and insurance and asks the Fire Authority to consider whether to set out a specific indemnity for Members and officers and, if so, to agree the wording of that indemnity;

2 Recommendations

Members are asked to consider whether:

- a) To set out a specific indemnity for Members and officers; and if so,
- b) To agree the wording of that indemnity.

3 Background

The Fire Authority has, since its inception, had in place insurance cover, which provides protection for Members and officers in respect of claims made against them for negligence. In the early 1990's, however, it was made clear through some high profile court cases that such cover could not be implemented, where the actions of Members or officers were ultra vires, i.e. outside their powers.

In these cases officers found themselves acting in good faith on behalf of their authorities but in actions, which were subsequently found to be ultra vires. As a result, they were held personally liable for legal and associated costs. Understandably, this created much unease in the public sector. Furthermore, ambiguity remained regarding the circumstances, in which authorities were empowered to provide indemnities to their Members and officers.

In order to clarify the powers, which local authorities have in such circumstances, the Government introduced The Local Authorities (Indemnities for Members and Officers) Order 2004 (Statutory Instrument 3082).

4 Scope of the Order

The Scope of the Order can be summarised as follows:

Authorities are empowered to indemnify Members and officers in circumstances where:

- a) They are carrying out any function at the request, with the approval, or for the purposes, of the authority.
- b) They are carrying out any function at the request, or with the approval, of the authority but acting in capacities other than as Members or officers of the authority. An example of this would be where a Member or officer acts as a director of a company at the request of the authority and is, therefore, acting in the capacity of a director.
- c) The action or inaction falls outside the powers of the authority itself or outside the powers of the Member or officer individually (ultra vires), provided the Member or officer reasonably believed the matter was not outside those powers.
- d) 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. Again, the Member or officer indemnified must reasonably believe that the statement was true when it was made.

An authority cannot indemnify for the following:

- a) Criminal acts
- b) Any other intentional wrongdoing
- c) Fraud
- d) Recklessness
- e) Defamation

An indemnity may, however, be provided for the defence of any criminal proceedings and civil liability arising from a criminal offence and for the defence of any action in defamation, i.e. not for instituting an action for defamation. In the case of a criminal offence, if the Member or officer is convicted and the conviction is not overturned on appeal, the legislation requires that the sums expended by the Fire Authority or its insurers are repaid. Any such sums may be recovered as a civil debt.

5 Insurance Implications

In 1998, following the cases referred to in section 3 above, Zurich Municipal (the Fire Authority's current insurance provider) extended the cover provided to authorities to include any activity of a Member or officer, where the authority has the legal power to undertake that activity and to indemnify in respect of that activity.

Zurich Municipal's view is that the introduction of the Order did not require any amendment to this approach. They advise, however, that authorities should follow good practice by vetting activities, maintaining records and conducting audits periodically. Taking this advice on board, the Service established a Partnership Assessment Group (now the Partnership Scrutiny Group), which vets all Fire Authority and Service partnerships, with the aim of ensuring that there is no involvement in partnerships, which are ultra vires.

6 General Indemnity

Although the statutory instrument on indemnities empowers authorities to indemnify Members and officers in the circumstances set out in section 3 above, the Fire Authority has never enshrined this power within its constitution. Recent high-profile court cases involving firefighters have, however, brought this issue to the fore and caused officers to carry out some further research.

Having sought legal advice on this matter, your officers recommend that an indemnity is set out in writing to provide clarity to both Members and officers regarding the circumstances, under which an indemnity would and would not operate. Accordingly, the Fire Authority is asked to consider whether such an indemnity is required and, if so, to agree the wording of that indemnity. A draft document for this purpose is set out at the appendix to this report.

In addition to the limitations contained in the Order, it is proposed that any indemnity should restrict the payment of legal costs, fees and expenses involved in the defence of proceedings to those, which are reasonable and necessary.

Once given, an indemnity would cover any claim arising (subject to statutory limitations) at any time in the future and may continue to apply after the Member or officer has left office or employment with the Fire Authority in respect of actions or omissions, which occurred during their term of office or employment.

7 Financial Implications

There are no direct financial implications resulting from this report. If, however, the Fire Authority agrees to put in place a specific indemnity with the wording proposed, then it will commit the Authority to the payment of legal costs, fees and expenses involved in the defence of proceedings against an employee under the circumstances set out in the indemnity (limited, of course to those, which are reasonable and necessary).

8 Legal Comment

Under The Local Authorities (Indemnities for Members and Officers) Order 2004 the Fire Authority is empowered to offer an indemnity for Members and officers as proposed in this report.

Although not required to set out any indemnity in writing, it is considered advisable to do so in order to provide clarity regarding the circumstances under which an indemnity would operate.

9 Equality Impact Assessment

Officers have considered the Service's Brigade Order on Equality Impact Assessments (Personnel 5 Part 2) and have decided that there are no discriminatory practices or differential impacts upon specific groups arising specifically from this report. An Equality Impact assessment has not, therefore, been completed.

10 Appendix

Draft Indemnity for Members and Officers

11 Background Papers

There are no background papers associated with this report.

Shropshire and Wrekin Fire and Rescue Authority Proposed Indemnity for Members and Officers

In this Indemnity:

‘Fire Authority’

means Shropshire and Wrekin Fire and Rescue Authority

‘officer’

includes any person employed by the Fire Authority or any person appointed to, or engaged as, an officer of the Fire Authority

‘Member’

Means a Member of the Fire Authority or of any of its committees, or a person who is a member of, and represents the authority on, any joint committee or sub-committee pursuant to section 101(5) of the Local Government Act 2000

1. The Fire Authority will, subject to the exceptions and terms set out in this indemnity, indemnify each of its Members and officers against any expenses, liability, loss, damage, claim or proceedings whatsoever arising from, or in connection with, any action of, or failure to act by, the Member or officer in question, which:
 - (a) is authorised by the Fire 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 or she does so in his or her capacity as a Member or officer of the Fire Authority)
 - (i) at the request of or with the approval of the Fire Authority, or
 - (ii) for the purposes of the Fire Authority.
2. Notwithstanding any limitation on the powers of the Fire Authority, this indemnity is effective, to the extent that the Member or officer in question reasonably believed at the time when he or she acted that:
 - (a) the action or failure to act in question was within the powers of the Fire Authority, and
 - (b) the action or failure to act was within his or her powers, or
 - (c) where the action or failure comprised the issuing or authorisation of any document containing an untrue statement as to the Fire Authority's powers, or any statement that certain steps had been taken or requirements fulfilled, the contents of that statement were true when it was issued or authorised.

3. The indemnity granted by paragraph 1(b) only applies where the appointment to an outside body has been formally approved by the full Fire Authority or one of its committees or Chief Fire Officer.
4. This indemnity will not extend to loss or damage in relation to any action by, or failure to act by, any Member or officer which:
 - (a) subject to paragraph 5 below, constitutes a criminal offence
 - (b) is the result of fraud, dishonesty or other deliberate wrongdoing or recklessness on the part of the Member or officer.
5. This indemnity does extend to:
 - (a) subject to paragraph 8 below, the defence of any criminal proceedings brought against the Member or officer, and
 - (b) any civil liability action arising as a consequence of any action or failure to act which constitutes a criminal offence
6. No indemnity may be provided to the Member or officer in relation to the making of any claim of 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 or her.
7. The indemnity will not cover any loss or expense in respect of which the Member or officer can obtain reimbursement from any other source, including any policy of insurance whether taken out by the Fire Authority, the Member or officer or by any other person or body.
8. Where an indemnity is granted to any Member or officer in relation to the defence of any criminal proceedings, if the Member or officer is convicted of a criminal offence and that conviction is not overturned on appeal that Member or officer shall reimburse the Fire Authority or the insurer for the sums expended by the Fire Authority or insurer in relation to those proceedings. Any such sum shall be recoverable by the Fire Authority or insurer as a civil debt.
9. The Fire Authority may in its absolute discretion withdraw the indemnities if:
 - (a) the Member or officer does not notify the Corporate Services Manager immediately upon being notified of a claim or of any circumstances likely to form the basis of any claim against the Fire Authority or likely to result in any financial loss to the Fire Authority and shall follow the advice (if any) of the Corporate Services Manager and the Fire Authority's Solicitor.
 - (b) the Member or officer makes any admission to, or negotiates or attempts to negotiate or agrees any settlement with, a third party of any claim falling within the scope of this resolution without the prior consent of the Chief Fire Officer.

10. In pursuance of this indemnity, the Fire Authority will not make any claim against the Member or officer in relation to any costs or expenses for which they are hereby indemnified (except in the circumstances specified in Clause 8 above).
11. This indemnity and undertaking shall be without prejudice to the right of the Fire Authority to take disciplinary action against an officer in respect of any act or failure to act.
12. The indemnity will only extend to cover actual loss and reasonable necessary fees, costs and expenses incurred and evidenced by the Member or officer to the satisfaction of the Corporate Services Manager and Fire Authority's Solicitor.