

Agenda Item No: 9.8 **Report No:** 153/17

Report Title: Appointment of Members and Officers to Outside Bodies - Insurances and Indemnities

Report To: Cabinet **Date:** 13 November 2017

Cabinet Member: Councillor Giles

Ward(s) Affected: All

Report By: Catherine Knight, Assistant Director of Legal and Democratic Services

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Purpose of Report:

To ensure that members and officers are fully protected against personal liabilities when properly carrying out roles to which they have been appointed by the Council.

Officers Recommendation(s):

- 1 That the Council reviews the scope of its insurance provision and, if necessary, extends it to provide cover for those members and officers who are nominated or appointed by the Council to outside bodies, both currently and in the future; and
- 2 That the Council should provide a comprehensive indemnity in the terms permitted by the Local Authorities (Indemnities for Members and Officers) Order 2004 for members and officers who are nominated or appointed by the Council to outside bodies, both currently and in the future.

1. Reasons for Recommendations

The appointment of council members and/or officers to senior roles with outside bodies has increased recently. To ensure they are appropriately protected against personal liability when acting in those external roles, it is necessary to review the provision of insurance and indemnity cover available to them.

2. Information

2.1 There is statutory protection against personal liability for members and officers whilst they are performing their council roles, providing they act within their powers and in good faith.

2.2 This statutory protection does not exist when members and officers act on outside bodies, so the issue of personal liability on outside bodies is one which needs to be considered.

2.3 Where the Council has been invited to nominate a member or officer for appointment, the formality of the appointment itself remains with the outside body and so in these circumstances a first step should be to find out what provision by way of insurances and protection the outside body is providing for those persons nominated to it.

2.4 Where the Council itself is making the appointment to the outside body then it has the power itself to provide the relevant members and officers with insurance and/or an indemnity to cover any personal liabilities. This is helpful because, for example, although the circumstances in which it might happen are rare, it is at least possible for members or officers who are appointed as directors of companies to be held responsible for a company's liabilities. Appointments of members and officers to non-corporate organisations (unincorporated associations), which have unlimited liability, carry greater risk of personal costs/liability.

2.5 The Council's insurances have in the past been sufficient to provide cover for both officers and members when they have been acting on outside bodies by way of appointment by the Council.

2.6 With the advent of more innovative ways of working the Council is setting up and appointing members and officers to a range of new external bodies, in particular local authority companies. In order to make certain that members and officers who are appointed to these roles are fully covered, it is suggested that two things should happen:

- i) The Council reviews the scope of its insurance provision and, if necessary, extends it to provide cover for those members and officers who are nominated or appointed by the Council to outside bodies, both currently and in the future.

There may be occasions where insurance cover does not provide adequate protection. For this reason government has seen fit to pass legislation which explicitly enables a local authority to provide an indemnity to any of their members or officers for any action of, or failure to act by, that member/officer whilst acting in the outside role to which they have either been nominated or appointed by, at the request of, with the approval of or for the purposes of the Council.

- ii) The Council should therefore provide a comprehensive indemnity in the terms permitted by the Local Authorities (Indemnities for Members and Officers) Order 2004 for members and officers who are nominated or appointed by the Council to outside bodies, both currently and in the future.

2.7 It is emphasised that such protection, whether by way of insurance or other indemnity, will only protect members and officers whilst they are acting in good

faith.

2.8 No indemnity may be provided in relation to any act or failure to act which:

- constitutes a criminal offence. (Also in the event of a finding of guilt of part or all the charges the indemnity shall provide for a claw-back of sums paid out by the authority or insurer); or
- is the result of fraud or other deliberate wrongdoing or recklessness of the part of that member or officer.

3. Financial Appraisal

The Council's existing Officials Indemnity policy is sufficient to cover officers and members in most appointments to not-for-profit outside entities. The Council reviews the adequacy of its cover at least annually; no unusual premium movements are anticipated. In instances involving appointments to, for example, a newly formed housing company, the Council's Officials' Indemnity policy is not applicable; such a housing company would require its own Directors', Trustees', and Officers' Liability policy and the cost of the same is borne by the company, not the Council. The cost of such a policy would, while the company's annual income is up to £250,000, be less than £1,000 annually.

4. Legal Implications

These are set out in the body of the report.

Lawyer consulted 03.10.17. Legal ref: 006731-JOINT-CK

5. Risk Management Implications

In the absence of suitable indemnity cover, a Council member or officer appointed by the Council to an outside body may, as an individual, have to meet the costs or other financial consequences of any legal action taken against them when acting in that external role. The Council's own indemnity or insurance cover could only be called upon if the indemnity protection offered by the external body was somehow inadequate.

As indicated in the report, there are certain types of conduct that, for reasons of public policy, would not be covered by any insurance or indemnity offered by the external body or the Council itself, such as fraud, recklessness and bad faith.

6. Equality Screening

There are no equalities issues associated with this report.

7. Background Papers

None

8. Appendices

None