

9 JANUARY 2006

**APPLICATION FOR RETROSPECTIVE MEMBER INDEMNITY
– PART 3 PROCEEDINGS**

Contact Officer

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1. **Purpose**

- 1.1 To consider the granting of an application to retrospectively meet a Member's costs of responding to a formal allegation of breach of the Members Code of Conduct, where no breach was found and which, were it to have occurred later, would otherwise have been met by way of insurance.

2. **Recommendations**

- 2.1 **The costs incurred in responding to formal allegations of a breach of the Members' Code of Conduct pursuant to Part 3 of the Local Government Act 2000 by Cllr I McCall, as identified at Appendix A to this report, be met. These are costs which**
- (a) **fall within the conditions of any such indemnity granted under the Local Authorities (Indemnities for Members and Officers) Order 2004; and**
 - (b) **would have met the terms of insurance, had such insurance for an indemnity been in place rather than the Council carrying its own risk, as now made available to all Members in respect of future events.**

3. **Issues and Choices**

- 3.1 At its meeting of 12th September 2006, Council considered adoption of the power to indemnify its Members against meeting the costs of responding to formal allegations of breaches of the Members' Code of Conduct or 'Part 3 proceedings' (meaning any investigation, report, reference, adjudication or any other proceeding pursuant to Part 3 of the Local Government Act 2000).
- 3.2 Further to minute CL45 (2006/7), Council resolved to

- (a) grant the indemnity for future events, via the purchase of insurance; and
 - (b) defer to a future meeting the consideration of providing the indemnity, in whole or in part, in response to any retrospective applications.
- 3.3 In providing the power to grant this indemnity, the Order made under s101 of the Local Government Act 2000 also requires a constraint on that indemnity. That constraint requires that any indemnity granted must contain a pay-back provision, so that the Council (or its insurers) do not meet any costs where
- 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
 - the Member admits that he or she has failed to comply with the Code of Conduct,
- 3.3 The insurance purchased by the Council to meet this indemnity contains a further restriction in respect of the insured Member's legal representative meeting the standard terms of appointment of the insurer and being required to co-operate with the insurer in meeting its terms. This is to ensure that the costs of representation are reasonable, which are in any event capped at £50,000.
- 3.4 Insurance cannot be purchased in respect of past events and Council is now asked to consider whether and how, if at all, such an indemnity should be granted in response to any retrospective applications.
- 3.5 This mix of indemnifying against some insured and some uninsured events is not unique to this element of the authority's power and is reflected in other indemnities that may now be granted. These other matters are to be dealt with in a report to Cabinet, but which will recommend that Council introduces a generic indemnity and which will also encompass the Part 3 proceedings indemnity discussed here, in the form of a further financial procedure rule (financial regulation). That financial procedure rule as currently drafted is likely to include the following paragraph.

"The terms of the indemnity are as follows:-

- (a) *Where the indemnity has effect in relation to the defence of any criminal proceedings; or any Part 3 proceedings (meaning any investigation, report, reference, adjudication or any other proceeding pursuant to Part 3 of the Local Government Act 2000) then*

- (i) *in the case of criminal proceedings, if the employee or Member or officer in question is convicted of a criminal offence and that conviction is not overturned following any appeal, and*
- (ii) *in the case of Part 3 proceedings -*
 - (1) *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*
 - (2) *if the Member admits that he has failed to comply with the Code of Conduct,*
the Member shall reimburse the Council for any sums expended by it in relation to those proceedings pursuant to the indemnity, and those sums shall be recoverable by the Council as a civil debt.
- (b) *The indemnity will only extend to cover actual loss and expense incurred and evidenced by the employee or Member to the satisfaction of the S.151 Officer or the Monitoring Officer.*
- (c) *The indemnity will not cover any loss or expense in respect of which the employee or Member can obtain reimbursement from any other source, including any policy of insurance whether taken out by the Council or the employee or Member by any other person.”*

- 3.6 Any retrospective application, therefore, must meet the legislative constraints and should meet the equivalent terms of the above draft and of any insured indemnity now granted to Members.
- 3.7 Only one application has been received. This matter was the subject of an allegation against Cllr I McCall (then Wilson). This was referred to an ethical standards officer and, following that investigation, was referred to a Case Tribunal of the Adjudication Panel for England. That allegation was referenced SBE.8525.04 by the Standards Board for England and the hearing was referenced APE 0293, which may be read on the Adjudication Panel website (www.adjudicationpanel.co.uk).
- 3.8 The Case Tribunal in that case found that there was no breach of paragraph 3(a), 4 or 5 of the Code of Conduct, which were the subject of the referral. The application therefore meets the finding of no guilt requirement.
- 3.9 The cost of representation met by Cllr McCall in this case is identified in the breakdown of the representative's bill attached as Appendix A.

- 3.10 In the view of the Monitoring Officer and the S.151 Officer, the costs attached as Appendix A relating to this case
- (a) are reasonable;
 - (b) would have been met by the Council's insurers had such insurance been in place at that time; and
 - (c) would meet the terms of the indemnity as drafted above, should such a generic indemnity be approved as a financial procedure rule.

4. **Implications**

4.1 Resources

4.1.1 The cost to the Council in granting this indemnity is £7,382.35 (including VAT), as identified at Appendix A.

4.2 Legal

4.3.1 Legal implications are referred to in the report.

4.3.2 The ability to grant a retrospective indemnity, not preceding the date that the Order came into force, is considered to be within the powers of the Council to grant.

4.3 Other

4.3.1 None

Background papers