



GOVERNANCE COMMITTEE

9 March 2016

Subject Heading:

CMT Lead:

Report Author and contact details:

Policy context:

Financial summary:

Indemnities for Members and Officers

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Council Constitution.

There are no additional costs associated
with this report

The subject matter of this report deals with the following Council Objectives

Havering will be clean and its environment will be cared for
People will be safe, in their homes and in the community
Residents will be proud to live in Havering



SUMMARY

A review of the Council's current constitution and policies has failed to identify whether the Council determined to extend member and officer indemnities under the powers granted under the Local Authorities (Indemnities for Members and Officers) Order 2004. This report proposes to confirm the 2004 Order and extended the powers of the Authority to give indemnities to members and officers in respect of liabilities arising during the course of their duties.

RECOMMENDATIONS

That the Committee:

Confirm the Local Authorities (Indemnities for Members and Officers) Order 2004 and extend the powers of the Authority to give indemnities to members and officers in respect of liabilities arising during the course of their duties

REPORT DETAIL

1. Under Section 265 of the Public Health Act 1875 (the Act), councillors and local authority officers, when acting in the course of their duties and in good faith, have statutory immunity and are not personally liable for the actions they take. The Act provides for an indemnity in relation to potential liabilities and also costs.
2. Section 111(1) of the Local Government Act 1972 provides ancillary powers to local authorities that may permit them to indemnify members and officers in relation to particular decisions or acts if to do so would facilitate; or is incidental, or conducive, to the discharge of a function of the authority.
3. The Local Authorities (Indemnities for Members and Officers) Order 2004 gives a specific power for authorities to grant indemnities and/or take out insurance to cover the potential liability of councillors and officers in a wider range of circumstances than under the 1875 Act. Each local authority has the discretion to decide whether to use the powers, and to decide the extent of such indemnities and insurance.
4. A review of the Council's current constitution and policies has failed to identify whether the Council determined to extend member and officer indemnities under the powers granted under the Local Authorities (Indemnities for Members and Officers) Order 2004. There has however been confirmation that the council's insurance policy provides cover for members in respect of liabilities arising during the course of their duties.
5. Prior to the 2004 Order, doubt existed about the extent to which authorities could provide indemnities in two main areas: Firstly where individuals incur personal liability for their actions on outside bodies to which they have been appointed by the authority and secondly the scope to provide indemnities for actions where an officer or member acts beyond their powers ("ultra vires") or negligently.
6. In relation to officers, councils have always been able to indemnify officers and take out insurance cover where an officer acts within his or her powers for the council, in order to protect the council in the event of

an officer's actions or inactions giving rise to a claim. The 2004 Order allows councils to indemnify officers where they have acted outside the powers of the authority but reasonably believe that the action was within the powers at the time they were taken, or where they are acting on outside bodies for the council.

7. Given the wide range of council activities, the complexity of issues councillors and officers' face, and the demands made on their time, it is considered appropriate for the Council to confirm an indemnity where a councillor/officer inadvertently acts outside the powers given whilst believing he/she is acting in the interests of the Council or other body.
8. An indemnity can be granted to cover *"any act or omission by the member or officer which is authorised by the council, or forms part of, or arises from any powers conferred or duties placed, as a consequence of a function being exercised by the member or officer at the request of, or with the approval of, or for the purposes of the council"*.
9. The power extends to circumstances where the member or officer is acting in a capacity other than as member or officer. This covers the situation where a member or officer is acting as a director or trustee or Council representative on an outside body in connection with his or her role with the Council.
10. No indemnity can be granted to any member or officer in relation to "outside" work, which is unconnected with the work of the Council. It would not therefore cover any member or officer acting in a private capacity. It would cover situations where as a result of designation by the Council, an individual has specific statutory powers or responsibilities e.g. the Monitoring Officer, or the Returning Officer and nominated deputies.
11. There is a power to provide an indemnity where the action or inaction complained of is outside the powers of the Council itself or outside the powers or authority of the member or officer concerned. It also covers cases in which 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.
12. However, an indemnity in these circumstances is limited to cases in which the person indemnified reasonably believed they were acting within their powers, or reasonably believed that the statement was true.
13. For both councillors and officers, the 2004 Order restricts the provision of indemnities so that they cannot cover any finding of criminal liability or liability arising from fraud, deliberate wrongdoing, or the cost of pursuing a defamation claim. In such cases any costs incurred under an indemnity would normally have to be repaid to the Council or insurer.

IMPLICATIONS AND RISKS

Financial implications or risks

Member and officer indemnity is already covered under the Council's existing indemnities insurance policies.

Legal implications and risks

Without confirmation of the 2004 Order, officers and members' could be personally liable for costs or expenses, despite the fact that they were carrying out the work at the request of (or with approval) of the council and were acting in good faith.

Human resource implications and risks

There are no immediate human resource implications and risks arising from this report.

Background papers

None