



AGENDA ITEM: 16

NORTH WALES FIRE AND RESCUE AUTHORITY EXECUTIVE PANEL

3rd February 2014

INDEMNITIES FOR MEMBERS AND OFFICERS

Report by Colin Everett, Clerk

PURPOSE OF REPORT

- 1 To provide information about indemnity insurance costs and ask Members to decide on the way forward.

BACKGROUND

- 2 In accordance with section 101 of the Local Government Act 2000 and the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, the Authority is able to indemnify each member and officer of the Authority against any claim liability loss and/or damage in relation to any action or failure to act by a member or officer, including legal costs for representation in the event of a member being subject to an investigation alleging a breach of the code of conduct.

INFORMATION

National/Wales Position

- 3 Local Authorities have long been able to give indemnities to their elected members and their officers. This is to reassure them that should they be sued as a result of their role they will not have to face heavy legal bills. If indemnities were not possible then it could act as a serious disincentive to people entering public service either as officers or councillors.

- 4 The Local Government Act 2000 allowed the National Assembly for Wales to make regulations giving additional powers to local authorities to grant indemnities in certain defined circumstances. Those regulations, the Local Authorities (Indemnities for Members and Officers) (Wales) Order 2006, came into force on 8th February 2006. They were intended to clarify whether an authority could indemnify its members against the costs of defending an accusation that the code of conduct has been breached.
- 5 Broadly speaking, the Fire and Rescue Authority can grant an indemnity for the costs of defending an accusation that the code has been breached. If the member is subsequently found to have breached the code and is either disqualified or suspended then all of the money paid under the indemnity must be returned to the authority. Equally, if a member is found to have acted deliberately or recklessly then the authority has no power to grant an indemnity at all and so any money would again have to be repaid. If the member is in breach of the code but gets a lesser penalty then the authority can decide to ask for some of the money to be repaid.
- 6 There has been concern in Wales that such indemnities have funded the over-use of lawyers such that tribunal and Standards Committee hearings have become overly legalistic. There is also concern about the total cost to the public purse. In recent years therefore the Welsh Government and the Welsh Local Government Association have encouraged authorities to set a limit or cap on the amount of money that will be paid under an indemnity. The recommended level of cap is £20,000 which is the maximum amount of costs that could be awarded in an Employment Tribunal case, reasoning that loss of office is akin to loss of a job.

NORTH WALES FIRE AND RESCUE AUTHORITY'S POSITION

- 7 The FRA has several issues to consider:
 1. whether to offer an indemnity
 2. whether to impose a cap
 3. how to fund any payment under the indemnity

- 8 All other local and fire authorities in Wales offer an indemnity to their members. The terms of the indemnity are understandably tied to the powers within the regulations and so money paid under the indemnity must be repaid as set out in paragraph 5 above. It is recommended that similar indemnity be granted to members of the fire authority.
- 9 The majority of local authorities (10 out of the 16 responding) have both insurance and a cap on any indemnities. There is less consistent practice as to the level of cap because some councils limit their indemnity to the level of insurance. However, £20,000 is broadly accepted as the upper limit with 2 offering less (£5,000 and £10,000). Irrespective of whether insurance is taken out, it is recommended that a cap is imposed on any indemnity granted.
- 10 In deciding whether insurance represents value for money the committee should consider the likelihood of making a claim balanced against the cost of the insurance and the ability to pay should the indemnity be called upon.
- 11 The Authority has had no allegations since the introduction of the regulations. Further it has received no complaint against a member since the code of conduct was introduced in 2001. Should members agree to adopt the local resolution procedure (as recommended in another report on the agenda) then this will further reduce the likelihood of a claim being made under the indemnity, because no legal costs are payable under that process.
- 12 Quotations have been obtained from two insurance companies. One company has quoted a minimum of £1500. The other company has quoted £826 plus insurance premium tax which totals 875.56.
- 13 Provided there was not a flurry of claims (which seems unlikely) the authority is confident that it could meet the costs under an indemnity. The authority holds general reserves of £1.609 million and could fund any claims from this.

14 In view of the fact that there have been no claims to date and therefore paying nearly £900 per annum could prove to be more expensive than it's worth, Members are advised:

1. that insurance is not cost effective and should not be taken out; and
2. a specific reserve is not needed and any claims under the indemnity will be paid out of the general reserve.

RECOMMENDATIONS

15 That Members propose to the Fire and Rescue Authority that:

- (i) an indemnity be granted to cover the legal costs of defending a complaint to the Public Service Ombudsman for Wales that a member has breached the code of conduct and note that no legal costs will be paid in respect of a complaint that is handled under the local resolution procedure;
- (ii) if the member is found to have breached the code and
 - a. is disqualified or suspended; or
 - b. is found to have deliberately or recklessly breached the code (irrespective of any sanction)

then any and all money paid under the indemnity must be repaid to the authority and if the circumstances listed in subparagraphs a or b arise and:

- no money has been requested or paid under the indemnity; OR
- some but not all the legal costs have been paid

then no payments will be made at all or no further payments will be made (in addition to requiring any payments to be repaid).

- (iii) if the member is found to have breached the code and either no sanction is imposed or the member is censured then the Authority may request that a proportion of any money paid under the indemnity should be repaid. In in the event that

- no money has been requested or paid under the indemnity; OR
- some but not all the legal costs have been paid

then the Authority may choose to pay a proportion only of the members' costs, and may require that any costs paid which exceed that proportion be repaid;

- iv) the costs of any claims under the indemnity will be limited to £20,000 and will be paid out of the general reserve.