



**NOTTINGHAMSHIRE**  
**Fire & Rescue Service**  
*Creating Safer Communities*

Nottinghamshire and City of Nottingham  
Fire and Rescue Authority  
Policy and Strategy Committee

# REVIEW OF INDEMNITIES FOR MEMBERS AND OFFICERS

Report of the Chief Fire Officer

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**Date:** 25 April 2014

**Purpose of Report:**

To present the Committee with a report on the suitability of the current Indemnities to Members and Officers Policy, and provide recommendations for enhancing the robustness of that policy.

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## **1. BACKGROUND**

- 1.1 Members of the Policy and Strategy Committee requested at the 31 January 2014 meeting that the Business Risk Manager prepare a report for this meeting concerning the Indemnities to Members and Officers Policy (the policy).
- 1.2 The current version of the policy was drafted to mirror the Local Authorities (Indemnities for Member and Officers) Order 2004. The requirement for a review of this policy was highlighted when it was invoked, for the first time, as a result of a threat of litigation against an Officer. Now that the policy has been invoked, and the threat of litigation has passed, it is appropriate to address learning points from the experience.
- 1.3 The seeking of an indemnity by a Member or Officer is rare, primarily because this will normally (although not exclusively) mean that the Member or Officer stands accused of some form of wrongdoing. Despite this low probability the impact, both financial and reputational, can be significant. As any such allegation against a Member or Officer is likely to result from their connection with the activities of the Authority it is probable that action against an individual will run parallel to a liability on the Authority.
- 1.4 This report provides a brief overview of the suitability of the current policy, and makes recommendations as to how it may be enhanced in order to make it more robust for the future. This report adopts a process-based approach to the revision of the policy.

## **2. REPORT**

- 2.1 The recent reliance on the policy raised questions around whether or not an indemnity should be granted and if so, to what extent the indemnity should extend. In addition, the conduct of the defence, and insurance coverage under the Authority's Officials Indemnity insurance (the insurance) were questioned.
- 2.2 As a result of the Committee's request for this report, the Business Risk Manager has met with Browne Jacobson solicitors, who drafted the original policy. Having now had the benefit of experiencing the application of the policy, both parties agreed that while in its current form it is not necessarily unfit for purpose (as it mirrors the 2004 Order), there are a series of reasonable and desirable changes and clarifications that could be made that would provide a greater degree of certainty for both the Authority and the individual seeking the indemnity.
- 2.3 Discussions with Browne Jacobson highlighted an important consideration to be borne in mind while revising the policy: that is the impact on the individual seeking the indemnity of both the claim made against them, the process for determining whether an indemnity will or will not be granted, and the actual decisions made within that process. While this is not the only consideration,

any revisions to the policy will be made with recognition of the impact this may have on the individual concerned.

- 2.4 The granting of an indemnity is in the gift of the Authority. As noted in the previous report, the Authority could, as a matter of policy, decide that it will offer an indemnity in all cases where it is legally permitted to do so; it could also refuse to issue an indemnity in all cases, even though it may legally be permitted to provide the indemnity in some circumstances. In addition to these two options, the Authority could decide to consider each and every request for an indemnity on its merits. The general principle of an indemnity policy should be that both Members and Officers should be able to presume that an indemnity will be granted.
- 2.5 There are risks associated with each of the above options. In the case of offering an indemnity in all cases, this could encourage Members and Officers to act recklessly, or result in a situation where the Authority is obliged to offer an indemnity even though it finds it morally or ethically unacceptable to do so. A blanket refusal to offer an indemnity may result in Members and Officers refusing to make decisions for fear of personal liability and will inevitably lead to a drop in morale. While considering each case on its merits may, at face value, appear a suitable option it will, in practice, merely result in Members and Officers being uncertain as to the level of support the Service is willing to commit to.
- 2.6 It is therefore proposed that the Authority adopts a hybrid scale of these three options. Browne Jacobson have suggested that the Authority could decide to offer an indemnity at any point up to accusations of negligence, and conversely refuse to offer an indemnity from the point of recklessness through to allegations where it is not legally permitted to indemnify the individual. Around the tipping point between the offer and refusal of an indemnity, it is further suggested that a discretionary band is introduced whereby the Authority can consider the nature of the allegations, and the facts to hand before deciding whether to grant the indemnity. Further work on developing this scale will be necessary, so at this point in time, Members are recommended to agree to the principle of a scale of indemnity as outlined here and to task the Business Risk Manager with providing a draft scale at the Committee's August 2014 meeting.
- 2.7 By introducing a discretionary element, there is a need to establish a process for making those decisions. There is also a need to consider representations from Members or Officers who may not be entitled to an indemnity under the proposed scale, but who feel that the allegations made against them are without sufficient merit or, are unlikely to be successful. Members are therefore recommended to agree to the establishment of a decision-making panel, a scheme of delegation for authority to grant an indemnity, and a process for appeals, and ask the Business Risk Manager to develop proposals to bring back to the Committee's August 2014 meeting.
- 2.8 Just as it is within the gift of the Authority to offer an indemnity, the Authority also has the ability to impose conditions on any indemnity granted. These conditions can include the ability to exercise 'step-in rights' where the

Authority or their insurers assume conduct of the claim, setting a financial limit of the indemnity, communication and information sharing, or the offer or acceptance of settlements. Some of these conditions can be applied generally to all offers of indemnity, while others will be appropriate to specific allegations and circumstances. It is recommended that the following general conditions are adopted:

- The Member or Officer makes a full disclosure of the allegations made against them and provides contact details for any legal representation already, or subsequently appointed;
- The Authority retains the right to withdraw the indemnity at any time that information comes to light which, had it been known at the outset, would have caused the Authority to refuse to provide an indemnity;
- The right for the Authority and/or its insurers to assume conduct of the claim (step-in rights) at any time, and the need for the Member or Officer to cooperate with the Authority and/or insurer in the subsequent handling of the claim;
- Limit the indemnity to a sum, usually £5m (being the limit of the Authority's Officials Indemnity insurance), but which may be varied depending on the individual circumstances of the allegations;
- Provide regular updates on the progress of negotiations and correspondence with the claimant;
- Notify the Authority of the withdrawal, or addition of any allegations;
- Gain the written agreement of the Authority before proposing or accepting any settlement;
- The right of the Authority to recover any costs associated with the claim if the outcome of the claim is one for which the Authority would not have granted an indemnity in the first instance;
- That the indemnity may be withdrawn should the Member or Officer do anything likely to prejudice the outcome of the claim.

Specific conditions may include a lowering of the limit of indemnity, immediate exercising of step-in rights, or the selection of legal representation.

- 2.9 Where the Authority and/or its insurers exercise step-in rights, it is recommended that the Business Risk Manager be charged with the day-to-day management of the claim.
- 2.10 Any offer of an indemnity to a Member or Officer must be made in writing and outline both the general conditions and any specific conditions attaching to the granting of that indemnity. For avoidance of any doubt, the Member or Officer seeking the indemnity should be required to sign and return a copy of the indemnity offer. It is recommended that Members ask the Business Risk

Manager to draft a standard offer of indemnity letter by the August 2014 meeting of this Committee.

- 2.11 Where the Authority grants an indemnity it can seek to transfer the financial risk to insurers. Anecdotal evidence from the insurance industry is that only around 20% of claims made under the Officials Indemnity policy are honoured. This highlights the extent of the exclusions applied by insurers and Members are asked to note that this could result in a situation where the Authority is unable to reclaim all or any of the costs associated with the provision of an indemnity. Members are therefore recommended to request that the Head of Finance and Resources makes adequate contingency arrangements in the event of the insurance not wholly covering the costs of the indemnity. Members are also recommended to agree that where an indemnity is granted, a report on the conduct of the claim and the potential financial liability are provided to the Finance and Resources Committee.

### **3. FINANCIAL IMPLICATIONS**

- 3.1 A situation may arise where the granting of an indemnity by the Authority will not be covered by insurers. This will necessitate the provision of an adequate financial contingency based on the risk.
- 3.2 There will also be some financial implications arising from the engagement of lawyers to provide legal advice on a proposed policy. This will be met from the budget allocated for legal advice.

### **4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS**

- 4.1 Claims made against Members and Officers can result in physical and/or mental health issues arising from the potential personal financial losses that may be sustained, the defending of the action in question and the relationship with the Authority and colleagues depending on the granting of the indemnity, and may include others affected by the action indirectly. Such issues may necessitate the provision of support from the Occupational Health team.
- 4.2 Depending on the nature of the allegations made and whether they are subsequently accepted as true or proven, there may be a need to invoke the Authority's disciplinary process.
- 4.3 Should the Authority and/or its insurers exercise step-in rights, this may result in a need to draw employees away from their normal duties in order to assist with investigations and/or the management of the case.

## **5. EQUALITIES IMPLICATIONS**

There are no specific equalities implications arising from this report.

## **6. RISK MANAGEMENT IMPLICATIONS**

The existence of a situation where a Member or Officer is alleged to be personally liable for a situation is indicative of a failure of the Authority to effectively manage the risks to which it is exposed. The subsequent litigation process itself gives rise to significant financial and reputational risk.

## **7. CRIME AND DISORDER IMPLICATIONS**

The outcome of a claim against a Member or Officer may result in the discovery of criminal activity which the Authority may be obliged to report to the relevant authority.

## **8. LEGAL IMPLICATIONS**

The decision of whether or not to grant an indemnity may be the subject of legal challenge. Unless the Authority is subject to parallel litigation there is a possibility that the Authority may become vicariously liable for the individual liability of the Member or Officer.

## **9. RECOMMENDATIONS**

It is recommended that Members:

- 9.1 Agree to the adoption of a scale of indemnity and requests that the Business Risk Manager provide a draft.
- 9.2 Agree to the establishment of a decision-making panel for the granting of indemnities and tasks the Business Risk Manager with developing a proposal for this panel alongside a complimentary scheme of delegation for authority and appeals process.
- 9.3 Agree to adopt the general conditions applying to indemnities as outlined in Paragraph 2.8 of the report.
- 9.4 Task the Business Risk Manager with the day-to-day management of any claim where an indemnity has been requested and/or granted.
- 9.5 Task the Business Risk Manager with drafting a standard indemnity offer letter.

- 9.6 Task the Head of Finance and Resources with ensuring adequate financial contingency for indemnity costs and reporting to the Finance and resources Committee on the potential financial liability of indemnities provided

**10. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)**

None.

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**CHIEF FIRE OFFICER**