

AGENDA ITEM: 11 Pages 64 – 67

Meeting	Cabinet Resources Committee
Date	30 November 2010
Subject	Request by a Member for an Indemnity in respect of Legal Costs
Report of	Director of Corporate Governance / Monitoring Officer
Summary	This report informs the Committee of a request by a Member for an indemnity to cover the cost of their own choice of legal representation in respect of a complaint concerning an alleged breach of the Members' Code of Conduct.

Officer Contributors	Jeff Lustig, Director of Corporate Governance (Monitoring Officer), Seye Aina, Senior Governance Advisor
Status (public or exempt)	Public
Wards affected	Not applicable
Enclosures	None
For decision by	Cabinet Resources Committee
Function of	Executive
Reason for urgency / exemption from call-in (if appropriate)	Not applicable

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1. RECOMMENDATIONS

- 1.1 That the Committee consider a request by a Member to be provided with an indemnity for costs incurred upon their own choice of legal representation in respect of dealing with a complaint concerning an alleged breach of the Members' Code of Conduct.**
- 1.2 That, if the request is considered favourably, it be considered whether a financial limit be placed on such indemnity.**

2. RELEVANT PREVIOUS DECISIONS

- 2.1 Cabinet, 17 January 2007(Decision item 4) – approved the grant of indemnities to Members and Officers within the terms set out in that report.
- 2.2 Cabinet, 18 June 2007(Decision item 4) – approved an amendment to the previously approved arrangements and noted external insurance cover was arranged in relation to certain types of investigation.
- 2.3 Cabinet, 22 February 2010 (Decision item 8.3) – approved that it was appropriate to continue with the principle of external insurance cover being called upon in all cases where a Member indicates a wish to have legal advice and representation funded by the Council.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

- 3.1 The Corporate Plan 2010-2013 priority 'A Successful London Suburb' has a top improvement initiative to "increase opportunities for civic and democratic engagement'. Members of the Council when undertaking their engagement duties require suitable indemnity in respect of any complaints against them.

4. RISK MANAGEMENT ISSUES

- 4.1 Since the implementation of the Local Government Act 2000, Executive Members have carried a portfolio representing a function or functions of the Council. Within guidelines, they may take individual decisions and are attributed direct responsibility and accountability for these decisions. Non-executive Members perform other Council duties and regularly serve as Council representatives on outside bodies. Powers delegated to Chief Officers have increased since the Council adopted its Constitution in 2001. Generally, Officers are carrying out council functions in the performance of their duties. Members and Officers who do not believe that they will be indemnified whilst performing their duties for the Council, may not be willing to undertake those duties, if they consider that they may be held personally liable for costs associated with proceedings lodged in connection with matters relating to their Council duties.

5. EQUALITIES AND DIVERSITY ISSUES

- 5.1 The proposals in this report address an issue that potentially impedes Members from participating fully in public service within the wider community.

6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

- 6.1 If an indemnity is sought through the Council's external insurance arrangement there will be no financial implications up to the limit of indemnity of £50,000 any one claim.
- 6.2 If external insurance does not operate the indemnity costs will be required to be funded from the Council's accumulated reserves and balances.
- 6.3 In the circumstances described in paragraph 6.2, the terms of the indemnity would not require the Council to make any payment of the Member's legal costs and require the Member to repay any sums paid on account of such legal costs in the event of a finding that the Member had breached the Members Code of Conduct. However, consideration would need to be given to whether a financial limit should be placed on the indemnity. However, consideration would need to be given to whether a financial limit should be placed on the indemnity. It is suggested that such financial limit should not exceed £3000 and that any extension beyond this limit would require the express approval of the Committee or, in case of urgency, the Cabinet Member for Resources.

7. LEGAL ISSUES

- 7.1 The legal issues in relation to grant of indemnities to Members and officers were set out in the previous reports.

8. CONSTITUTIONAL POWERS

- 8.1 The Council's constitution in Part 3, Responsibility for Functions, paragraph 3.6 states the functions delegated to the Cabinet Resources Committee including approval of schemes not in performance management plans but not outside the Council's budget or policy framework.

9. BACKGROUND INFORMATION

- 9.1 On 18 June 2007, Cabinet agreed an amendment to the criteria for the provision of indemnity for members and officers and noted that external insurance cover had been arranged for members effective from May 2007 in relation to Standards Board, Ethical Standards and Monitoring Officer Case Tribunal investigations.
- 9.2 In respect of the external arrangement it was reported, in 2007, that although the insurer was not bound to accept a Member's proposal, a Member might, if they wished, propose a choice of legal representative.
- 9.3 In April 2009, the first call on these arrangements was made. However, the insurer did not agree the Member's proposed representative on the basis that the firm was not on their approved panel and unlikely to gain approval because of cost, although they were willing to put the case through their internal processes.
- 9.4 On 22 February 2010, Cabinet agreed that it was appropriate to continue with the principle of external insurance cover being called upon in all cases where a Member indicates a wish to have legal advice and representation funded by the Council. However, in circumstances where the Member was not happy with the lawyer chosen by the external insurer, Cabinet further agreed that alternative provision could be considered in exceptional cases. Application for the Council to provide an indemnity for the Member's legal costs in these circumstances would be made to the Director of

Corporate Governance and submitted by the Director for consideration and decision by the Cabinet Resources Committee or, in case of urgency, by the Cabinet Member for Resources.

The terms of such indemnity would not require the Council to make any payment of the Member's legal costs and would require the Member to repay any sums paid on account of such legal costs in the event of a finding that the Member had breached the Members Code of Conduct.

- 9.5 On 6 September 2010, the Standards Sub-Committee referred a complaint against a Member to the Monitoring Officer for investigation. The subject Member has made a request for an indemnity for costs incurred upon the provision of legal advice and representation but does not wish to use the legal representative proposed by the Council's insurers.
- 9.6 The subject Member has informed the Director of Corporate Governance that exceptional circumstances apply because the complaint is against a Member of the Standards Committee and that the case requires an expert lawyer in the field who has dealt with Standards cases in Barnet and elsewhere, and has a successful track record. The subject Member wishes to instruct Mr. Stephen Hocking of Beachcroft LLP, Solicitors.
- 9.7 William Graham Law, Solicitors, of Cardiff have been proposed by the Council's insurers to act on behalf of Members who are the subject of complaints of breach of the Members Code of Conduct. The Insurer Zurich Municipal has confirmed that William Graham Law are appointed nationally on almost all Member conduct matters, are selected to deal with cases on their individual merits and are the most appropriate Panel Solicitors. They have also confirmed that William Graham Law would be the approved firm of solicitors for the purposes of the indemnity being provided to the subject Member.
- 9.8 In considering the request by the subject Member, the Committee will need to consider whether the arguments put forward by the subject Member in paragraph 9.6 constitute sufficient exceptional circumstances to justify a departure from the normal provision approved by the Cabinet for legal representation to be provided under the Council's insurance arrangements.

10. LIST OF BACKGROUND PAPERS

- 10.1 None.