

Committee(s):	Date:
Local Government Pensions Board Court of Common Council	7 February 2019 7 March 2019
Subject: Insurance and Indemnities	Public
Report of: The Comptroller and City Solicitor and the Chamberlain	For Decision
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Summary

This report sets out the position in relation to the potential personal liability of members of the Local Government Pensions Board (LGPB) and the Police Pensions Board (PPB) (together “the Boards”) in the event of breaches of data protection legislation. The report proposes that the Court of Common Council confirms that the City Corporation will indemnify Members of the Boards against any such personal liability in the circumstances defined in the report.

The Information Commissioner has power to impose civil penalties under various provisions of the Data Protection Act 2018 (DPA). The penalties lie against the relevant Data Controller responsible for the breach, but Members of the Boards are concerned they could have a personal liability because of the nature of the Boards.

The Boards are creatures of the Public Service Pensions Act 2013 (the PSPA 2013) and they are not committees established under the Local Government Acts.

The City Corporation’s existing insurance policies have been extended to include all members of the Boards but they do not cover civil penalties under the DPA.

Recommendation

Members are asked to approve the proposal as set out in paragraph 15 of this report for onward approval by the Court of Common Council.

Main Report

Background

1. The PSPA 2013 requires administering authorities of public sector pension schemes to establish committees or boards to oversee the administration of the scheme and assist the Scheme manager. The City Corporation is an administering authority for the local government pension scheme and the police pension scheme.

2. Accordingly, the Local Government Pensions Board and the Police Pensions Board were established in 2015. Their membership comprises Common Councillors and, at present, one Alderman, as well as current and retired employees and police officers respectively.
3. The advice of James Goudie QC to the Local Government Association in 2015 highlighted that committees established under the PSPA 2013 have an anomalous legal status. They are creatures of the PSPA 2013, and the Boards are not committees of the City Corporation within its local authority capacity. Mr Goudie also advised that in some unspecified circumstances Board members could incur personal legal liability, and the local authority should ensure that its insurance policies are extended to specifically cover members of the Boards.

Insurance

4. The City Corporation's insurers have confirmed that the indemnity under the Employers', Public and Professional indemnity insurance policies has been extended to the Boards and the members of the Boards as a business activity of the City Corporation. However, there are important exclusions.
5. The Data Protection Act 2018 (DPA) empowers the Information Commissioner to impose civil penalties in the event of certain breaches, such as unauthorised and unjustified disclosure of personal data. The City Corporation's insurance policies do not cover civil penalties arising from breach of the DPA, only the costs and damages arising from civil claims as a result of the breach. It should be noted that the DPA also creates a number of criminal offences which are excluded from the cover, as is normal.
6. Furthermore, there are general market exclusions for what might be termed "cyber liability"; for example, arising from computer systems and viruses, malicious or otherwise inappropriate use of software or emails. There is a specific insurance market for cyber related products, but this has not been pursued on a corporate basis. In order to procure appropriate cover that provides valuable financial protection, the City would need to undertake a corporate wide project to determine the key risks, exposures and their potential impact against the cost of available cover. This would be a significant project, requiring wide consultation and committee approval as a change of insurance strategy.
7. Therefore, the specific circumstances of a data breach and the effect of the breach would determine the extent of cover or the application of any policy exclusions. Members of the Boards are concerned therefore that the existing insurance policies will not necessarily cover against all potential liabilities arising from data breaches. It is not anticipated that the Boards will be required to consider significant amounts of personal data, if any, and wherever possible such data will be anonymised. In the final resort personal data will be presented in the confidential "blue paper" part of the agenda.

Current Position- Immunity and Indemnity

8. Local authority Members and officers benefit from certain immunities. Section 265 of the Public Health Act 1875 (extended by s. 39 of the Local Government (Miscellaneous Provisions) Act 1976) provides that "no matter or thing done bona fide for the purpose of executing a public general act or local act by any member or officer of a local authority or any other person acting under direction of the authority shall subject them personally to any action liability claim or demand whatsoever".
9. The limitations of this protection are that it only applies to local authority functions, and does not apply to Members or officers sitting on outside bodies. Arguably the Boards are outside bodies because of the anomalous legal status already referred to. The immunity also does not extend to former officers of the local authority nor to current or former police officers.
10. The Local Authorities (Indemnities for Members and Officers) Order 2004 clarified the power of local authorities to indemnify Members and officers. The Order is attached at Appendix 1. The Order permits indemnities and/or insurance to be provided in relation to any action or failure to act by a Member or officer providing the Member or officer is carrying out a function at the request of, with the approval of, or for the purposes of, the authority. The power extends to cases where the Member or officer exercises the function in a capacity other than that of a Member or officer of the authority, for example, as a member of an outside body. The Order applies to the City Corporation in its capacities as local authority and police authority.
11. The 2004 Order excludes criminal acts, deliberate wrongdoing or recklessness, and the bringing of defamation proceedings. However, an indemnity can be granted to cover criminal defence costs, but is re-payable if conviction results.
12. The Order would enable an indemnity to be granted to Members and current City Corporation officers sitting on the Boards, but would not apply to enable an indemnity to be granted to former local authority officers sitting on the LGPB, nor to serving or former police officers who are members of the PPB.
13. The general power of competence in Part I of the Localism Act 2011 enables the City Corporation to grant an indemnity for the benefit of former City Corporation employees sitting as members of the LGPB. However, the 2011 Act only applies to the City Corporation in its capacity as a local authority, and therefore serving and former police officers sitting as members of the PPB would have to be indemnified through City's Cash.

Proposals

14. The Court of Common Council on 9th June 2011 exercised the power in the 2004 Order to indemnify Members and officers sitting on outside bodies. In cases where the outside body was not related to a local authority or police authority function the indemnity was to fall on City's Cash. If the Boards are understood to be outside bodies then there is a degree of protection already in

place for Members and officers sitting on the Boards by virtue of this decision of the Court. However, serving and former police officers sitting as members of the PPB do not fall within this decision.

15. Therefore it is proposed that, utilising powers in the 2004 Order and in the Localism Act 2011, and utilising City's Cash where necessary, the City Corporation resolves to indemnify Members and officers, including former officers, and serving and former police officers, who sit as members of the Boards against any personal liability that may arise to pay a civil penalty under the Data Protection Act 2018, to the extent that the City Corporation's insurance policies do not fully cover such liability, and subject to the exclusions and restrictions contained in the 2004 Order.

Appendix 1:

The Local Authorities (Indemnities for Members and Officers) Order 2004

Background Papers:

Report to the Court of Common Council on 9 June 2011

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