

Report – Local Government Pensions Board Insurance and Indemnities

To be presented on Thursday, 7th March 2019

*To the Right Honourable The Lord Mayor, Aldermen and Commons
of the City of London in Common Council assembled.*

SUMMARY

Members of Local Government Pensions Board (LGPB) and Police Pensions Board (PPB) have recognised that there would be certain circumstances where the City Corporation's various insurance policies would not offer appropriate personal liability insurance cover for them in the event of breaches of data protection legislation.

It is now proposed that the Court of Common Council agrees to the City Corporation indemnifying Members of the Boards against any such personal liability as defined in the report.

The Information Commissioner has power to impose civil penalties under various provisions of the Data Protection Act 2018 (DPA). Penalties lie against the relevant Data Controller responsible for the breach, but Members of the Boards are concerned that they could have personal liability owing to 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 Board's but they do not cover civil penalties under the DPA.

RECOMMENDATION

The Court of Common Council is recommended to:

Approve utilising powers in the [Local Authorities \(Indemnities for Members and Officers\) Order 2004](#) and in the Localism Act 2011, and utilising City's Cash where necessary, and that 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.

MAIN REPORT

Background

1. The PSPA requires administering authorities of public sector pensions schemes to establish committees or boards to oversee the administration of the scheme

and assist the Scheme Manager. The City Corporation is 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 Councilors and, at present, one Alderman, as well as current and retired employees and police officers respectively.
3. Advice of James Gouldie QC to the Local Government Association in 2015 highlighted that committees established under the PSPA 2013 have an anomalous legal status. The Boards are not committees of the City Corporation within its local authority capacity and Mr Gouldie also advised that in some unspecified circumstances Board Members could incur personal legal liability, and that the local authority should ensure that its insurance policies are extended to specifically cover Members of the Boards.

Current Position

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. However, there are important exclusions. These being:
 - The Data Protection Act 2018 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 policies do not cover civil claims as a result of the breach.
 - 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 security related products, but this has not been pursued on a corporate basis and would require a significant corporate wide project requiring wide consultation and committee approval as a change of insurance strategy.
5. Therefore, the specific circumstance 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.
6. Local authority Members and officers benefit from certain immunities through section 265 of the Public Health Act 1875 (extended by s. 29 of the Local Government (Miscellaneous Provisions) Act 1976, but 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, which the Boards are considered to be given their 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.
7. The Local Authorities (Indemnities for Members and Officers) Order 2004 clarified the power of local authorities to indemnify Members and officers. 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 Members or officers 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.
8. 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 serving or former police officers who are members of the PPB.

9. The general power of competence in Part I of the Local 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.

Proposal

10. 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.

Corporate & Strategic Implications

11. The Boards have strategic oversight roles in relation to the administration of the Pension Funds and in securing compliance with the scheme regulations and other legislation relating to the governance of the scheme and any statutory pension scheme that is connected to it.

Conclusion

12. The Court is asked to give approval to utilising powers in the 2004 Order and in the Localism Act 2011, and utilising City's Cash where necessary 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.

Appendices

13. There are no appendices.

DATED this 7th day of February 2019.

SIGNED on behalf of the Board.

James Tumbridge
Chairman, Local Government Pensions Board