

Committee(s):	Date:
Standards Committee	4 October 2019
Finance Committee	15 October 2019
Establishment Committee	29 October 2019
Court of Common Council	5 December 2019
Subject: Insurance and Indemnities for Independent Persons	Public
Report of: The Comptroller and City Solicitor and the Chamberlain	For Decision
Report authors: Michael Cogher and Kate Limna	

Summary

This report sets out the position in relation to the potential personal liability of the Corporation's Independent Persons appointed under the Localism Act 2011 when carrying out their duties and the recommendations of the Committee on Standards in Public Life that local authorities provide indemnities to their Independent Persons in relation to their comments during the discharge of their duties. The report proposes that the Court of Common Council should indemnify Independent Persons in respect of any personal liability arising in the circumstances defined in the report.

Recommendation

Members are asked to approve the proposal in this report for onward approval by the Court of Common Council to indemnify and/or insure Independent persons (through the extension of the Corporation's Defamation Cover) against awards of damages or expenses incurred arising out of the disclosure of any comments made in good faith during the exercise of their statutory functions as Independent Persons.

Main Report

Background

1. The Localism Act 2011 requires a local authority to appoint at least one "Independent Person" to participate in the arrangements a local authority must put in place to consider and determine complaints made against a member in relation to its Code of Conduct.
2. An Independent Person must be consulted i.e. their views must be sought and taken into account, by the authority before it takes a decision on an allegation that a member has breached the Code of Conduct that it has decided to investigate. Their views may also be sought in other circumstances including by a member subject to an allegation, and in relation to disciplinary proceedings against the three statutory officers (head of paid service, chief finance officer and monitoring officer).

3. The Corporation currently has three Independent Persons and the Corporation's arrangements for dealing with complaints against members require an Independent Person's views to be sought at the assessment, hearing and appeal stages of a complaint. Independent Persons are not members of the Corporation or any of its committees. They are not therefore protected by the veil of incorporation or current insurance/indemnity arrangements for members and officers. They are therefore at risk of personal liability for the opinions they express should those opinions be found to be defamatory. Whilst the law of defamation itself may provide protection e.g. by the application of qualified privilege, Independent Persons are at risk of being pursued individually with all the implications that entails such as legal costs.
4. When Charles Bourne QC reviewed the Corporation's standards framework in December 2016, one of his recommendations was that the Independent Person should answer questions and express views in the presence of all those attending the hearing. This recommendation was subsequently supported by the Court of Common Council and is reflected in the current arrangements.
5. The Committee on Standards in Public Life ("CSPL") has recently carried out a substantial review of the arrangements for dealing with ethical standards in local government. Its report, published in January 2019, was entitled "Local Government Ethical Standards – A Review by the Committee on Standards in Public Life".
6. Two of the recommendations made by the CSPL in relation to the Independent Persons were as follows:

Recommendation 9: The Local Government Transparency Code should be updated to provide that the view of the Independent Person in relation to a decision on which they are consulted should be formally recorded in any decision notice or minutes.

Recommendation 11: Local authorities should provide legal indemnity to Independent Persons if their views or advice are disclosed. The government should require this through secondary legislation if needed.

7. The CSPL provided some additional commentary in chapter 3 of their report as follows:

We have noted the recent First Tier Tribunal cases which have found that it will often be, on balance, in the public interest to disclose the view or advice of the Independent Person under the Freedom of Information Act 2000. As above we support the Independent Person's advice being made public, which could enhance openness and accountability. However, we are concerned that Independent Persons would not automatically enjoy indemnity if a councillor or member of the public were to take legal action against them, in a same way that a member or officer of an authority would. Local authorities should take steps to provide legal indemnity to Independent Persons if their views are disclosed, and the government should confirm this through secondary legislation if needed.

8. An initial report on all of the recommendations of the CSPL was received by the Standards Committee in May 2019. Members agreed in principle with the provision of a legal indemnity to the Independent Persons and requested that a further report on this issue should be brought back to all of the relevant decision-making committees for onward approval by the Court of Common Council.

Current Position – Immunity and Indemnity

9. 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". This immunity would not apply to Independent Persons.
10. The Local Authorities (Indemnities for Members and Officers) Order 2004 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. As currently drafted the Order would not apply to Independent Persons.
11. However, the general power of competence under section 1 of the Localism Act 2011 would allow the granting of an indemnity and/or insurance to protect Independent Persons against loss, damage and expenses arising out of the disclosure of any comments made in the course of their statutory duties in good faith.

Insurance

12. The Corporation's public liability insurance policy includes cover for the legal costs and liability for damages for civil claims of defamation. Indemnity under the policy extends to employees unless the Corporation wishes to withhold the indemnity. The policy definition of employee encompasses "*any person co-opted, seconded or appointed to assist the [Corporation] in their business*". Application of cover will follow on approval of this report's recommendation.

Corporate & Strategic Implications

13. Members and Officers already have protection in place dating from 2011 and the Pensions Board have recently been granted an indemnity in relation to GDPR.

Conclusion

14. It is recommended that the Corporation follow the recommendations of the Committee on Standards in Public Life and grant an indemnity and/or provide insurance to protect Independent Persons in the circumstances set out above.

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