

YORKSHIRE DALES NATIONAL PARK AUTHORITY

25th July 2006**POTENTIAL PERSONAL LIABILITIES OF MEMBERS AND OFFICERS****Purpose of report**

To inform the Authority of the legal position in relation to the potential personal liabilities of Members and Officers, and to recommend that action is taken to cover these risks, under powers contained in the Local Government Act 2000.

Strategic Planning Framework

The information and recommendation(s) contained in this report are consistent with the Authority's statutory purposes and its approved strategic planning framework:

- ***Risk Management Policy:*** The Authority seeks to comply with risk management best practice, and to ensure that the components of risk within all of its operations are identified and evaluated. Those operations to which an unacceptable degree of risk attaches will not be pursued until such time as that risk can be managed within acceptable bounds: the Authority's policy is to manage risk, rather than to become risk averse, so ensuring that our business remains innovative but secure.

Background

For many years, it was thought that both Members and Officers of local authorities (and other bodies in the local government "family", such as National Park Authorities) were adequately protected against any risk of personal liability arising from their work for their Authority. However, during the 1990s, a number of loopholes came to light that showed that this was not always so. The Government recognised this problem, and Section 101 of the Local Government Act 2000 gave the Secretary of State power to make an order setting out the conditions on which local authorities could give indemnities to their Members and Officers. Such an order was eventually made in November 2004.

So far as Members are concerned, the most obvious loopholes are that existing legal provisions do not protect Members when they are acting as the representative of the Authority on outside bodies; and that members have to meet personally the costs of defending themselves against allegations that they have breached the Authority's code of conduct. For Officers, the main loophole is that they are not protected if what they are doing transpires to be ultra vires (beyond the legal powers) of the Authority.

The order closes these loopholes, and enables Authorities to provide indemnities to their Members and Officers in relation to any act or omission which is either explicitly authorised by the Authority, or forms part of their duties or responsibilities. The only exception is that the indemnity may not cover matters which are criminal offences, or are the result of fraud,

deliberate wrongdoing, or recklessness. The indemnity can cover the cost of defending criminal proceedings, though the member or officer has to pay these costs back if they are convicted. The indemnity can also cover the costs of members in relation to allegations that they have breached the code of conduct, though again they have to pay the costs back if they are found (or they admit) to have breached the code.

In this context, a “Member” includes any member of any of the Authority’s Committees, and would therefore extend to the two independent members on the Standards Committee – in relation only, of course, to their duties and responsibilities as such.

The Order also allows Authorities to insure Members and Officers – so effectively any costs for the Authority arising under the indemnity would be met under the insurance policy. The Treasurer’s advice has been sought on this aspect of the matter, and the advice is as follows. The Authority has cover under three policies:

- Liability (other than professional indemnity and directors and officers cover)
- Professional indemnity
- Directors and Officers cover

The cover under these policies does not apply to an error committed by a member independently of officer advice. The Authority does not have (though it could purchase, see below) cover for costs incurred by members in relation to allegations that they have breached the code of conduct.

The above insurances cover all of the circumstances of the proposed indemnity except:

- Costs regarding alleged breaches of the code of conduct (see below)
- Professional indemnity and directors and officers cover does not extend to situations where officers or members are acting in other capacities
- Liability cover does not extend to situations where the action or inaction in question is beyond the legal powers of the Authority
- There is no cover for Contractual liabilities which might arise where a member or officer makes a statement that certain steps have been taken or requirements fulfilled.

In relation to the latter three cases, one must remember that the context is the extremely unlikely one of members or officers being sued personally (as opposed to the Authority being sued). The implications of granting the indemnity would be that, should an officer or member be sued personally then in these three instances any irrecoverable costs they incur, and any award of damages against them, would be payable by the Authority and could not be recovered through insurance. If the indemnity is not granted, the member / officer would have to meet those costs and damages themselves.

In relation to insurance for the Authority against costs incurred by members in successfully defending themselves against allegations that they have breached the code of conduct, cover would be available at a likely cost of £805.35 per annum (including tax). This equates to £29.50 plus tax per member and, as under the regulations, any legal costs met under the insurance would have to be repaid if the member was found to have breached the code of conduct. The member would be represented during any investigation and at any hearing by the insurer, or a legal representative appointed by the insurer (although the member has a say in who is appointed). The limit of liability is £50,000 per claim, and £500,000 in any 12 months. The insurance covers only code of conduct proceedings, not criminal proceedings.

This issue was referred to the Finance and Resources Committee on 15th May 2006, and the Committee resolved to recommend to the Authority that it provide an indemnity to all members and officers, subject to satisfactory resolution of the insurance position (now resolved as set out above), and to discussion of the detailed wording of the indemnity between myself and a member. Those discussions have taken place, and an amendment has been made to the wording of the proposed indemnity as a result.

Conclusions

It is suggested that the Authority should take advantage of the opportunity provided by the new legislation, and provide an indemnity to Members and Officers. My suggested form of words is attached as an Appendix to this report.

RECOMMENDATION

That the Authority provide an indemnity to all Members and Officers in the terms set out in the Appendix to this report, and consider whether to effect insurance against costs incurred by members in successfully defending themselves against allegations that they have breached the code of conduct. If members decide that insurance should be effected, it is recommended that the indemnity be amended to provide that members' legal costs in relation to code of conduct matters will only be reimbursed by the Authority if the member complies with the terms and conditions of the insurance.

Richard Daly
Solicitor / Monitoring Officer

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

6th July 2006

Yorkshire Dales National Park Authority

Indemnity to Members and Officers

1. The Yorkshire Dales National Park Authority will provide an indemnity to all of its Members (including independent Members serving on the Standards Committee) and Officers (that is, all employees of the Authority) on the terms set out in this document.
2. The Authority will indemnify all Members and Officers against all claims, liabilities, costs and expenses arising out of any action, or failure to act, by the Member or Officer in question which is authorised by the Authority or which forms part of, or arises from any powers explicitly or implicitly conferred, or duties placed, upon that Member or Officer, as a consequence of any function being exercised by that Member or Officer (whether or not, when exercising that function, he/she does so in his/her capacity as a Member or Officer of the Authority), so long as the action or failure to act is undertaken at the request of, with the approval of, or for the purposes of the Authority.
3. This indemnity does not cover any action, or failure to act, by any Member or Officer which constitutes a criminal offence, or is the result of fraud or other deliberate wrongdoing, or recklessness on the part of that Member or Officer. It does cover:
 - a. subject to paragraph 6, the cost of defending any criminal proceedings against the Member or Officer; and
 - b. subject to paragraph 7, costs incurred in relation to any investigation, report, reference, adjudication or other proceeding in relation to any allegation that a Member has failed to comply with the Authority's code of conduct for Members; and
 - c. any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence.
4. This indemnity does not cover the making by any Member or Officer of any claim in relation to alleged defamation, but does cover the defence by a Member or Officer of any allegation of defamation made against him/her.
5. This indemnity covers any action or failure to act by any Member or Officer which is subsequently found to be beyond the powers of the Authority, or beyond the powers of the Member or Officer in question, but only to the extent that the Member or Officer reasonably believed, at the time in question, that the act or omission in question was within the powers of the Authority, and within his/her powers. Where the action taken comprises the issuing or authorisation of any document containing any statement as to the powers of the Authority, or any statement that certain steps have been taken or requirements fulfilled, this indemnity applies only if the Member

or Officer believed, at the time in question, that the contents of that statement was true.

6. In the case of criminal proceedings, if the Member or Officer is convicted of a criminal offence, and that conviction is not overturned following any appeal, the Member or Officer shall reimburse the Authority (or any insurer who has made payments in this regard) for any sums expended in relation to the proceedings.
7. In the case of the proceedings referred to in paragraph 3b above, the indemnity applies only if the Member does not have the benefit of any other indemnity or insurance in relation to such matters; [and the member complies with the terms and conditions of any insurance effected by the Authority]. If the Member admits, or is found to have failed to comply with the code of conduct, and that finding is not overturned following any appeal, the Member shall reimburse the Authority [or any insurer who has made payments in this regard] for any sums expended in relation to the proceedings.

25th July 2006.