

REPORT TO COUNCIL

Report No.

Date of Meeting	5 TH September 2006
Title of Report	Appointments to Outside Bodies – Liability of Members and Officers
Link to Corporate Priorities	There is a link to partnership working which is a Corporate Plan priority and governance issues generally underpin all the work of the Council
Public Report	YES

Summary of Report

This report is prepared on the instructions of the Council and in response to the following notice of motion submitted by Councillor R. L. Tonge to the Council Meeting on 27th June 2006:

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“The personal risk to Members on the North Wiltshire Leisure Trust was cruelly exposed at the last Council meeting.

I move that all representation on outside bodies be analysed to ensure that no such risk exists and that in future any new arrangements are analysed in the same way. I further move that any risk to the nominated Members be put in writing to the Member before appointment”.

Officer Recommendations

- (1) that all appointments to outside bodies (past and future) be analysed to assess the risk of personal liability attaching to Members
- (2) that all members be advised of the risk attaching to any appointment
- (3) the Council indemnifies Members appointed to outside bodies against personal liabilities arising from such appointments only where such indemnities are insurable and where the outside body itself does not carry its own insurance

Other than those implications agreed with the relevant Officers and referred to below, there are no other implications associated with this report.

Financial Implications	Legal Implications	Community & Environmental Implications	Human Resources Implications	Equality & Diversity Implications
NONE	YES	NONE	NONE	NONE

Contact Officer	Peter Jeremiah 706600	Team Leader Legal Services pjeremiah@northwilts.gov.uk	01249
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1. Introduction

1.1 This report is prepared on the instructions of the Council and in response to the following notice of motion submitted by Councillor R. L. Tonge to the Council Meeting on 27th June 2006: -

“The personal risk to Members on the North Wiltshire Leisure Trust was cruelly exposed at the last Council meeting.

1.2 I move that all representation on outside bodies be analysed to ensure that no such risk exists and that in future any new arrangements are analysed in the same way. I further move that any risk to the nominated Members be put in writing to the Member before appointment”.

2. Recommendations

- (1) that all appointments to outside bodies (past and future) be analysed to assess the risk of personal liability attaching to Members
- (2) that all members be advised of the risk attaching to any appointment
- (3) the Council indemnifies Members appointed to outside bodies against personal liabilities arising from such appointments only where such indemnities are insurable and where the outside body itself does not carry its own insurance

3. Preface

3.1 Whilst the notice of motion suggests specific courses of action it is also relevant to consider the circumstances in which the Council can lawfully indemnify Members against personal liability.

3.2 An indemnity is essentially an agreement by one party, in this case the Council, to keep another party, that is, an individual Member, harmless against loss caused by third party claims.

3.3 In the context of this report indemnification relates specifically to personal liabilities incurred by individual Members arising from their involvement with outside organisations to which they have been appointed by the Council.

4. Scope of Indemnities

4.1 It is well accepted that indemnities can lawfully be given to members appointed to outside bodies in the following circumstances:-

- a) where a Member acts solely on behalf of his or her authority, within the terms of reference laid down by the authority, and solely in pursuance of the local authority's statutory powers
- b) where a Member acts solely in an advisory capacity in connection with the local authority's functions

- c) where the Member occupies an observational role on the board or managing committee of an outside organisation (rather than in a decision making capacity)
- d) where the Member acts on behalf of a joint committee established by two or more local authorities

5. The Local Authorities (Indemnity for Members and Officers) Order 2004

5.1 The purpose of this Order is to clarify by statute the local authority's powers to provide indemnities to both Members and Officers in respect of their personal liability while carrying out activities connected with the authority. In practice the Order anticipates the likely increase in partnership working.

5.2 The Order defines the circumstances in which indemnities can lawfully be given. These are as follows:-

- a) where a Member is carrying out any function which is at the request of, or with the approval of, or for the purpose of, the authority
- b) where the Member is carrying out any function, which is at the request of, or with the approval of the authority, but acting in capacities other than as a Member of the authority
- c) where the liability arises from an act or omission which is outside the powers of the authority or of the Member provided that the Member reasonably believed the matter was not outside those powers
- d) where a Member makes a statement that certain steps have been taken or requirements fulfilled, which have not been taken or fulfilled, provided that the member reasonably believed the statement to be true when it was made

5.3 The circumstances set out in 6.2 (a)–(d) above apply equally to officers as they do to Members.

5.4 The scope of the power to indemnify does not include:-

- a) criminal acts
- b) any other intentional wrong doing
- c) fraud
- d) recklessness
- e) defamation (but not including the costs of defending an accusation)

6. Insurance

6.1 The Order states that the authority may provide an indemnity by securing the insurance of any of its Members or officers.

- 6.2 The Council's insurers have confirmed that insurance cover extends to any activity of a Member or officer where the authority has the legal power to approve the activity and to give a personal indemnity.
- 6.3 However, for personal indemnity cover to operate there is a requirement within the cover that the claim is also capable of being made against the authority itself.
- 6.4 Consequently, insurance cover is not available in circumstances where a member or officer incurs liability as a Member of the board or managing committee of an outside body, even though indemnity could technically be given, because in those circumstances the claim lies against the outside body and not the authority.

7. Risk Management

- 7.1 As suggested by the notice of motion it would be prudent to analyse the Council's representation on outside bodies, particularly in the context of the rules relating to indemnities.
- 7.2 The nature of the outside organisation will also need to be considered as some will have limited liability in any event (though this would not affect unlawful activity such as wrongful trading) and others will have their own insurance for board members or members of the managing committee.
- 7.3 Due to the different types of outside bodies and, possibly, the differing roles of Members appointed to those bodies any advice purporting to be of universal application will be of limited value. Advice, therefore, needs to be given to members or groups of members following the completion of the analysis referred to in paragraph 8.1 above.
- 7.4 With the possible exception of NWLL there is no history of members being exposed to personal liability as a result of their appointment to outside bodies and it is not recommended that any precipitate action is taken pending the completion of the analysis referred to in paragraph 8.1.

8. Legal Implications

- 8.1 The Legal Implications are set out in the report.

Appendices:	<ul style="list-style-type: none"> • Councillor Tonge's Motion
Background Documents Used in the Preparation of this Report:	<ul style="list-style-type: none"> • None

Previous Decisions Connected with this Report

Report	Committee & Date	Minute Reference
Report 16 (e) – Councillor Tonge's Motion	Council – 27 th June 2006	C32 (e)

Notice of Motion

General Subject: Outside Bodies		
Proposer: R.L. Tonge Seconder:	Date proposed at Council: 27/6/05	Minute No: C32 (e)
Text of Motion: The personal risk to Members on the North Wiltshire Leisure Trust was cruelly exposed at the last Council meeting. I move that all representation on outside bodies be analysed to ensure that no such risk exists and that in future any new arrangements are analysed in the same way. I further move that any risk to the nominated Members be put in writing to the Member before appointment.		
Action agreed by Council: Resolved that consideration of this motion be deferred pending a report by the Team Leader for Legal Services on this subject for consideration by Council.		