

## INDEMNITIES FOR MEMBERS – CORRESPONDENCE FROM THE LOCAL GOVERNMENT ASSOCIATION

### 1 SUMMARY

- 1.1 This report provides Members with details of the response received from the Local Government Association (LGA) in reply to a request concerning the adequacy of Members' indemnity insurance.

### 2 INTRODUCTION

- 2.1 Following concerns raised by Members, the Corporate Director (Law, Planning & Administration) entered into correspondence with the LGA concerning the adequacy of Members' indemnity insurance.
- 2.2 While confirming that the indemnity offered by the Council meets, and in some respects exceeds the parameters of the Local Authorities (Indemnity for Members and Officers) Order 2004, the LGA believes that there is no prospect of securing the provision of a more general statutory indemnity.

### 3 DETAILS OF CORESPONDENCE

- 3.1 A copy of the exchange of correspondence is attached for Members information. It is particularly disappointing to note the length of time taken by the Association to deal with this matter.

### 4 RECOMMENDATION

- 4.1 It is proposed that the Committee **RESOLVES** to note the Local Government Associations position with regard to indemnities for Members and Officers.

John Honey

Corporate Director (Law, Planning & Administration)

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**Background Papers:-** None

For further information please contact John Honey on:-

Tel:- 01702318004

E-Mail:- [john.honey@rochford.gov.uk](mailto:john.honey@rochford.gov.uk)

*promoting better local government*

Mr R J Honey  
Corporate Director  
Rochford District Council  
Council Offices  
ROCHFORD  
Essex SS4 1BW

Our Ref: Your Ref:RJH

2 December 2005

Dear Mr Honey

#### **Indemnities for Members and Officers**

Thank you for your letter of 31 October. I am sorry for the delay in replying, but I have been trying to obtain some information about the status of regional assemblies.

In response to your query as to whether the LGA believes that Rochford's provision is adequate, I can only say that it appears to be so (indeed it includes potential support in relation to libel and slander, which is not always included). However, I would repeat that this is essentially a matter of judgment by each authority.

In relation to the comments in the Sunday Telegraph on the status of regional assemblies as 'unincorporated associations', I should say that Rochford is the only member authority to raise concerns. I have sought views from both ODPM and the English Regions Network (who represent the collective view of regional assemblies to Government). I have not been able to obtain a view from ODPM (but shall persist). ERN has commented that they have not had any indication that there is concern at the status of assemblies amongst local authorities in membership of assemblies. They do comment that the assemblies have been the target of a range of largely unfounded criticism in the press in the context of the general regional debate. They suggest that you seek re-assurances from the Chief Executive of the East of England Assembly.

In relation to the specific issue about personal liability on councillors serving on the regional assembly, the fact that your authority has in place an indemnity policy should provide sufficient protection of their position – and the ultimate liability in such cases should surely lie with your insurer.

The LGA view is that the provisions of the LGA Act 2000 permitting the provision of indemnities for councillors, for which the LGA lobbied hard, appears sufficient to protect the interests of councillors serving on other bodies. In our view, there would not be a realistic prospect of securing the provision of a more general statutory indemnity for councillors, coming relatively soon after the 2000 Act provisions, nor does there appear at present any widespread wish amongst member authorities for such a provision. The LGA would, of course, revisit the issue, were it to become a matter of more general concern amongst member authorities.

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In relation to the potential liabilities from the regional assembly resting with the authority as a body, the constitution of the East of England already provides that each member authority undertakes jointly to underwrite any liabilities that are not ultra vires, apportioned according to a weighted scheme.

Could I suggest that you might raise your concerns as to potential authority liability directly with the Chief Executive of the Assembly.

Yours sincerely

W R S Williams

Head of Member Services

R.J. Honey, BA(Hons), FCMI  
Solicitor  
Corporate Director  
(Law, Planning and Administration)

My Ref: RJH/DF  
Your Ref:

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Council**

Council Offices South Street  
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Telephone: 01702 546366  
DX 39751 Rochford  
Facsimile: 01702 318154

Date: 21 February 2006

Dear Sir,

**Indemnities for Members and Officers**

I refer to my letter dated 31 October 2005 (copy attached) and subsequent email reminders.

My original enquiry dated 5 July 2005 followed a formal request from this authority's Policy and Finance Committee to obtain a view from the Local Government Association on indemnities. The Committee has periodically monitored progress of the request and at its meeting on 9 February 2006 resolved "that a further letter be sent to the Local Government Association expressing this Council's disappointment that a response has not yet been received on the question of whether an indemnity in law for elected Members representing their authorities on outside bodies generally and regional assemblies in particular should be pursued".

I would be obliged to you for a response and wish to register a formal complaint on behalf of this Council with regard to the Association's indolence in dealing with this matter.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'R.J. Honey', written over a horizontal line.

**Corporate Director (Law, Planning & Administration)**

Head of Member Services  
Local Government Association  
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INVESTOR IN PEOPLE

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Solicitor  
Corporate Director  
(Law, Planning and Administration)

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Date: 31 October 2005

Dear Mr Williams,

**Indemnities for Members and Officers**

I thank you for your letter dated 19 October 2005 and note the contents.

My authority acknowledges that it has responsibility for providing indemnity to its members. Nevertheless, I am instructed to take up this matter with you and report back at the earliest opportunity. Given that the insurance provisions agreed by this Council "relate closely to the parameters of the regulations", can I assume that the Association would believe this to be adequate provision?

With regard to the final paragraph of your letter, I enclose an extract from an article appearing in the Sunday Telegraph on 6 March 2005 expressing the view that "because of the dubious status of most of these bodies as 'unincorporated associations', councillors may be personally liable in law for their [regional] assembly's financial obligations, including the contractual and pension rights of hundreds of employees."

The role created by government for regional assemblies means that local councils must become involved if they are to have a voice in the development of regional policy. Even the remote possibility that individual members could incur personal liability is intolerable. However, with indemnity, that liability could transfer to any council with joint and several liability and potentially catastrophic results. Members elected to Council have personal responsibility for their actions but not the general liabilities of the authority they represent. Is

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Local Government Association  
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Yours sincerely,

Shane

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## UNELECTED ASSEMBLIES

# Hidden cost of Prescott's regional folly

**S**ince last November's referendum in the North-East, which delivered a resounding four-to-one vote against a regional assembly, John Prescott's scheme to divide England under eight regional governments has crumbled further into chaos. The survival of the eight unelected assemblies that he hoped would be retrospectively legitimised by referendums, and which are part-funded by local authorities, is now looking increasingly shaky.

Last week, 70 per cent of the elected councillors on the South-East Regional Assembly voted for its abolition. In Cornwall, the county council is considering withdrawing its support from the South-West assembly. Lancashire county council has already withdrawn from the North-West assembly, with Cheshire set to follow.

One reason for this disintegration is the growing panic among council nominees on these assemblies that, because of the dubious status of most of these bodies as "unincorporated associations", councillors may be personally liable in law for their assembly's financial obligations, including the contractual and pension rights of hundreds of employees.

In Yorkshire and Humberside, it has emerged that all the assembly's financial obligations are being underwritten by Wakefield council. This startling fact may well alarm local ratepayers, who were never informed of this peculiar arrangement.

Meanwhile the sharp-eyed Neil Herron, who led the "No" campaign in the North-East, has just formally brought it to

councillors who sit on the North-East Assembly seem to be in serious breach of various statutory provisions. For a start, since the councillors are personally liable for the Assembly's financial obligations, this gives them a personal and pecuniary interest in its decisions, which in law disqualifies them from participating in those decisions.

Furthermore, under the Local Government Acts, it is illegal for councils to give money to bodies which may be acting against their interests. Since the North-East assembly recently voted for a regional planning strategy which some participating councils strongly oppose,

**The councillors who sit on the unelected North-East assembly may well be breaking the law**

for them to fund a body against their ratepayers' interests appears to be breaking the law.

Prior to lodging a complaint with the district auditor, Mr Herron has fired off a set of searching questions to Sunderland's chief legal officer, to which he has been promised "a substantive reply". But at least Bob Gibson, the leader of the North-East assembly is no stranger to the problems of failing to declare a "pecuniary interest". In 1997, he was fined £800 and found guilty on four charges of failing to declare his interest when, as Mayor of Stockton, he had chaired meetings which voted on pro-

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R J Honey  
Corporate Director  
Rochford District Council  
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South Street  
ROCHFORD SS4 1BW

Our Ref: Your Ref:RJH/DF

19 October 2005

Dear Mr Honey

**Indemnities for Members and Officers**

Can I first apologise for the delay in replying to your letter of 5 July, which appears to have been caused by the non – delivery of the hard copy, and a mis-direction of the subsequent e-mail enquiries.

Turning to the content of your letter, I have to say that the Association would find itself in some difficulty in commenting on the adequacy of the insurance provision which you provide for members. That surely must be a matter for your authority, in the light of the provisions of the Local Authorities (Indemnities for Members and Officers) Order 2004.

You may recall that the LGA was instrumental in securing provision in the Local Government Act 2000 for a clarification of the ability of local authorities to provide indemnities for members – and to purchase the underlying insurance policy. The subsequent regulations set out the limits of these powers, which included for the first time the ability, if an authority wished, to indemnify, within certain constraints, members against the costs of defending accusations of breaches of the members' code of conduct.

Your description of the scope of Rochford's provision appears to relate closely to the parameters of the regulation. I am therefore a little uncertain as to the areas which your authority might wish the Association to lobby for improvements. Your reference to articles in the national press relating to the regional assembly are unfamiliar to us, and I wonder, therefore, if you could expand on the difficulties which your members envisage in relation to any appointments to these bodies.

Yours sincerely

Head of Member Services

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Date: 5th July, 2005

*COPY*

Dear Sirs,

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

I am instructed to write to you for the Association's views on the adequacy of the insurance provided by Rochford District Council and the possibility of the Association lobbying for improvements to the indemnity that can be made available to Members, at present or in the future.

The Council's current insurance provides indemnity cover in the following circumstances:-

- i) Under an Officials Indemnity Policy – cover for Members, officers and volunteers assisting the Council for all sums the Council becomes legally liable to pay as damages and claimants' costs and expenses for financial loss as a result of a negligent act or accidental error or accidental omission in the consequence of their duties arising out of the business of the insured.

Following a review of insurances, "business" is now defined as an activity where the authority has the legal power to approve the activity and to support it with a personal indemnity.

Zurich Municipal, the Council's insurers, advise that Members are only covered under the Officials Indemnity policy when representing the Local Authority on the board/committee of an outside body if:

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- a) the individual acts solely on behalf of his or her Local Authority, within the terms of reference laid down by the authority, and solely in pursuance of the Local Authority's statutory powers
- b) the individual acts solely in an advisory capacity in connection with the Local Authority's functions
- c) the individual occupies an observational role on the board or committee of an outside organisation, representing the Local Authority's interest (but not in a decision-making capacity)
- d) the individual acts on behalf of a joint committee established by 2 or more Local Authorities.

Cover will not apply where the individual acts:

- a) solely on behalf of any outside body
- b) outside his or her delegated powers
- c) outside the authority's statutory powers.

- ii) Under a Libel and slander Policy – cover for Members and officers arising out of the business of the insured authorised by the Council. This covers the cost of defending an action and damages, except punitive or exemplary damages, or arising from malicious falsehood or injurious falsehood.
- iii) There is no insurance cover for Code of Conduct investigations or for acts that are without authority and ultra vires.

Our Council has implemented provision of indemnity in relation to any action or failure to act by any Member or officer which:-

- a) is authorised by the Council;
- b) form part of, or arises from, any powers conferred or duties placed upon that Member or officer at the request of or with the approval of the authority including acting as the Council's representative on an outside body;
- c) arises in respect of the cost of defending any claim for an allegation of defamation by a Member or officer acting in an official capacity (but not in respect of any punitive or exemplary damages or arising from malicious falsehood or injurious falsehood) or
- d) is in respect of any investigation, hearing or other proceedings for an alleged failure to comply with the Code of Conduct for Members but, if the Member is found to have breached the Code of Conduct, and where an appeal is unsuccessful, then that Member shall reimburse the authority or the insurer for their costs incurred in relation to those proceedings.

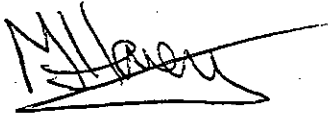
Such indemnity to include an act or omission subsequently found to be beyond the powers of the Member or officer in question, but only to the extent that the Member or officer reasonably and genuinely believed that the act or omission was within his/her powers at the time when he/she acted.

It is further resolved that no indemnity be offered for legal representation to defend a criminal conviction unless specifically approved by the Council and then on a similar basis to that relating to Part 3 proceedings with regard to reimbursement.

Following articles in the national press, some Members have expressed particular concern as to personal liability in representing the authority on unincorporated bodies such as the Regional Assembly. Your views on this, and the above, would be welcome.

I look forward to hearing from you in due course.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M. H. Allen', with a long horizontal stroke extending to the right.

**Corporate Director (Law, Planning & Administration)**