

Report to: Corporate Governance
Date of Meeting: 18th December 2013
Lead Officer: Gary Williams, Monitoring Officer
Report Author: Gary Williams, Monitoring Officer
Title: Cap on Member Indemnities for Code of Conduct Complaints

1. What is the report about?

The report is about a proposal for all 22 unitary authorities to agree a voluntary cap on the level of indemnity made available to elected members in respect of proceedings relating to alleged breaches of the Code of Conduct.

2 What is the reason for making this report?

- 2.1 To seek a recommendation to Council that the indemnities available to Members involved in Code of Conduct hearings be capped at a maximum figure of £20,000.

3 What are the recommendations?

That the Committee recommends to Council:-

- 3.1 That the Corporate Governance Committee considers, on a case by case basis, each application for a costs indemnity in order to decide whether an indemnity should be given at all.
- 3.2 That if, in any individual case, an indemnity is to be given in respect of matters relating to a breach of the Members' Code of Conduct, the Corporate Governance Committee should decide on the amount of that indemnity up to a maximum of £20,000.
- 3.3 That the Council's Constitution and form of indemnity be amended as necessary to reflect these decisions.

4 Report details

- 4.1 There has been much debate across Wales about the scale of indemnities provided by local authorities to Members when defending themselves in hearings against alleged breaches of the Code of Conduct.

- 4.2 Concerns have been expressed about the scale of indemnities provided by local authorities to Members in such circumstances by, amongst others, the WLGA, the Public Services Ombudsman for Wales (the Ombudsman) and the Chair of the Adjudication Panel for Wales.
- 4.3 Earlier this year a letter from the then Minister for Local Government and Communities regarding the ethical framework which contained reference to a voluntary cap on indemnities being imposed by local authorities was considered by the Standards Committee. The Standards Committee indicated their support for such a measure.
- 4.4 The Ombudsman had originally proposed a cap of £10,000 but the WLGA Council approved a cap of £20,000 on the basis that the level proposed by the Ombudsman was insufficient cover given the complexities of some cases.
- 4.5 The WLGA Council further agreed that local authorities should consider on a case by case basis whether and to what level to grant an indemnity but that no indemnity should exceed £20,000.
- 4.6 The position in Denbighshire is that the Corporate Governance Committee has the power to consider the level of professional representation of a Member under the terms of the form of indemnity to Members and officers approved by Council on 23rd September 2008.
- 4.7 The level of indemnity has implications not only in terms of managing the potential for significant legal costs but also the impact on senior Council officers' and other public servants' time.
- 4.8 There is also the potential, in the absence of a cap, for there to be a legal 'arms race' e.g. where one party instructs leading Counsel the other party may often feel the need to instruct Counsel of commensurate standing and experience which results in increased cost.
- 4.9 The Ombudsman has agreed that, in each case, his own legal costs will not be allowed to exceed the level imposed by the proposed cap.
- 4.10 If the Committee is minded to recommend the proposed cap to Council, the terms of the form of indemnity would be amended by the insertion of the words shown in italics in the document attached as Appendix 1 to this report.

5 How does the decision contribute to the Corporate Priorities?

- 5.1 The decision has no direct impact on the Corporate Priorities.

6 What will it cost and how will it affect other services

6.1 The only change being introduced is a cap on the level of any indemnity given. There should be no additional cost. There is no direct impact on other services.

7 What consultations have been carried out and has an Equality Impact Assessment Screening been undertaken?

7.1 This issue has been considered by the Standards Committee who have indicated their support. On a national basis, the WLGA, Public Services Ombudsman for Wales and the Adjudication Panel for Wales have supported the introduction of a voluntary cap.

7.2 There is no need for an Equality Impact Assessment.

8 Chief Finance Officer Statement

8.1 The council does not have a specific budget for this, however there have not been any cases in Denbighshire in the recent past. The risk to the council is therefore low and should the need arise the costs could be found from balances.

9 What risks are there and is there anything we can do to reduce them?

9.1 There are no significant risks associated with this report.

10 Power to make the Decision

10.1 Section 101 Local Government Act 2000.
The Local Authorities (Indemnities for Members and Officers)(Wales) Order 2006.