

Central
Bedfordshire
Council
Priory House
Monks Walk
Chicksands,
Shefford SG17 5TQ



CONSTITUTION ADVISORY GROUP

DATE: 25 January 2010

TITLE	OUTSIDE BODIES – INDEMNITY COVER	ITEM NO.
REPORT OF	Assistant Director Legal and Democratic	9

PURPOSE	To report (a) as requested on the issue of indemnity cover for members serving on outside bodies, and (b) on a draft policy on Member appointments to outside bodies.
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ORIGIN OF PROPOSAL	<p>On 25 August 2009 the Advisory Group considered an advice note by the Monitoring Officer to all Council Members providing general guidance in relation to their role on outside bodies (<u>Appendix 1</u>). The Group discussed in particular the issue of members’ liabilities when serving on outside bodies and what indemnity cover was provided. Officers reported that, whilst the Council’s insurance provided members and officers indemnity cover when acting on behalf of the Council, in the case of a registered company or charity where the member was a director or trustee, the member would be acting on behalf of the company or charity not the Council and the Council’s indemnity may not cover this situation.</p> <p>The Group asked for specific advice to be provided to all members, drawing attention to the need to ascertain the legal status of each organisation and what each member needed to find out should they be appointed as a trustee of a charity or as a director of a registered company. A report was requested on how this issue was being addressed.</p>
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RECOMMENDATION: That the survey results be noted and that any comments by the Advisory Group be passed to the General Purposes Committee when they consider the attached draft policy on appointments to outside bodies.

SUPPORTING INFORMATION

1. As reported to the Group's August meeting, the Council's insurance provides members and officers with indemnity cover when acting on behalf of the Council, but there was a need to check what cover if any was in place for members who were appointed to charities where they took on the liabilities of a trustee, to companies where they might be appointed as a director, or to other incorporated bodies (e.g. industrial and provident societies). Through a survey conducted in 2008 as part of the transition to Central Bedfordshire, officers already had some information on the legal status of each body, which was included in the appointment letters sent to members in August 2009. Further enquiries were necessary in some cases to clarify the information provided about legal status.
 2. As the 2008 survey included no details about indemnity and/or insurance cover it was necessary, to enable officers to report back to this Group, to conduct a fresh survey in September 2009 of those outside bodies which were either registered charities or companies, or were otherwise incorporated. This information was also required in order for our present insurers to confirm individually which outside bodies were or were not covered by the present policy. A number of survey forms were returned by the outside bodies during October but it was necessary to chase others to obtain a more complete picture. A few queries are still outstanding.
 3. Information gathered from the replies received has been included in the Schedule of Outside Body Appointments (Appendix 4), which has also been restructured to distinguish clearly between
 - (a) corporate bodies (companies, industrial and provident societies, NHS Foundation Trusts and statutory bodies), and
 - (b) non-corporate bodies, which have been sub-divided into advisory or consultative bodies, registered charities and others.
 4. The Monitoring Officer has sought expert legal advice on the issues surrounding members' responsibilities and potential liabilities when serving on outside bodies as well as on the scope for conflicts of interest, particularly for Executive members, and has issued a further advice note on these matters (Appendix 2). The latter part of the note deals with the issue of insurance and indemnity cover.
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5. Officers have also been asked to consider a draft policy on appointments to outside bodies including issues such as our definition of an outside body, our criteria for making Council appointments, the capacity in which members serve, their responsibilities and potential liabilities, whether they are covered in their duties by insurance and/or an indemnity and conflicts of interest. A draft policy (Appendix 3) which is scheduled to be considered by the General Purposes Committee on 10 February is attached for the Advisory Group's information and comments.
6. It is now clear from enquiries of both our current insurers and our insurance brokers that insurance cover can only be provided under the Council's own policy when either the member is sitting on the outside body purely to represent the Council, or the body on which the member sits is acting only in the interests of the Council. This position is reflected in paragraphs 8 and 9 of the draft policy.
7. This appears to be an industry-wide commercial restriction, despite a legal authority in the relevant regulations which permit local authorities to provide an indemnity against any liability incurred by reason of any action of, or failure to act by, the member or officer in question which forms part of, or arises from, any powers conferred or duties placed upon them, whether or not the function concerned is being exercised in the member's or officer's capacity as a Council member (e.g. it can under law include a member acting in the capacity of a company director).
8. In view of this restriction on the extent of cover provided, the draft policy suggests at paragraph 10 that as a matter of principle Council appointments should not be made, other than as non-voting observers, to companies or charities which have not provided their own insurance-backed indemnities to members appointed by the Council, nor to any unincorporated association where there is a significant risk of personal liability, e.g. where there are contractual obligations in relation to staff, premises or equipment. On our Schedule of Outside Body Appointments this would include all those marked 'No' in the row 'Indemnity Cover' (the 6th row down), unless they are able to confirm that suitable cover is being sought. A few queries remain to be resolved. If, after further enquiries of the body concerned, it should become clear that there is no intention to provide insurance cover, it is suggested that the Council appointment should be rescinded.

Appendices:

Appendix 1 – Monitoring Officer's general advice note

Appendix 2 – Monitoring Officer's advice to Executive Members

Appendix 3 – Draft Policy on Member Appointments to Outside Bodies

Appendix 4 – Schedule of Outside Body Appointments

Contact Officer Details:
Barbara Morris

Key Background Papers:
None