

YORKSHIRE DALES NATIONAL PARK AUTHORITY
FINANCE AND RESOURCES COMMITTEE

15TH May 2006

POTENTIAL PERSONAL LIABILITIES OF MEMBERS AND OFFICERS

Purpose of report

To inform the Committee 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 were concerned, the most obvious loophole was that existing legal provisions did not protect Members when they were acting as the representative of the Authority on outside bodies. For Officers, the main loophole was that they were not protected if what they were doing transpired to be ultra vires (outside of 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 arising under the indemnity would be met under the insurance policy. The Treasurer's advice has been sought on this aspect of the matter; his response is awaited and will be reported orally at the meeting.

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. A suggested form of words is attached as an Appendix to this report.

Consideration will need to be given to the Treasurer's advice on the question of insurance.

RECOMMENDATION

That, subject to any comments of the Treasurer, the Authority be recommended to provide an indemnity to all Members and Officers in the terms set out in the Appendix to this report.

Richard Daly
Solicitor / Monitoring Officer

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

2nd May 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 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 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.

30th May 2006.