


URGENT DECISION NOTICE

Date:	23 November 2023
Decision Taken:	To confirm the provision of officer indemnities and allow for the provision of associated insurance cover.
Decision Taker:	Interim Chief Executive
Signed:	

Decision

- To confirm the provision by the West of England Mayoral Combined Authority of indemnities to all its members and officers in the following terms:

“The West of England Mayoral Combined Authority (“the Authority”) agrees to indemnify each of its members¹ and officers² with respect to any action of, or failure to act by, said member or officer which:-

(a) is authorised by the Authority; or

(b) 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 does so in his capacity as a member or officer of the Authority)

(i) at the request of, or with the approval of the Authority, or

(ii) for the purposes of the Authority;

save where the action or failure to act:-

¹ Which, for the avoidance of doubt, shall include the Metro Mayor and any member acting in the role of Deputy Mayor

² Which, for the avoidance of doubt, shall include anyone working for the Authority whether establishment, permanent, fixed-term, seconded, interim, intern, full-time or part-time.

- (a) constitutes a criminal offence (but an indemnity is available for any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence other than where the action or failure to act falls within (b) hereof; and for the expense of successfully³ defending criminal proceedings whether at trial or on appeal); or*
- (b) is the result of fraud, or other deliberate wrongdoing or recklessness on the part of that member or officer;*

and no indemnity is provided in relation to the making by the member or officer of any claim in relation to an alleged defamation of that member or officer but may be provided in relation to the defence by that member or officer of any allegation of defamation made against him.

The indemnity granted hereunder will apply even in circumstances where the Authority did not have power to perform the relevant act so long as the member or officer:-

- (a) believed that the action, or failure to act, in question was within the powers of the Authority, or*
- (b) where that action or failure 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, believed that the contents of that statement were true,*

and it was reasonable for that member or officer to hold that belief at the time when he acted or failed to act.

Further, the indemnity granted hereunder will apply in relation to an act or omission which is 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 believed that the act or omission in question was within his powers at the time at which he acted.

For the avoidance of doubt, this indemnity will not extend to the costs of legal advice or representation where the purpose of the same is (or is reasonably considered to be or include) making a claim or bringing a challenge of any sort against the Authority or a member or officer of the authority, nor to the costs of legal advice or representation of defending a claim brought by the Authority

³ Any costs met by the Authority of any a defence which ultimately proves to be unsuccessful shall be refunded by the member/officer to the Authority.

against the member or officer, or of the damages, compensation or accounts payable arising from such a claim”.

2. To authorise the S73 Officer to put in place such insurance arrangements as that Officer considers necessary or prudent in the interests of the West of England Mayoral Combined Authority in relation to the indemnities provided to its Members and Officers.

Background / Issues for Consideration

Legal Position

3. Section 265 of the Public Health Act 1875 (“the 1875 Act”) provides that councillors and local officers, when acting in the course of their duties and in good faith, have statutory immunity and are not personally liable for the actions they take. Since then, successive governments have clearly considered the scope of the indemnity provided under the 1875 act to be inadequate, and have enacted further powers to extend the scope of indemnities which may be granted to members and officers.
4. The Local Authorities (Indemnities for Members and Officers) Order 2004 (“the 2004 Order”) gives a specific power to grant indemnities and/or take out insurance to cover the potential liability of councillors and officers in a wider range of circumstances than under the 1875 Act.
5. Section 111(1) of the Local Government Act 1972 provides ancillary powers to local authorities that may permit them to indemnify members and officers in relation to particular decisions or acts if to do so would facilitate; or is incidental, or conducive, to the discharge of a function of the authority.
6. Section 1 of the Localism Act 2011 (“the 2011 Act”) provides a general power of competence for authorities to do anything that individuals generally may do, which would include the power to indemnify and take out insurance.
7. There are restrictions which limit the power to grant indemnities to cases in which the member or officer, acting at all times in good faith, is discharging a function at the request of, with the approval of, or for the purposes of, the authority. There are also controls around the circumstances in which an authority can indemnify members and officers in respect of the costs of legal advice and representation.
8. Each local authority has the discretion to decide whether to use the powers and to decide the extent of any such indemnity and/or insurance cover.

National Approach

9. Historically, local authority members and officers operated under the statutory indemnity provided as a matter of course by the 1875 Act. Upon the subsequent

introduction of further powers to increase the scope of permissible indemnities, local authorities have typically updated their indemnities and/or insurance cover to indemnify their members and officers to the full extent permissible in law.

10. Doing so is good practice as a matter of public policy, because without appropriate indemnification, authorities would find themselves in a position of being unable to retain members and/or officers who would be prepared to discharge, in a full and fearless manner, the statutory duties that they are obliged to discharge.
11. All of the West of England Mayoral Combined Authority's constituent unitary authorities, and its neighbouring partner North Somerset Council, are understood to have followed this best practice along with most, if not all, other local authorities.

West of England Mayoral Combined Authority

12. At its inaugural meeting on 1 March 2017, the West of England Mayoral Combined Authority Committee ("the Committee") appointed three named individuals to the three interim statutory officer roles of Head of Paid Service, Chief Finance Officer (Section 73 Officer) and Monitoring Officer. In doing so, it also granted the three named individuals in question "appropriate indemnities".
13. At a meeting of the Committee on 1 June 2018, the Committee received an annual business report. Within that report the granting of the indemnity referred to above was noted, and it was said that this indemnity would continue in relation to those named officers whilst they held those posts.
14. The approach taken by the West of England Mayoral Combined Authority in 2017 was plainly inadequate. Whilst it is particularly important for statutory officers to be fully indemnified, given the personal statutory responsibilities that fall on officers who hold those roles, the indemnities granted should, as a minimum, have been granted in respect of the holders of those posts from time to time and not just the three specifically named individuals.
15. To accord with nationally accepted best practice, the indemnity should have extended to all other officers and members who have, as a result of this omission, been operating since the inception of the authority with only the minimum statutory protection afforded by legislation brought into force 148 years ago.
16. It must be assumed that there was an intention to revisit the position in respect of indemnities as the authority grew and interim roles became permanent, but that was subsequently overlooked. The authority is operating in a substantially different context and climate than it was in 2017. From the Investment funding provided by Government as part of the Original Devolution Deal £15m revenue and £15m capital funding per year for 30 years to the 2023/24 approved Mayoral

Combined Authority revenue budget total resource allocation of **£359.8m** and **£811.9m** capital programme up to March 2027.

17. As the authority proceeds at pace on significant and complex project delivery, particularly around significant regeneration and infrastructure, requiring it to enter into more complex delivery models such as limited company arrangements, it is essential that its members and officers have the comfort of operating under the most comprehensive indemnity permissible in law.

Consultation

18. In accordance with paragraph 1.4 on page 24 of the constitution, the Mayor has been consulted. On account of potential conflicts of interests, the Deputy Section 73 Officer and the interim Deputy Monitoring Officer have also been consulted and have completed, respectively, the financial and legal implications sections below.

Other Options Considered

19. **Do nothing.** This option was discounted as it is not considered appropriate to expect members and officers to operate effectively in an organisation of the size and complexity of the West of England Mayoral Combined Authority, to deliver the complex and innovative projects and initiatives that it must deliver at pace, without the benefit of full indemnities permissible under law and routinely put in place by all other public authorities.
20. **To proceed as set out, but not utilising urgency powers.** This would require a decision of the Committee. Careful consideration was given to this option, however a statutory duty to deal with a matter of unlawful expenditure has arisen in circumstances where the deficiency with existing indemnities had not previously identified.
21. There is now insufficient time to convene a meeting of the Committee to grant the indemnity sought before the point in time when the statutory officers will incur personal risk in dealing with the unlawful expenditure matter, if the statutory officers are to deal with that matter in accordance with the obligations they are under. Neither statutory officer is prepared to expose themselves to those risks without the benefit of the indemnity sought. Not dealing with the unlawful expenditure issue in a timely and appropriate manner, which this urgent decision would allow, presents significant risk to the authority in terms of compounded reputational damage and an increased risk of government and/or external audit intervention.

Risk Management/Assessment

22. Dealt with in the body of this report.

Public Sector Equality Duties

23. Not directly applicable.

Finance Implications

24. The Mayoral Authority has in place Officials' Indemnity insurance cover through Maven Public Insurance. This includes a self-insured retention of £25K under Section 3 of the Maven Public Sector Liability Policy Schedule. In respect of all claims arising other than from Professional Activities a limit of Indemnity of £5m in any one claim and in the annual aggregate.
25. Further consideration to be given to the 'backing off the risk' around the Officials' Indemnity insurance cover as detailed in the report by the S73 Officer and Deputy S73 Officer as appropriate.
26. There are potentially more significant unquantifiable cost risks to the authority if it is unable to attract and retain the personnel it requires to meet its objectives on account of the risks of not having sufficient indemnities in place.

Advice given by: Selonge Russell, Head of Finance, Deputy S73 Officer (22/11/23).

Legal Implications

27. The legal implications are discussed in the body of this report.
28. Whilst as a matter of fact the Authority carries some current Officials' Indemnity insurance cover (subject to the usual conditions relating to financial limits and exclusions of cover in certain cases) there is still, crucially, no formal decision in place stipulating that the Authority itself provide its officers and members with an indemnity in the clear terms set out in the body of this report. In all the circumstances I consider that it is reasonable and proper:
- A) For the Authority to give an indemnity to its officers and members in the clear terms set out in the body of this report;
 - B) For the said indemnity to be given forthwith on an urgent basis by the Authority to place officers and members in the position which they can reasonably expect to be in while discharging their duties - a position which is in line with the indemnity position in the majority of, if not all, public authorities;
 - C) For the Authority's Section 73 Finance Officer to give consideration to backing off the risk around the said Authority indemnity with Officials'

Indemnity insurance cover (and, if so, on exactly what terms) but without prejudice to the immediate provision by the Authority of the indemnity in the clear terms set out in the body of this report.

Legal implications section provided by Clive Sheldon, Interim Senior Commercial Lawyer and Deputy Monitoring Officer, on 22nd November 2023

Human Resources Implications

29. The Human Resources implications are set out in the main body of this report.

Advice given by: Alex Holly, Head of People and Assets

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