



# DEVON & SOMERSET FIRE & RESCUE AUTHORITY

<b>REPORT REFERENCE NO.</b>	DSFRA/10/27
<b>MEETING</b>	DEVON & SOMERSET FIRE & RESCUE AUTHORITY
<b>DATE OF MEETING</b>	16 DECEMBER 2010
<b>SUBJECT OF REPORT</b>	INDEMNITY POLICY
<b>LEAD OFFICER</b>	CLERK TO THE AUTHORITY
<b>RECOMMENDATIONS</b>	<i>That the Authority approves any of its Members acting from time to time as an alternate director on South West Fire Control Limited (SWFC), this constituting approval for the purpose of paragraph 7.2.3 of the Authority's indemnity policy.</i>
<b>EXECUTIVE SUMMARY</b>	This paper refers to the Indemnity Policy approved by the Authority in accordance with the provisions of the Local Authorities (Indemnities for Members and Officers) Order 2004 and raises an issue in relation to the application of this indemnity to the alternate director on South West Fire Control Ltd.
<b>RESOURCE IMPLICATIONS</b>	Nil
<b>EQUALITY IMPACT ASSESSMENT</b>	An initial assessment has not revealed any issues so significant as to require a full EIA.
<b>APPENDICES</b>	A. Authority Indemnity Policy
<b>LIST OF BACKGROUND PAPERS</b>	Report DSFRA/07/9 to the ordinary Authority meeting on 30 May 2007 and the Minutes of that meeting.

## **1. BACKGROUND**

- 1.1 Under the provisions of the Local Authorities (Indemnities for Members and Officers) Order 2004, the Authority is able to indemnify Members against loss suffered when acting as a Member of the Authority or when acting on another body at the request of or with the approval of the Authority. There are important exceptions to the indemnity that can be granted, mostly around criminal actions, fraud, and deliberate wrongdoing or recklessness.
- 1.2 This Authority approved its indemnity policy at its meeting on 30 May 2007 (Minute DSFRA/17 refers). A copy of this indemnity as approved is attached at Appendix A. The precise terms of the indemnity were worded to reflect the provisions of the above-mentioned Regulations.

## **2. CURRENT ISSUE**

- 2.1 The Authority has the right to appoint a Member to the Board of Directors of South West Fire Control Limited (SWFC). The Member so appointed (currently Cllr. Woodman) is covered by the Authority's indemnity policy when acting on the Board.
- 2.2 A company director is entitled to appoint a deputy ("alternate director" in company law parlance). When acting on behalf of (i.e. in the absence of) the main director, an alternate has all the duties and responsibilities of the director. The current "alternate director" for Cllr. Woodman is Cllr. Eastman.
- 2.3 Strictly speaking, under company law the appointment of an alternate is in the personal gift of the main director. It might therefore be argued whether a Member of the Authority when acting as an alternate director is actually doing so at the request of or with the approval of the Authority. If not, it could be argued that the said Member is not covered by the Authority's indemnity policy.
- 2.4 Consequently and for the avoidance of doubt, it is recommended that this Authority formally approves any of its Members acting from time to time as an alternate director on SWFC, this constituting approval for the purpose of paragraph 7.2.3 of the Authority's indemnity policy.
- 2.5 It should be recognised that failure to approve the recommendation might potentially expose a Member serving as an alternate director on SWFC to personal loss. This in turn might make a Member reluctant to serve in this capacity and consequently the Authority is advised to approve the recommendation.

**M PEARSON**  
**Clerk to the Authority**

**Form of Indemnity for Members and Officers of the Devon and Somerset Fire and Rescue Authority**

1. Subject to the exceptions set out below, the Authority will indemnify each of its Members and employees against any loss or damage suffered by the Member or officer arising from his/her action or failure to act in his/her capacity as a Member or officer of the Authority.
2. This indemnity will not extend to loss or damage directly or indirectly caused by or arising from:
  - 2.1 any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the Member or officer;
  - 2.2 any act or failure to act by the Member or employee otherwise than in his/her capacity as a Member or officer of the Authority, or
  - 2.3 failure by the member to comply with the Code of Conduct for Members.
3. Subject to the exceptions set out below, the Authority will indemnify each of its Members and officers against the reasonable costs which he/she may incur in securing appropriate legal advice and representation in respect of any civil or criminal proceedings or Part 3 proceedings to which he/she is subject.
  - 3.1 "Criminal proceedings" includes any interview or investigation by the Police, and any proceedings before a criminal court, in the United Kingdom
  - 3.2 "Part 3 proceedings" means any investigation or hearing in respect of an alleged failure to comply with the Code of Conduct for Members under Part 3 of the Local Government Act 2000.
4. This indemnity will not extend to any advice or representation in respect of any claim or threatened claim in defamation to be brought by a Member or officer, but will extend to defending a claim for defamation.
5. Where any Member or officer avails him/herself of this indemnity in respect of defending him/herself against any criminal proceedings or Part 3 proceedings, the indemnity is subject to a condition that if, in respect of the matter in relation to which the Member or officer has made use of this indemnity:-
  - 5.1 the Member or officer is convicted of a criminal offence in consequence of such proceedings, or
  - 5.2 a Case Tribunal or Standards Committee determine that the Member has failed to comply with the Code of Conduct for Membersand the conviction or determination is not overturned on appeal, the Member or officer shall reimburse any expenditure incurred by the Authority under the indemnity.
6. Where the Authority arranges insurance to cover its liability under this indemnity, the requirement to reimburse in Paragraph 5 shall apply as if references to the Authority were references to the insurer.
7. For the purpose of these indemnities, a loss or damage is deemed to have arisen to the Member or officer "in his/her capacity as Member or officer of the Authority" where:

- 7.1 the act or failure to act was outside the powers of the Authority, or outside the powers of the Member or officer, but the Member or officer reasonably believed that the act or failure to act was within the powers of the Authority or within the powers of the Member or officer (as appropriate) at the time that he/she acted or failed to act, as the case may be;
- 7.2 the act, or failure to act, occurred not in the discharge of the functions of the Member or officer as a Member or officer of the Authority but in their capacity as a Member or employee of another organisation, where the Member or officer is, at the time of the action or failure to act, a Member or employee of that organisation either:-
  - 7.2.1 in consequence of his/her appointment as such Member or officer of that organisation by the Authority, or
  - 7.2.2 in consequence of his/her nomination for appointment as such Member or officer of that organisation by the Authority; or
  - 7.2.3 where the Authority has specifically approved the appointment of the Member or employee of that organisation for the purpose of these indemnities.
8. The Authority undertakes not to sue (or join in action as co-defendant) any Member or officer in respect of any negligent act or failure to act by the Member or officer in his/her capacity as a Member or officer of the Authority, subject to the following exceptions:
  - 8.1 any criminal offence, fraud or other deliberate wrongdoing or recklessness on the part of the Member or officer; or
  - 8.2 any act or failure to act by the Member or officer otherwise than in his/her capacity as a Member or officer of the Authority.
9. These indemnities and undertakings will not apply if a Member or officer, without the express permission of the Authority or of the appropriate officer of the Authority, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the resolution.
10. These indemnities and undertakings are without prejudice to the rights of the Authority to take disciplinary action against an officer in respect of any act or failure to act.
11. These indemnities and undertakings apply retrospectively to any act or failure to act which may have occurred before the date on which this Form of Indemnity was approved and shall continue to apply after the Member or officer has ceased to be a Member or officer of the Authority as well as during his/her Membership of or employment by the Authority.