

WELWYN HATFIELD COUNCIL
SPECIAL CABINET –7 FEBRUARY 2017

REPORT OF THE EXECUTIVE DIRECTOR (HOUSING AND COMMUNITIES)

RE-INTEGRATION OF THE HOUSING SERVICE INTO WELWYN HATFIELD BOROUGH COUNCIL – INDEMNITY FOR BOARD MEMBERS

1 Executive Summary

- 1.1 Following on from Cabinet's recent decision to wind-up Welwyn Hatfield Community Housing Trust ('the Trust') and bring the housing service back into Welwyn Hatfield Borough Council ('the Council'), this reports seeks Cabinet's approval for the Council to provide an indemnity to Trust Board Members.
- 1.2 Although the Board Members have given a formally recorded assurance that they have not engaged in any activity outside of the Trust's governance arrangements, the indemnity will give added comfort to the Board Members that if a matter arises after the winding up of the Trust for which they are found to be liable, they will be protected in the event that their Directors and Officers Insurance will not pay out.
- 1.3 The wording of the clause within the Transfer Agreement which describes the conditions for the indemnity has been provided by the Council's legal advisor, Bevan Brittan and agreed by the Board and its legal advisor.

2 Recommendation(s)

- 2.1 It is recommended that Cabinet:
- 2.2 Gives approval for the Council to indemnify Trust Board Members in line with the provisions recommended by the Council's legal advisor.

3 Explanation

- 3.1 As part of the agreement for the transfer of assets and liabilities from the Trust to the Council there will be provision for the Council to provide assurance to Board Members that they will be protected from any personal claims against them which relate to their role as non-Executive Directors of the Trust. This was agreed with Board Members within the spirit of mutual cooperation when the re-integration process began.
- 3.2 As with other ALMO closures and service re-integrations, for example, Stevenage and Waltham Forest, the Council is being asked to arrange Directors and Officers (D&O) Liability Insurance (as provided by the Trust when it was operational) and also an indemnity.

- 3.3 Following negotiations between the Trust's legal advisors (Trowers and Hamlins) and the Council's legal advisors (Bevan Brittan) the terms have been agreed for the provision of an indemnity by the council. These terms are as follows:
- The indemnity shall not cover liability for negligence, default, breach of duty or breach of trust
 - The indemnity shall state that it shall indemnify a director to the extent to which the Council has the power to do so;
 - The director must first have claimed under the D&O insurance before claiming under an indemnity (and shall only be able to claim to the extent not covered by the D&O insurance)
- 3.4 The extent to which the Council is able to indemnify persons who are neither officers nor members has not been tested in the courts to date – however, it is a legal view that local authorities are empowered to do so under provisions of Section 1 of the Localism Act 2011.
- 3.5 However the Council has already agreed to accept the liabilities of the Trust and given the involvement of the Executive Director and Chief Executive as former Executives of the Trust it is their view that it is unlikely that matters will arise which are unknown liabilities or which require an insurance claim or indemnity claim by the non-Executive Board Members.

4 Legal Implication(s)

- 4.1 The provision of the indemnity and the conditions attached to it as set out in 3.3 above, are proposed on the advice of the Council's legal advisor. The relevant statutory power is contained in section 1 of the Localism Act 2011, as set out in 3.4 above.

4.2

5 Financial Implication(s)

- 5.1 No financial implications are anticipated through the provision of an indemnity; however if the indemnity was called upon and there was a legal challenge, this could generate an expense to the Council.

6 Risk Management Implications

- 6.1** There is potentially a risk of a legal challenge that the Localism Act 2011 does not cover the granting of the proposed indemnities to Trust Board Members. However, the risk is assessed to be low because it is a legal view that this is permitted and that the indemnity is unlikely to be called upon. The Trust Board Members have liability insurance which would be claimed before the indemnity and the Council is, in any event, accepting the liabilities of the Trust as part of the re-integration of the service. In addition to this, the Trust Board Members have, in a meeting of 19 January 2017 given their assurance that there are no matters in which they have engaged outside of the governance arrangement of the Trust and which are likely to create new liabilities for the Trust/Council.

7. Security and Terrorism Implication(s)

7.1 None directly arising from this report.

8 Procurement Implication(s)

8.1 There are no implications as a result of this report.

9 Climate Change Implication(s)

9.1 None directly arising from this report.

10 Link to Corporate Priorities

10.1 The subject of this report is linked to the Council's Corporate Priorities "Meet the borough's housing needs"

11 Equality and Diversity

11.1 No Equality Impact Assessment is required as a result of this report.

Name of author
Title
Date

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