

Title of meeting: Resources Portfolio Decision Meeting

Date of meeting: 29/09/2011

Subject: Indemnity for LINK Volunteers

Report by: Louise Wilders

Wards affected: All

Key decision: No

Full Council decision: No

1. Purpose of report

This Report is being submitted to the Cabinet Member for Resources because Portsmouth City Council (PCC) is now undertaking support of the Portsmouth Local Involvement Network (LINK). Part of that support is to provide indemnity for LINK activity. The current financial implications of providing this indemnity are uncapped as currently this risk is not insured by the Council. In the event that this risk could be added to our insurances then the maximum liability would be £50,000 for each claim (the level of our deductible under the Council's insurance policy) which would be funded from central Council funds in the event of a successful claim.

2. Recommendations

It is recommended that the Cabinet Member for Resources approves the following:
That

- a) PCC define the scope of legitimate LINK activity by reviewing LINK procedures in accordance with the Local Government and Public Involvement in Health Act 2007 and associated Regulations.
- b) PCC communicate the results of the review referred to in (a) and formally communicate this to the residents participating in LINK activity.
- c) PCC indemnify Portsmouth LINK Residents in the execution of legitimate LINK activity [as defined by the outcomes of (a) and (b) above] within the City of Portsmouth.
- d) PCC pursue insuring the activity in addition to the provision of the indemnity.

3. Background

A Local Involvement Network (LiNK) is a group of residents who have an interest in Health and Social Care and want to bring about changes to the quality of local Health and Social Care services. An effective LiNK will participate in decision making about Health and Social Care services within a Local Authority area. The statutory remit of a LiNK is defined in the Local Government and Public Involvement in Health Act 2007.

PCC has taken responsibility to provide support services to the Portsmouth LiNK from 15/04/2011. Part of that service is to indemnify participating residents during the course of authorised LiNK activity. The responsibility for making arrangements to set up LiNKs does not lie with the Secretary of State but with each Local Authority (under s.221 of the Local Government and Public Involvement in Health Act 2007).

Local Authorities are responsible for making arrangements to set up LiNKs to carry out LiNK activities and the responsibility for indemnifying LiNKs therefore lies with a Local Authority.

4. Reasons for recommendations

- I. **Recommendation (a)** has been made because PCC needs to be assured that the risk of liability is reduced by full awareness and training of residents who participate in LiNK activity.
- II. **Recommendation (b)** has been made for two reasons, as follows: **(i)** It is a practical course of action flowing from Recommendation (a); **(ii)** It will facilitate unimpeded transition from LiNKs to Healthwatch (set to come into force when LiNKs are abolished in September 2012).
- III. **Recommendation (c)** has been made for two reasons, as follows: **(i)** LiNK activity will be impeded if residents participating in LiNK activity are not indemnified; **(ii)** Indemnified LiNK activity will facilitate unimpeded transition from LiNKs to Healthwatch (set to come into force when LiNKs are abolished in September 2012).
- IV. **Recommendation (d)** has been made because a change in the insurer's position will reduce liability of PCC.

5. Equality impact assessment (EIA)

The Council's Equality Duty has been considered, and it has been concluded that there is no need to carry out an Equality Impact Assessment with relation to the Indemnity for the LiNK volunteers. The indemnity will cover all LiNK volunteers and there will not be any impact on equalities.

6. Head of legal, licensing & registrars' comments

- 6.1 The Local Government and Public Involvement in Health Act 2007 at Part 14 (Patient and Public Involvement in Health and Social Care Local involvement networks) requires local authorities to put in place external arrangements for the delivery of the LINK and the necessary support services in its respective area. Due to contractual difficulties the support service has been brought in-house, while the future structure of Healthwatch is considered by central government. As a result of bringing the service in-house the responsibility for the volunteers forming the LINK now rests with the Council.
- 6.2 Section 265 of the Public Health Act 1875 provides that those acting under our direction and in accordance with our instructions shall not take on personal liability, and the proposed indemnity supports this principle.
- 6.3 Section 111 of the Local Government Act 1972 enables the Council to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.
- 6.3 It is therefore possible for PCC to provide the indemnity to LINK volunteers.
- 6.4 Under Part 2, Section 3, of the City Council's constitution the Portfolio holder for Resources has the authority to approve the recommendations set out in this report on the basis that this is a form of support to a third sector organisation.

7. Head of finance's comments

The current position is that City Council's insurers have advised that PCC's responsibility does not extend to the activities undertaken by the LINK volunteers and consequently there is no insurable interest. Although powers exist to allow the indemnity to be made, there is not a statutory requirement to grant it. It is proposed that the City Council would only indemnify the volunteers, and therefore potentially incur a future unlimited liability claim, where volunteers sign the Volunteer Agreement produced by legal services. This agreement would limit the liability to situations where the Volunteer has complied with the obligations required of them to mitigate the risk of any claim arising. The City Council's insurers have been asked to review their position with the Volunteer Agreement in place.

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Signed by:

Appendices:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: