

**DERBYSHIRE COUNTY COUNCIL**

**CABINET**

**24 July 2012**

**Report of the Director of Finance**

**INSURANCE FOR THE ADMINISTRATION OF MEDICINES AND OTHER  
MEDICAL PROCEDURES  
(FINANCE AND MANAGEMENT)**

**1 Purpose of the Report**

To ask the Authority to confirm that it will indemnify employees who consent to undertake medical procedures, or administer prescription medicines, to service users and other employees of the Council.

**2 Information and Analysis**

**2.1 Background**

For some time we have seen closer working relationships to deliver joined up services, often with formal partnerships between the Council and Health Authorities. A more inclusive approach to the provision of Council services has also led to an increasing number of people with specific medical needs accessing mainstream Council services.

This has led to a blurring of the traditional boundaries and the number of occasions is increasing where CAYA and Adult Care employees consent to undertake medical procedures, or administer prescription medicines, to service users. These tasks were once perceived to be exclusively the domain of Health Care Employees who also trained parents and other caring relatives to undertake such procedures in order that a child or adult may be better supported in the community. Local Authority practice and procedures aim to provide services that replicate what is achieved by a caring parent or relative with professional support.

By providing appropriate training and support to those employees who are willing to undertake these duties, enables more people with complex needs to access mainstream Council services.

CAYA and Adult Care issue guidance and procedures to staff. In addition a Care Plan, including a specific health care plan where

necessary, exists for all persons needing these interventions, and all employees who consent to undertake the procedures are given appropriate training by trained medical professionals. For the purpose of providing an indemnity, Local Authority foster carers/adult placement providers (authorised carers) are included.

Previous guidance issued to employees in CAYA and Adult Care advises that the Council will indemnify them in the event of a claim where they have consented to undertake such duties.

## **2.2 Insurance**

The County Council's public liability insurance policies exclude claims arising from medical malpractice. However, the insurers provide cover for non-invasive procedures or where the care involves the administration of prescription drugs. The Council's procedures for these medical interventions and the conditions that can be treated are agreed regularly with the insurers.

The insurers issue guidance to explain what is covered and what is excluded from cover, but the list is very prescriptive and many of the conditions with which employees are required to assist are either excluded altogether, or need to be referred to the insurer on a "one off" basis. An example would be a pupil in a school who needs to have a tracheotomy tube removed, cleaned and re-inserted. The Insurer's guidelines indicate that they will cover general cleaning around the area of insertion but will not insure the Council for anything more invasive.

Despite such a medical condition the young person would enjoy almost full integration into school life and the involvement of staff in the child's care would enable them to enjoy many of the benefits of mainstream schooling that would otherwise not be possible. However, the lack of insurance leaves employees and other authorised carers feeling vulnerable in the event of a claim.

The Council's insurance brokers have previously (2008) sought interest from specialist medical malpractice insurers and they reported that only one company was interested in providing cover.

The quotations received were in excess of £65,000 for a minimum limit of £5million and an excess of £125,000. It is likely that such premiums would be significantly higher in the current insurance market.

The cover was on a claims made basis. The policy in force when the claim is received is the policy that responds to the claim. Therefore, the Council would need to renew the insurance every year for there to be any continuing cover.

The policy excess was £125,000 so the majority of claims would fall to be met from the insurance fund.

Cover is subject to strict policy conditions regarding the maintenance and retention of records, and certain procedures being followed. Failure to comply with these conditions would mean that there was no cover.

### **3 Financial Considerations**

#### **3.1 Provision of Indemnity**

The Council is keen to ensure that as many people as possible are able to access mainstream Council services.

To enable this to happen, the Council needs employees and authorised carers who are willing to undertake medical intervention.

The Council may find that it is uninsured for some of these activities.

In the event of a claim arising from employees and authorised carers undertaking these activities, they need to be assured that the Council will indemnify them irrespective of whether the Council is insured.

The indemnity will apply wherever an employee or authorised carer has been willing to undertake the duties, following the provision of specific training for the employee or authorised carer and resources for the activity.

The indemnity would not apply wherever an employee or authorised carer wilfully ignored the advice and training that had been given or if the employee or authorised carer knowingly acted illegally or recklessly.

A restriction however would have practical limitations in so far that legal responsibility would almost certainly be imposed upon the Council as employer for the acts or omissions of its employee carrying out the activity, even if the Council itself is free from blame under the provisions of vicarious liability.

### **4 Legal Considerations**

The County Council already indemnifies its employees in respect of claims arising where it is alleged that they have been negligent whilst undertaking their duties, and that negligence has resulted in death, injury or illness to persons, or damage to their property.

Confirming the indemnity to employees for claims arising from them undertaking medical procedures, or administering prescription

medicines to service users, is no different from providing the indemnity in respect of claims arising from an employee's other duties.

As already described, legal responsibility for the employee's acts and omissions is likely to be imposed upon the Council in any event due to the context in which the activities were carried out. The limitation of the extent of indemnity would however enable the Council, in theory, to pursue recovery of any outlay from the individual employee concerned.

## **5 Human Resources Considerations**

This issue is an emotive one and many staff are concerned that because there may be no insurance, they would be exposed personally in the event of a claim. That is not intended to be the case but it is important that the Council reassures staff that it values and supports what they are doing and that it will protect them.

This report has dealt with claims from service users but it is possible that the Council may employ a person with specific medical needs or a current employee might develop a medical condition where other employees might be required to assist with medical care. It is therefore recommended that the indemnity also extends to cover these circumstances.

## **6 Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, environmental, health, property and transport considerations.

## **7 Key Decision**

No.

## **8 Call-in**

Is it required that call-in be waived in respect of the decisions proposed in the report? No

## **9 Background Papers**

Held in the Risk & Insurance Section, Corporate Finance Division.

## 10 OFFICER'S RECOMMENDATIONS

That the Council:

- Confirms it will continue to indemnify employees (including other authorised carers approved by the authority) who consent to undertake medical procedures, or administer prescription medicines, to service users or to other employees of the Council.
- Will provide general guidance to departments regarding the undertaking of these duties including volunteer status, training and indemnity.
- Provides appropriate specific guidance, training and advice to enable them to undertake these duties safely.
- Will apply the indemnity where the employee or authorised carer has acted reasonably and has endeavoured to undertake the activity within the scope of the training they have received.
- Will not apply the indemnity where the employee or authorised carer has wilfully ignored the advice and training that had been given or if the employee or authorised carer knowingly acted illegally or recklessly.
- Note that there may be claims arising for which there will no insurance and to make budgetary provision for those claims as and when they arise.

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