

Briefing Note:

Business Insurance / Employer Liability – Use of private vehicles by Members in connection with Council matters.

Background

In August 2010 a decision was made to trial the use of Members private vehicles for site visits in relation to Development Committees, as an alternative to the hiring of a bus. As a result of the trial, a number of questions were raised by Councillor Cumbers. This briefing note is not intended to answer the specifics of Councillor Cumbers queries, instead it looks at the general duties that Melton Borough Council (MBC) has towards Members who use their own private motor vehicles in the process carry out their Member duties.

Advice

In compiling this briefing note, advice has been sought from MBC's insurers, Zurich Municipal (ZM).

It is clear from the advice given by ZM that MBC does owe a duty of care to Members whilst they are undertaking their Member role on behalf of the authority. This includes the use of private motor vehicles. This duty of care is owed through tort as opposed to statute and a prosecution would be found under common law as opposed to the Health and Safety at Work Act 1974.

Although Members are not considered to be employees, the duty of care still exists to any Member undertaking activities on behalf of MBC. Should this duty be breached then the authority could be exposed to claims via their legal liability. ZM have confirmed that they will indemnify any employee and any Member.

In relation to accidents that occur on private land (e.g. during a site visit), ZM have advised that liability would depend on the exact circumstances of the incident however "MBC have both Public and Employers Liability policies in place and the Councils legal liabilities are covered".

In relation to the Corporate Manslaughter Legislation ZM have confirmed that the Corporate Manslaughter Act 2007 (CMA 2007) is applicable in this scenario. The CMA 2007 gives that organisations can be corporately responsible where they have been grossly negligent in exercising their duty of care. Currently MBC has no controls in place to make sure that Members using their own private vehicle are adequately managed e.g. checks on driving licences, business use for insurance (management of the grey fleet etc), and as such ZM have confirmed that should a fatality occur then there is a possibility that a Corporate Manslaughter prosecution could be brought against the Council. However, if MBC can prove that they have taken reasonable steps in managing the grey fleet, then such a prosecution will be unlikely.

Recommendations from ZM.

Attached is a document produced by ZM 'Managing the Grey Fleet' which details the controls recommended for organisations concerning the use of private vehicles. In short the authority needs controls re the driver, their licence and insurance, the journey, the vehicle and safety in the event of a breakdown. Currently, MBC has no controls in place for Members, it only has controls for employees. It is clear these controls need to be extended. On checking the policy of a neighbouring authority, they checks on employees and Members are undertaken every six months. This is to ensure that changes in insurance policies, licences and to vehicles are accounted for. Also attached is a document produced by the Department of Transport 'Driving at Work', which may assist in the development of a new policy.