

MUNICIPAL YEAR 2017/18 REPORT NO. **179**

MEETING TITLE AND DATE:

Cabinet – 22 March 2018

REPORT OF:

Executive Director of Finance,
Resources and Customer Services

Agenda – Part: 1

Item: 9

**Subject: Proposal for Membership
of LGA Insurance Mutual Company**

**Wards: All
Non Key**

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1. EXECUTIVE SUMMARY

- 1.1 The Local Government Association (LGA) represents more than 370 councils in England and Wales and has begun work with a number of them to develop a new insurance mutual for local authorities.
- 1.2 A viable potential alternative identified is pooling the risk of LGA members to form a discretionary mutual (the Mutual), where all surpluses are retained in the Mutual.
- 1.3 The new Mutual would aim to provide improved insurance protection to LGA member authorities at a competitive rate and would be owned and controlled by its local authority members.
- 1.4 Founding members of the Mutual would not need to change their insurance arrangements. No contribution to the new Mutual's set-up costs will be sought, but they would need to provide an elected member to join the Mutual's Board to help establish its governance and management arrangements and oversee its launch. There would be no obligation on this Council to utilise the Mutual subsequently.
- 1.5 A paper to inform Cabinet in December 2017 was withdrawn on the advice of the LGA's lead adviser because changes were being made to the proposed constitution, which could have implications for the Cabinet decision. Whilst we have not been formally notified of the changes, we understand that the founding members have made progress. Therefore, this paper is being presented in anticipation that the mutual will be going ahead.

2 RECOMMENDATIONS

Cabinet is asked to:

- 2.1 Approve the concept of the Council becoming a founding member of a new company limited by guarantee, from which to develop an insurance Mutual.
- 2.2 Authorise the Director of Law and Governance in consultation with the Leader of the Council and the Executive Director of Finance, Resources & Customer Services, to sign binding documents including the Memorandum of Association, subject to due diligence by Legal and other relevant Council Services.
- 2.3 Authorise the Executive Director of Finance, Resources & Customer Services to share the Authority's relevant risk transfer and protection data with the LGA officers working on the project on a strictly confidential basis
- 2.4 Note that once the new Mutual is established, a report on options and recommendations for the Council will be presented to Cabinet.

3. BACKGROUND

The LGA Proposal

- 3.1 Councils currently spend hundreds of millions of pounds on insurance nationally. The LGA has been exploring options to develop a cost-effective alternative to the conventional insurance market products and services available to local authorities.
- 3.2 A viable potential alternative identified by the LGA is pooling the risk of LGA members to form a discretionary mutual, where all surpluses are retained in the mutual.
- 3.3 The LGA wants to work with a small number of leading authorities with a view to developing a new mutual for local government which will aim to offer comparable cover to LGA members at a competitive rate.

The LGA Offer

- 3.4 The new mutual aims to offer the prospect of affordable, high quality risk transfer and risk management through a mutual structure for the benefit of the local government sector.

- 3.5 It may make a valuable contribution to sector-wide efficiencies and financial stability.
- 3.6 Participation in the manner described below allows the Council to contribute to the establishment of the new mutual without exposing itself to any financial or operational risk.
- a) The Council becomes a Founding Member (*i.e. subscribe to the memorandum of association*) of a new company limited by guarantee ("NewCo"), the intention being that NewCo develops into the new Local Government Mutual ("Mutual"), whose establishment is being facilitated by the Local Government Association ("LGA");
 - b) The Council's Leader / Finance Portfolio Holder / a Chief Officer is appointed a Director of NewCo to oversee and make strategic and operational decisions in respect of its build phase activity pending trading as a mutual
 - c) The Council's Chief Financial Officer shares its relevant risk transfer and protection data with NewCo and its suppliers and contractors working on the project on a strictly confidential basis
 - d) Officers of the Council consider the business case for utilising the Mutual at the appropriate time and to report accordingly to its Cabinet with a recommendation.
- 3.7 A company such as NewCo acts through two bodies of people – its Members and its Board of Directors.
- 3.8 The tasks of the Founding Members will in the ordinary course of events be limited to:
- a) Subscribing to the memorandum of association of NewCo in order to incorporate the company
 - b) Adopting the Mutual's Rules and new Articles of Association which will convert NewCo to mutual trading status and allow it to accept risks.
- 3.9 The tasks of NewCo's Board of Directors will be, inter alia, to:
- a) Procure the Mutual management services
 - b) Procure supporting insurance arrangements
 - c) Adopt a business plan, prospectus and member admissions process
 - d) Have general oversight of the build activity.

- 3.10 No contribution to the new Mutual's set-up costs is sought from this Council.
- 3.11 There is no obligation on this Council to utilise the Mutual subsequently.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council does not accept the LGA offer and continues with its current Corporate Insurance Arrangement including the use of any surpluses within the insurance fund as reserves set aside to smooth expenditure between years and meet contingent risks within the Council.

5. REASONS FOR RECOMMENDATIONS

- 5.1 A mutual is an alternative option for the transfer of insurable risks.

6. COMMENTS OF THE EXECUTIVE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

As we do not know how the mutual will be structured, we cannot comment on potential cost savings or benefits at this stage. It is, however, noted that no contribution to set-up costs is being sought.

6.2 Legal Implications

6.2.1 The mutual is intended to be set up as a company limited by guarantee. In this way, there are no shareholders of the company, only members. The members undertake to contribute a certain sum to the liabilities of the company which will become due in the event that the company is wound up. The intention is for such guarantee to be limited to £100. The Foundling Members will therefore need to provide this guarantee on incorporation of the mutual and becoming members.

6.2.2 Local authorities have a legal power to participate in a company for a commercial purpose under sections 1 and 4 of the Localism Act 2011 or for trading under section 95 of the Local Government Act 2003.

6.2.2 The Council should also ensure that it is acting for a "proper purpose" (for example, not to circumvent restrictions in legislation) and that it is acting in a reasonably business-like manner.

6.2.3 The authority should also satisfy itself that its decision to enter into the mutual will not have any adverse impact on its public sector equality duty and under the Human Rights Act 1998.

6.2.4 It should be noted that the company will need to comply with the propriety controls under the Local Government and Housing Act 1989, Part 5 and the Local Authorities (Companies) Order 1995 (as amended).

6.2.5 If Local authority members of the Mutual rather than officers, are appointed to be directors on the Board of the Mutual then their remuneration must be limited to an amount equivalent to their allowances as elected members due to restrictions in the Local Authorities (Companies) Order 1995, (the Order) Article 5(1).

6.2.6 The mutual company will be a "body governed by public law" under the Public Contracts Regulations 2015 (PCR 2015) and will therefore have to comply with public procurement law when letting its contracts and as a company wholly owned by local authorities, the company will be subject to the Freedom of Information Act (FOIA).

6.2.7 The Council should satisfy itself that the mutual remains compliant with the Teckal exemption "control" test by requiring the mutual company to provide copies of the minutes of board meetings and general meetings and the business plan. This would allow the Council to verify that it has been involved in all "significant decisions" and the "strategic direction" of the mutual company in order to satisfy Regulation 12(5)(b) PCR 2015 (i.e. namely that the Council exercises jointly with other member authorities control over the mutual company which is similar to that which they exercise over their own departments (Regulation 12(4)(a) PCR 2015) and the member authorities are able to jointly exert decisive influence over the strategic objectives and significant decisions of the mutual company (Regulation 12(5)(b) PCR 2015) and that the mutual company does not pursue any interests which are contrary to those of its member authorities (Regulation 12(5)(c) PCR 2015)).

6.2.8 It should also be borne in mind that the mutual company is likely to be a "body governed by public law" under the PCR 2015 which means that its contracts above the defined value thresholds should be let in accordance with the PCR 2015.

6.2.9 The Council should also consider whether any benefit afforded to the Mutual could be perceived as State Aid.

6.3 Property Implications

There are no specific property implications arising from this report.

7. KEY RISKS

- 7.1 If the Council is not involved as a founding member, an opportunity may be lost in influencing and making strategic and operational decisions for the mutual.
- 7.2 There may be potential liability for the Council as a Founding member and/or Director on the Board. This could be mitigated by ensuring binding documents are subject to due diligence by Legal and other relevant Council services before they are signed or adopted by the Council.
- 7.3 To ensure sharing of the Council's risk transfer and protection data is in line with relevant data and information Regulations, Council data should be subject to usual internal processes for disclosure and the permission/agreement of insurance company obtained where applicable.
- 7.4 Whilst insurance costs to Councils might be saved overall, this could be at the expense of those Councils which have a good claims history, such as Enfield. A full risk assessment should be carried out if/when the mutual has been formed and its proposals are known.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

Adequate insurable risk transfer mechanism is integral to the functioning of the authority, enabling the Council to meet insurable financial losses that may arise from the delivery of services to all residents.

8.2 Growth and Sustainability

Adequate insurable risk transfer mechanism is integral to the functioning of the authority, enabling the Council to meet insurable financial losses that may arise from the delivery of objectives in the area of growth and sustainability.

8.3 Strong Communities

Adequate insurable risk transfer mechanism is integral to the functioning of the authority, enabling the Council to meet insurable financial losses that may arise from the delivery of objectives in the area of strong communities.

9. EQUALITIES IMPACT IMPLICATIONS

It is not relevant or proportionate to undertake an equalities impact assessment as the items summarised in this report only affect the Council's ability to meet financial losses arising from its insurable risks.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

There are no specific performance management implications arising from this report.

11. HEALTH AND SAFETY IMPLICATIONS

There are no specific health and safety implications arising from this report.

12. HR IMPLICATIONS

There are no specific HR implications arising from this report.

13. PUBLIC HEALTH IMPLICATIONS

Items summarised in this report do not have a direct impact on the health and well-being of the public in Enfield.

Background Papers

None