

EPPING FOREST DISTRICT COUNCIL CABINET MINUTES

Committee: Cabinet **Date:** 15 May 2008

Place: Committee Room 2, Civic Offices, High Street, Epping **Time:** 6.30 - 7.05 pm

Members Present: C Whitbread (Vice-Chairman), M Cohen, Mrs A Grigg, Mrs M Sartin, D Stallan and Ms S Stavrou

Other Councillors: None

Apologies: Mrs D Collins and A Green

Officers Present: R Palmer (Director of Finance and ICT) and G J Woodhall (Democratic Services Officer)

Also in attendance L North (Sparling Benham & Brough)

196. DECLARATIONS OF INTEREST

There were no declarations of interest pursuant to the Council's Code of Member Conduct.

197. ANY OTHER BUSINESS

It was noted that there was no other urgent business for consideration by the Cabinet.

198. EXCLUSION OF PUBLIC AND PRESS

That the public and press be excluded from the meeting for the items of business set out below on the grounds that they would involve the likely disclosure of exempt information as defined in the paragraphs of Part 1 of Schedule 12A of the Local Government Act 1972:

<u>Agenda Item No</u>	<u>Subject</u>	<u>Exempt Information Paragraph Number</u>
5	Employer's Liability Claim - Asbestos	1

199. EMPLOYER'S LIABILITY CLAIM - ASBESTOS

The Finance, Performance Management & Corporate Support Services Portfolio Holder presented a report concerning the Employer's Liability Claim for Asbestos received by the Council. The Cabinet were reminded that the Council had received this claim from a former employee in 2007 and that in normal circumstances the Council's insurers would have handled the claim on the Council's behalf, with the Council only liable for any policy excess incurred. However, both the Council's current and former insurers had rejected the claim on the basis that they were not the insurance provider at the relevant time and the Council had been forced to handle

the claim directly. On the basis of external legal advice, the Cabinet had previously decided that the claim should be defended and had authorised the appointment of a barrister to appear on the Council's behalf in any court proceedings. However, having obtained expert engineering advice, it appeared that the claim could not be defended and the Council's external legal advice was now to settle the claim on the best terms possible.

The Cabinet were informed that the Council would achieve a better settlement if it was possible to conclude the matter before the claimant died. The claimant had already exceeded the life expectancy previously provided in medical evidence, and if the decision was delayed until the next scheduled Cabinet in June then it would substantially reduce the chances of concluding this matter in time. Hence, an extraordinary meeting of the Cabinet had been organised to consider this matter. The Cabinet were reassured that the Council's contribution to the claim had already been reduced from 56% to 44% of the total claim, with the prospect of this being reduced further still. The Cabinet were advised that, in light of the expert engineering advice received, the best course of action now would be to make a suitable well judged Part 36 offer to all parties involved, in an effort to conclude the case as swiftly as possible.

The Cabinet were also advised that the test case involving insurance companies and a number of local authorities was scheduled to be heard in August, with a decision expected in October 2008. The Council was not directly involved in this action but had been listed on the Court file as having a material interest in the case. Following the resolution of this test case, a further report would be submitted to the Cabinet detailing the options for action available to the Council.

Decision:

- (1) That Sparling Benham and Brough be authorised to settle this claim on the most favourable terms possible for the Council;
- (2) That Sparling Benham and Brough be requested to cap the Council's liability at a maximum of 44%, and urged to reduce this liability as much as possible;
- (3) That Sparling Benham and Brough be authorised to make a suitable Part 36 offer to the claimant, all other parties and all other potential parties; and
- (4) That, once the current test case involving Zurich Municipal and Municipal Mutual has been resolved, a further report be submitted to the Cabinet setting out the options available at that point.

Reasons for Decision:

The Council would be acting upon the advice of the external solicitors, which should minimise the Council's ultimate liability.

Other Options Considered and Rejected:

To allow the claim to go to trial and attempt to defend it, however this would contradict the legal advice provided to the Council and would incur additional costs with little prospect of success.

CHAIRMAN