

SOUTH STAFFORDSHIRE PCT BOARD

Date of Meeting: 11 October 2006

**LEAD DIRECTOR: Liz Onions
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ENCLOSURE NO: 9**

SUBJECT: Personal Liability of Non-Executives

FOR DECISION **FOR DISCUSSION** **FOR INFORMATION**

Summary:

HSC 1999/104 Personal liability of non-executives: amendment of indemnity, whilst published seven years ago the governance is still current today. Although not referred to in the 1999 circular, it applies equally to Primary Care Trusts and Strategic Health Authorities (SHAs).

The threat of legal action against chairs or non-executives personally, rather than the trust or SHA on which they serve, is very small but, legally, chairs or non-executives are personally liable for their actions and decisions whether acting as individuals or as members of a board.

To provide protection PCT's, Trusts and SHAs provide an indemnity for decisions taken properly in the normal course of board business.

NHS trusts and the then health authorities were advised in HSC 1999/104 to issue suitable indemnities to their non-executive board members, as follows:

"A chairman or non-executive member or director who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her board function, save where the person has acted recklessly".

This indemnity may be extended to lay members of those committees which have delegated powers to make decisions or take actions on behalf of NHS boards.

The position of executive directors, however, is markedly different from non-executives so the indemnity does not extend to them. The reason for this is that the trust or SHA is always liable for the actions of its employees in the course of their employment.

The indemnity is "issued" simply by minuting its acceptance in the minutes of the board.

Proposal:

Indemnity for non-executive directors is issued by the Board adopting this statement.

Recommendation:

That the Board adopts this statement.