

Outside body appointments – duties and liabilities

Councillors participate in a variety of external organisations mostly without any problems and, in doing so, support the development of important community services.

There are though legal issues associated with such appointments and this note highlights some of them. It is not a comprehensive guide to all the issues but is intended to raise awareness.

Joint Committees

Two or more Councils can form a joint committee to exercise any of their functions

Only Councillors who are Members of the local authorities who have come together to form the joint committee can sit on that joint committee. The Joint Committee will have governance documents which will set out its procedure rules and will confirm what powers the constituent councils have delegated to it.

Members of a joint committee who act in good faith, within their powers have a statutory immunity against personal liability.

There are though a variety of other external organisations which a Councillor could be appointed to where this statutory immunity does not arise.

Directors of Companies

Directors have specific responsibilities and non compliance could create a civil or criminal liability.

A comprehensive note on the duties of a Director is beyond the scope of this note. Duties may vary according to the nature of the business and the precise position held. There are though seven general duties owed by every Director:

- To act within powers.
- To promote the success of the company.
- To exercise independent judgment.
- To exercise reasonable care, skill and diligence.

- To avoid conflicts of interest.
- Not to accept benefits from third parties.
- To declare an interest in a proposed transaction or arrangement.

Companies generally have limited liability. If they owe money then creditors can seek to recover from the company's assets and, theoretically in the case of a company limited by guarantee, from the guarantors but only up to the level of the guarantee. Often that will only be £1.

Generally speaking directors are not liable for the Company's debts but if they continue to trade when they knew, or ought to have concluded, that there was no reasonable prospect that the company would avoid going into insolvent liquidation then personal liability can arise. Directors must therefore take steps to ensure that they are understand their company's financial position

Companies' powers are set out in their memorandums and articles and sometimes in other governance documents. Third parties acting in good faith can rely on decisions made by directors acting outside their authority, but the company may recover any resulting loss from the director personally. It is important therefore that directors understand what decisions they are entitled to make.

On ceasing to be a Director it is sensible to ensure that the Company's records have been updated at Companies House.

Governor of a maintained school

Governing bodies are corporate, charitable bodies and, because of this, individual governors are generally protected from personal liability as a result of the governing body's decisions and actions. Provided they act honestly, reasonably and in good faith, any liability will fall on the governing body even if it has exceeded its powers, rather than on individual members

Unincorporated Associations

A typical unincorporated association might be a sports club or a society run by its members, often with a management committee. There will usually be a constitution or a set of rules which sets out how decisions

are made, how often meetings are held, how the management committee is appointed and so on.

Because unincorporated associations cannot contract in their own names individual members have to sign contracts and will be personally liable. Whether other members will also be liable will depend on all the circumstances of the case including the association's rules. Members of the management committee are significantly more likely than ordinary members to be personally responsible for contracts.

It is therefore very important that proper control is exercised over the rights of other members to commit the association by entering contracts. A member who acts beyond his powers cannot commit other members.

If an unincorporated association needs to enter high value contracts, lease buildings or employ staff then it is probably time to consider adopting a different legal status.

Charitable trustees

Charities are subject to regulation through the Charities Commission and Trustees must ensure that obligations such as making returns to the Commission are complied with.

Charities may be unincorporated associations managed by trustees or companies managed by directors. Directors of charitable companies must comply with charity law as well as company law.

Trustees must use reasonable care and skill in their work as trustees, using their personal skills and experience as needed to ensure that the charity is well-run and efficient. Trustees must consider getting external professional advice on all matters where there may be material risk to the charity, or where the trustees may be in breach of their duties

Trustees of an unincorporated charity may be personally liable for liabilities incurred which exceed the trust assets. They may also be liable to the charity where there has been a breach of trust. However, if the trustees have acted honestly and reasonably then the Charity Commission can relieve them of their liability to pay in this circumstance.

The Charity Commission's website is an excellent source of easy to read guidance for any new trustee.

Reducing the risk

Members who are invited to sit on an outside body need to ensure that they understand what role they are being asked to perform. They need to be sure they can devote enough time to the role to ensure that the body's activities are effectively managed.

Outside bodies can cover many potential liabilities through insurance. It is worth asking the question whether the organisation has public liability insurance and indemnity insurance for the directors, management committee or trustees and, if not, whether the cost of putting these in place justifies the peace of mind achieved.

The Council can also indemnify a Member against personal liabilities arising from an outside body appointment. Indemnities cannot extend to cover criminal offences; or liabilities arising from fraud, or other deliberate wrongdoing or recklessness on the part of that member and cannot cover defamation actions.