

SECTION J

LEGAL LIABILITY OF COMMUNITY COUNCILLORS

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J LEGAL LIABILITY OF COMMUNITY COUNCILLORS

J1 Legal Status

- J1.1 Community Councils are created by statute, Part IV of the Local Government (Scotland) Act 1973, but their legal status is not defined anywhere in the legislation. The description "statutory" in itself does not create any rights. Legal status is important because that is what creates the uniqueness of an organisation and makes it a separate legal entity from the members of the organisation.
- J1.2 The particular importance of the legal status of an organisation can be seen in relation to (i) whether it is the organisation itself which can sue or be sued in its own name without these rights and liabilities affecting the members of the organisation or (ii) whether the members of the organisation themselves have to sue on behalf of and, more importantly, can themselves be sued personally on behalf of the organisation.
- J1.3 In the first case only the organisation's own assets become liable, in the second case the member's own personal assets become liable. A limited company is an example of the first case and the shareholders' liability is limited to their shareholding. A voluntary association, ie a club or society, is an example of the second where either the office bearers or all club members can be liable personally.
- J1.4 Because the legislation does not give Community Councils some form of protected corporate status like a limited company or a local authority, the Community Council falls firmly into the second category. **The Community Council is the collection of the individual elected Community Councillors and any liability incurred by the Community Council can fall personally, collectively or individually on the Community Councillors.**

J2 Public Liability Insurance

- J2.1 **Community Councils are responsible for any loss, injury or damage to property or persons arising from its activities or from any equipment or services it provides.**
- J2.2 South Ayrshire Council has therefore agreed to pay the annual premium for public liability insurance with respect to Community Councils.
- J2.3 This type of cover provides indemnity in respect of incidents arising for activities such as fetes, gala days, firework displays (as long as the Insurance Company is advised and is satisfied with the safety arrangements and any other conditions that it may impose).
- J2.4 Where Community Councils own property or equipment it is advisable that Community Councils have their own appropriate insurance cover.
- J2.5 Details on how to obtain insurance cover and the policy can be obtained from the Risk & Insurance Team, Newton House, 30 Green Street Lane, Ayr KA8 8BH, telephone: 01292 613081, email: insurance@south-ayrshire.gov.uk.

J3 Objectives of the Community Council and Related Funding

The statutory foundation for Community Councils broadly is to enable them to express to the local authority local views on matters within the functions of the local authority, and other public bodies (for example the Health Board) and to take action in the interests of that community as may appear necessary. South Ayrshire Council funds Community Councils on the basis that they will represent such views to South Ayrshire Council and consequently feed back to the local area matters arising within South Ayrshire Council. Any other action which the Community Council might wish to take is regarded as being incidental to this principal purpose of communication flow. The current funding arrangements whereby South Ayrshire Council provides an administration grant to cover a Community Council's costs of photocopying, postage, room hire etc is intended to cover any reasonable liability which a Community Council might meet in carrying out its statutory duties. Consequently given the purposes of Community Councils and the funding provided by South Ayrshire Council this should not lead Community Councillors into circumstances where they accept other responsibilities which would lead them into potential financial liability in excess of the grant provided by South Ayrshire Council.

J4 Potential Development of Activities and Liability

J4.1 At a future date it is possible that Community Councils might wish to develop projects further. On a more general basis they might wish to undertake projects or carry out development work or become employers of staff. In such cases the Community Council could then be moving beyond the financial framework guaranteed by South Ayrshire Council and perhaps moving also outwith the statutory powers of Community Councils and may put the Community Councillors themselves in areas of personal liability. If developments of this nature are to be contemplated then, before proceeding, the Community Councillors should discuss with South Ayrshire Council what changes, if any, should be made to the legal status of the Community Council or what additional organisation should be formed by the Community Council to undertake the project or to employ the staff and so give the Community Councillors protection from personal liability.

J4.2 This is a very important matter. The statutory objectives of Community Councils are set out in the Local Government (Scotland) Act 1973, Section 51(2) as follows:-

"In addition to any other purpose which a Community Council may pursue, the general purpose of a Community Council shall be to ascertain, co-ordinate and express to the local authorities for its area, and to public authorities, the views of the community which it represents, in relation to matters for which those authorities are responsible, and to take such action in the interests of that community as appears to it to be expedient and practicable".

J4.3 This objective is not only permissive, that is, it states what Community Councils can do, it is also restrictive because it limits what Community Councils can do in terms of the objective. Strictly speaking if Community Councils wish to develop in ways which involve them in acting outwith their statutory remit, then they would not be acting under the purpose of being a Community Council. It is likely that they may then be acting as an unincorporated voluntary association. As the personal liability of a Community Councillor is almost identical whether the activity falls within or just outside the statutory objective, the difference has more to do with whether a Community Council could continue to call itself a Community Council, and should be recognised as a Community Council, if it strayed into activities outwith the statutory objectives.

- J4.4 The 1973 Act does not make it clear. What then are the statutory objectives? The objective may seem clear enough initially but the opening words "In addition to any other purpose which a Community Council may pursue" and the closing words "and to take such action in the interests of that community as appears to it to be expedient and practical" open up the possibility of wide ranging action than might at first appear. The section in the middle probably gives the greatest guidance with the phrases at the beginning and the end having to be taken in this spirit and having to be seen as in some way only extending the main purpose at the centre of the objective. However the powers are not entirely clear and the legislation elsewhere is not definitive.
- J4.5 The central core of the objectives, that is representing views, is clear enough. However in relation to the phrases which may seem to extend this central purpose, if Community Councils were to embark on projects or activities which could not be seen to have their foundation in the central purpose of representing views they could be acting outwith their original purpose. If the Community Council were to go outwith the objectives it would be acting outwith its powers and the individual Community Councillors would be personally liable for that activity. Whether Community Councillors find themselves having incurred personal financial liability will arise from the nature of the activity which the Community Council embarks on and the prudence with which the activity is approached, regardless of whether the Community Council operates within its objective or goes beyond them. However in respect of adhering to the statutory objectives, in matters of real difficulty, controversy or where a significant change of purpose is proposed, the Community Council should take the advice of the Head of Policy, Community Planning and Public Affairs, South Ayrshire Council, **before embarking on the activity** to clarify the legal position.
- J4.6 The margins within which Community Councils can operate with financial safety and without the potential for incurring personal financial liability for the Community Councillors are narrow. Any arrangements which a Community Council enters into for provision of accommodation and/or administrative services and/or publication of newsletters or whatever, should be met from within the grant which they know is available from South Ayrshire Council. Making financial commitments in excess of the available grant will place the Community Councillors in potential liability. If Community Councils wish to develop in other ways they must be absolutely certain that guaranteed funding is in place to meet all their expenditure.
- J4.7 If Community Councils wish to move into areas of development where guaranteed funding cannot be quite so certain then they must discuss with South Ayrshire Council the creation of some other mechanism, eg the formation of a private limited company. This would not remove liability but would restrict it to the assets of the company and would remove it from the individual members ie the Community Councillors. If Community Councils feel that a course of action (with or without financial uncertainty) may move them outwith the statutory objectives they should discuss this with the Head of Policy, Community Planning and Public Affairs, South Ayrshire Council to clarify any consequences of the proposed activity **before any legal commitment is made.**

J5 Working as a Group

It should be remembered that a Community Council can only act collectively. The law does not permit individual Community Councillors any special place to act independently.

J6 Liaison with Public Bodies and Voluntary Organisations

In the main Community Councils relate directly to the Local Authority for its area, ie South Ayrshire Council. However it is important to emphasise that the statutory purpose goes much wider and enables Community Councils to represent local views to public bodies in relation to matters for which those authorities are responsible.

It is therefore important for Community Councils to recognise this wider ability and to include in the matters which they discuss and seek to improve those issues which fall within the scope of other public bodies for example Health Boards, Tourist Boards, Water Authority, etc, and to contact those bodies direct to pursue the Community Councils' legitimate interests.

Details of those public bodies and other voluntary organisations in South Ayrshire are undernoted, but this list is not intended to be exhaustive:-

Public Bodies and Voluntary Organisations	Contact No.
Ayrshire and Arran Health Board www.nhsaaa.net	0800 169 1441
Ayrshire and Arran Tourist Board www.ayrshire-arran.com	0845 22 55 121
Ayrshire Valuation Joint Board www.ayrshire-vjb.gov.uk	01292 612221
Clydeport www.clydeport.co.uk	0141 221 8733
Data Protection Commissioner (Scottish Office) www.dataprotectionregister.org.uk	0131 225 6341
Equality and Human Rights Commission www.equalityhumanrights.com	0808 800 0082
European Parliament (Edinburgh Office) www.europarl.org.uk/edinburgh	0131 557 7866
Glasgow Prestwick Airport www.glasgowprestwick.com	0871 223 0700
Historic Scotland www.historic-scotland.gov.uk	0131 668 8600
Scottish Police Authority Board enquiries@spa.pnn.police.uk	0141 585 8300
Scottish Fire and Rescue Service Board www.firescotland.gov.uk	01738 475200
Scotland Office (UK Government) www.gov.uk/government/organisations/scotland-office	0131 244 9010
Scottish Environmental Protection Agency (Ayr Office) www.sepa.org.uk	01292 294000
Scottish Government www.scotland.gov.uk	08457 741 741
Scottish Water www.scottishwater.co.uk	0845 601 8855
South Ayrshire Council www.south-ayrshire.gov.uk	0300 123 0900