



July 2009

LIABILITY OF COMMITTEE MEMBERS AND THE MODEL CLUB CONSTITUTION

Where a club is constituted as an unincorporated association, members may be individually and severally liable for losses. Committee members in particular take on a measure of responsibility when they are elected, which may open them up in particular to this liability.

The ways in which this liability may occur are, for example, through negligent acts, breach of statutory duties and under contract. There may also be liability of the club if it cannot afford to pay its creditors, as they may look to the club's Committee members if there are insufficient assets or insurance to meet any claim.

The above notwithstanding, there are ways in which a club may protect against this:

- Include rules in the constitution to protect the Committee in so far as possible from personal liability (*Please see the provisions in the Model Club Constitution in this regard*);
- Ensure that the club carries adequate insurance so as to cover potential liabilities (*insurance is available to clubs as outlined in the Guidance Notes to the Model Club Constitution*); and
- Ensure that systems are in place at the club to facilitate and ensure good management and governance.

Although rather unassuming, the latter point is very important as a "first line of defence". A properly run club ought not be unduly worried; members of the Committee are expected only to act to the best of their ability and if they do so in accordance with the rules and according to Best Practice, should find that no personal liability attaches to them in the event of a claim (although a Committee member may nonetheless incur personal liability if he or she exceeds any authority given to him/her by the club).

Affiliated clubs that are concerned may wish to seek independent legal advice. However, in the first instance, a representative of the Committee may wish to consult the DAS legal helpline whose remit includes constitutional legal advice. If the Committee does not already have the telephone number and reference, the ASA Department of Legal Affairs is able to provide it to the club's Chairman, Treasurer or Secretary.