

**MERSEYSIDE FIRE & CIVIL DEFENCE AUTHORITY**

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**MEMBERS GUIDE TO OUTSIDE BODIES**  
**DUTIES & LIABILITIES**

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## **A MEMBER'S GUIDE TO OUTSIDE BODIES – YOUR DUTIES AND LIABILITIES**

### 1. **Introduction**

1. 1. This guide is intended to give you a comprehensive but concise summary of your main duties and liabilities when you sit on the Boards of various Outside Bodies.
1. 2. This guide is not intended as an exhaustive and definitive opinion of all the legal issues that may arise, but merely as a useful guide to assist you generally. Much depends on the reason for your appointment; the nature and constitution of the outside body; the capacity in which you serve and the terms and conditions of your appointment. Professional advice should always be sought in any particular case where you may be uncertain as to your position.

### **Scope of the Guide**

This guide covers the following areas:-

1. Your position as an Observer.
2. Your position as a Director of a Limited Company (whether charitable or not).
3. Your position as a Member of an Unincorporated Association or Trust.
4. Your position as a Charitable Trustee.
5. Declarations of Interest.
6. The ability of the Authority to insure/indemnify you against your liabilities.
7. Guidelines to protect you from incurring liabilities.

### 2. **Who do you represent when sitting on an outside body?**

When you are appointed by the Authority to sit as a Director/Trustee/Member of a Management/Executive Board on an Outside Body, you continue to owe a duty of loyalty to the whole local community i.e. it is entitled to expect that you will act in its best interests, **BUT** you also have personal and individual duties to the body on which you sit (See Paragraphs 4 – 6).

**NOTE 1.:** The views that you may express at the meetings of the Outside Body, do not necessarily represent the views of the Authority and any decision made by the Outside Body with your support will not be binding on the Authority.

**NOTE 2.** If you are only appointed as an observer rather than a full member of the Board of the Outside Body, then your position is different. Please see Paragraph 3 as to your responsibilities in such a case.

### 3. **Observers**

3. 1. If you are appointed by the Authority to act as an observer at the proceedings of an Outside Body, be it a Limited Company, an Unincorporated Association or other body, then, as is self evident, your role is limited to one of observation only. You have no right to take any active role in the proceedings of the body in question. Your role is to monitor any interests which the Authority may have in the business of an Outside Body. You may wish to think of yourself as an Agent for the Authority which appointed you as an observer. You may, with the consent of the Board, ask questions of clarification but you should not take part in any debate or in the decision making process.

3. 2. Because you are an observer you do **NOT** attract any of the duties and liabilities which fall upon those who are Directors, Trustees or members of the Management Committee/Executive Board of the Outside Body.
3. 3. However, you should be aware that you have a duty to the local community to perform your role as an Observer with reasonable diligence and ought to report to the Authority any conduct you see or matters discussed which appear to you to be detrimental or potentially harmful to the Authority's' interests. If you fail to perform this duty, it is possible, although very unlikely, that you may be liable to the Authority if it can be proved that it has suffered any losses as a direct consequence of your failure.

#### 4. Directors of Limited Companies

4. 1. If you are appointed as a Director of a Limited Company, it is likely that the Company will be either:-
  - (a) A Joint Venture Company ("JVC") limited by guarantee or by shares, or
  - (b) A Charitable company Limited by guarantee (e.g. Friends of the Fire Service Ltd.)

#### 4. 2. Joint Venture Companies

This type of Company may be formed for various purposes, but generally the intention is to access private sector capital/resources to achieve economic development by way of a partnership with the private sector. Such Companies generally are "Regulated Companies" under Part V of the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order 1995 (i.e. where they are public sector controlled or influenced Companies). The following guidance as to the duties and liabilities of Company Directors will generally apply to such "Regulated Companies".

#### 4. 3. Charitable Companies Limited by Guarantee

If you sit on the Board of a Limited Company it may either be a Company Limited by Shares (in which case on the insolvency of the Company your liability to the company's creditors will be limited to the value of your shares) **OR** a Company Limited by Guarantee – this means that your liability as a Member of the Company is limited to paying a nominal amount (usually £1.00) towards payment of the Company's debts/liabilities, if the Company is wound up whilst you are a Member or within one year of you ceasing to be a Member. A Company Limited by Guarantee is usually a charity or non-profit making organisation.

NOTE Whilst limited liability either by shares or by guarantee gives you significant protection from personal liability, it is **NOT** an absolute protection. This is discussed further below.

#### 4.4. Are you a Director?

Generally speaking you will be in no doubt when you are appointed by the Authority as a Director on an Outside Body. However, you should be aware that the term "Director" is not defined in law other than as "any person occupying the position of Director by whatever name called". You may therefore be considered to be a Director as a matter of fact, even if you have not been formally appointed as such. Whether you may be a Director therefore depends upon the circumstances of each individual case. It will depend on whether you are able to shape or direct the Company's activities.

4. 5. For the avoidance of doubt, if you have merely been appointed as an Observer to Board Meetings of a Limited Company, then it is very unlikely that you would be considered to be a "Director" unless you persistently became involved in debates and influence the decision making process.
4. 6. The term "shadow Director" has a very particular meaning in companies legislation as meaning "A person in accordance with whose directions or instructions, the Directors of a Company are accustomed to act. However, a person is not deemed to be a Shadow Director by reason only that the Directors act on advice given by him in a professional capacity". Generally speaking therefore, a Shadow Director is the Parent Company of its subsidiary. However, exceptionally the facts of any particular case may lead to Members of a Local Authority being regarded as a Shadow Director. A Shadow Director has the same duties and liabilities as other formally appointed Directors.
4. 7. A "Non Executive Director" is treated in Law exactly the same as a Director. The role of the Non Executive Director is that of protecting the interests of shareholders by monitoring the Boards performance. In the case of a Local Authority "Regulated Company", a Non Executive Director may have a particular role to ensure the Company does not exercise functions which have not been properly delegated to it by the Authority.

4. 8. Extent of Protection Afforded by Limited Liability

As mentioned above, the protection given by limited liability is **NOT** absolute. You and your entire assets may be at risk where you have personally been involved in:-

- (a) Breach of fiduciary duty to act in good faith in the interests of the Company.
- (b) Breach of the duty to exercise due care and skill.
- (c) Fraudulent trading.
- (d) Wrongful trading.
- (e) Personal guarantee given by yourself and dishonoured.
- (f) Breach of miscellaneous Statutory Duties (such as the duty to file certain documents at Companies House).

Note: If your Company is also a Charity, then you will be the subject of additional duties as a Charitable Trustee, which are dealt with subsequently in this guide.

4. 9. The guide will now deal with the circumstances number 4. 8 (a) – (e) above, where you may be subject to personal liability. The guide does not deal in detail with the situation numbered 4.8 (f) above since such Statutory Duties are various and not within the scope of this particular guide. Details of these duties can be obtained from Companies House, Crown Way, Maindy, Cardiff CF4 3UZ (Tel. No. 01222 388588).

4.10. Breach of Fiduciary Duty

A fiduciary duty could be described as one of trust and confidence. If you are a Company Director you must act honestly and in good faith in the best interests of your Company. The duty is entirely subjective so that as long as you honestly believe that you are acting in the best interests of the Company, then you will not be in breach of this duty just because your actions turn out not to have been in the Company's best interests.

- 4.11. This fiduciary duty includes not making a secret gain or profit, from your position other than as specifically permitted in the Company's Memorandum and Articles of Association. If you do make a secret profit you may be liable to account to the Company for the same.
- 4.12. It must be stressed that your legal obligations as a Director are quite separate from the duty of loyalty to the local community imposed upon you as a Member of the Authority. As well as the duty to the community, you owe fiduciary duties to the Company on whose Board you sit, and you must act in its best interests. Ordinarily, you can comply with both duties without difficulty, so long as both coincide. Where a conflict arises which cannot be resolved, you may have no choice but to resign from Directorship of the Company since your overriding duty is to the local community.
- 4.13. It should however be noted that if insolvency is looming, a Director may still be held liable for Wrongful Trading (see later) even if he/she simply resigns from being a Director since the Director is required to "take every step with a view to minimising the potential loss to the Company's creditors". The Director may therefore have to consider staying on the Board to undertake damage limitation.
- 4.14. If you breach your fiduciary duty to act in the best interests of the Company, then you could be held personally liable to account to the Company for any loss suffered as a result. It should be noted, however, that the Court may at its discretion waive a Directors liability, where it decides that the Director was acting in good faith.
- 4.15. Breach of duty to exercise due care and skill  
As a Director you must perform your functions with the degree of skill which may reasonably be expected from a person of your particular knowledge and experience. As with your fiduciary duty to act in the best interests of the Company (see above), this duty is entirely subjective.
- 4.16. As with a breach of the fiduciary duty to act in the best interests of the Company, if you are in breach of this duty to exercise due care and skill then you may be held personally liable to account to the Company for any loss suffered as a result. Again, you should note that the Court may at its discretion waive a Directors Liability, where it decides the Director was acting in good faith.
- 4.17. Fraudulent Trading  
If your Company goes into insolvent liquidation any person including the Directors, may be held personally liable if the liquidator successfully brings an action for Fraudulent Trading. Any person will be liable, if he/she was knowingly a party to carrying on the business of the company with a view to defrauding the Company's creditors or for any other fraudulent purpose.
- 4.18. If the case is successful the Court can order a Director to personally contribute to the assets of the Company for distribution between the Company's creditors.
- 4.19. It is also possible for the Director who traded fraudulently to be disqualified from holding the position of Company Director.
- 4.20. Wrongful Trading  
If your Company goes into insolvent liquidation then, even if there is no allegation of Fraudulent Trading, a person who is or has been a Director may become personally liable if the liquidator brings an action for Wrongful Trading.

- 4.21. The Director will be liable if before the start of the winding up he/she knew or ought to have concluded that there was no reasonable prospect that the Company would avoid going into liquidation and failed to take every step with a view to minimising the potential loss to the Company's creditors as he ought to have taken.
- 4.22. The Court will take into account the facts which a Director ought to have known, the conclusions he/she ought to have reached or steps he/she ought to have taken which are those of a reasonably diligent person, having the general knowledge, skill and experience that may be reasonably expected of a person, carrying out his/her functions.
- 4.23. A Director who assists the Company to obtain credit at a time when he/she ought to have known that there was no reasonable prospect of avoiding insolvent liquidation may be liable for Wrongful Trading. It is immaterial for them to believe that the financial crisis might be solved. If the company's assets cannot reasonably be expected to cover their liabilities, the prospect of liquidation must seem reasonably likely bringing with it the risk of Wrongful Trading.
- 4.24. If the claim for Wrongful Trading is successful the Court can order the Director to make a personal contribution to the assets of the Company for distribution amongst the company's creditors. In addition, the Director runs the risk of being disqualified from holding the position of Company Director.

4.25. Personal Guarantees

If you as a Director give a personal guarantee to a third party, for example, to a bank to secure a loan to the company, then the bank could enforce that debt against you personally if the Company defaults on the loan.

4.26. Continuing Personal Liability

You will continue to be liable to civil proceedings being brought against you after you have ceased being a Director for a period of six years after any acts you committed in any of the five situations detailed above whilst you were a Director.

4.27. Can the Company Indemnify or Insure you Against Liabilities?

Generally a Company's Articles (i.e. the document detailing the Constitution of the company) will commit the company to indemnify its Directors against liabilities incurred by them in discharging their duties, but such an indemnity will **not** extend to any liability in respect of a Director who is personally found to be responsible for:-

- (a) Negligence
- (b) Breach of Duty
- (c) Breach of Trust

- 4.28. It is however, possible provided the company's Articles allow it, for the Company to take out Director and Officer Liability Insurance which will cover items (a) to (c) above, as well as possibly Wrongful Trading. This insurance will not however cover the Director for losses incurred by fraudulent trading, recklessness, wilful negligence, dishonesty or general criminal acts.
- 4.29. If the Company declines or is unable to take out such insurance the Directors may in certain cases wish to consider taking it out themselves.

- 4.30. You should also note that even though the insurance may cover the Directors for personal liability for claims it is possible that an insurance company which has to meet a claim may pursue the Director personally under rights of subrogation, although this is only really likely in cases where the Director has been particularly culpable in causing any loss.

5. Unincorporated Associations

5. 1. An Unincorporated Association (whether charitable or not), unlike a Limited Company, has no independent legal existence separate from that of the persons of which it is comprised.
5. 2. Therefore, if you are a member of a Management Committee/Executive Board of an Unincorporated Association then, unlike a Company Director, you will generally have personal unlimited liability, even if there has been no wrong doing, for any debts and liabilities which cannot be met by the assets of the association upon its insolvency. This liability is "joint and several" i.e. each Member of the Management Committee/Executive Board can be held solely liable for the whole of the debt claimed. Likewise, when members of the Management Committee/Executive Board of Unincorporated Associations enter into contractual arrangements with third parties, then they do so in a personal capacity, and will be personally responsible for any breach of that contract.
5. 3. In addition, if you serve on the Management Committee/Executive Board of an Unincorporated Association your duties will be akin to those of Company Directors, namely:-
- (a) To act within the terms of the Authority laid down for the Management Committee/Executive Board by the constitution of the Association.
  - (b) To act in good faith in the interests of the Association subject to your overriding duty of loyalty to the whole local community.
  - (c) To exercise due care and skill in your dealings with the Association.
  - (d) To disclose any conflict of interest and not take part in any business of the Association when such a conflict arises.
  - (e) To ensure you monitor the financial position of the Association.

5. 4. Can the Unincorporated Association Indemnify or Insure you Against Liabilities?

The Unincorporated Association can only indemnify or insure you to the extent and degree, if at all, set out in its Constitution. You should check this and decide whether you need to arrange insurance for yourself.

6. Charitable Trustees

6. 1. If you are a Charitable Trustee you will have certain duties and liabilities in addition to those which arise from you being a Company Director or Member of a Management Committee/Executive Board (in the case of an Unincorporated Association) of the Charity.
6. 2. You will be a Charitable Trustee if you are a person having the general control and management of the administration of a trust established for charitable purposes. A trust holds property or rights for or on behalf of another person or for the accomplishment of some particular purpose. The trust may take the form of:-
- (a) A Limited Company (probably limited by guarantee rather than shares),

- (b) An Unincorporated Association, or
- (c) A Trust created and governed by a Deed of Trust.

6. 3. General Fiduciary Duty of a Trustee

If you are a Trustee, then you have a fiduciary duty to act in the best interests of the Trust. If you breach this fiduciary duty you may be held personally liable to the trust for any losses so caused **but only** if:

- (a) You acted contrary to the fiduciary duty, or
- (b) You exceeded your fiduciary duty, or
- (c) You committed any negligent omission or fraudulent act in fulfilling your fiduciary duty.

And whilst committing any of the acts listed (a) to (c) above you failed to act in good faith.

6. 4. This general fiduciary duty upon you means that:-

- (a) You must protect your trusts property, avoid speculative investment and invest prudently.
- (b) You must take professional advice whenever you are faced with a situation which may affect the trusts property and which you do not have the experience to deal with yourself.
- (c) If for any reason you as a trustee believe the charity is being abused, you must report this to the Charity Commissioners for investigation.

6. 5. Possibility of Charity Obtaining Insurance/Indemnity

It is possible for a charity to pay for its Trustees to take out "Trustee Liability Insurance", which will insure them against personal liability for claims of:-

- (a) Breach of duty;
- (b) Breach of trust;
- (c) Negligence;
- (d) Misleading statements;

**provided** that the claims arise from acts **properly undertaken** in the administration of the charity or taken in breach of trust, or under an **honest mistake**.

6. 6. It is also possible for the charity to insure Trustees who may also be Company Directors against Wrongful Trading (see earlier), provided that such cover will not include circumstances in which the Trustee Director was blameworthy in that he/she allowed the Company to continue to trade knowing it was insolvent or in reckless disregard of whether it was solvent or not.

6. 7. Any such insurance policy will cover damages and legal expenses involved in such claims and may extend to allowing Trustees to recover losses arising from dishonest, fraudulent or malicious conduct by a fellow Trustee where these losses are not recoverable from the errant Trustee.

6. 8. The Trustees will not be able to take out such insurance unless empowered to do so by their Governing Document (that is, the Memorandum and Articles of Association in the case of a Limited Company, the Constitution in the case of an Unincorporated Association or the Deed of Trust). If they are not so empowered then it will be necessary to seek the consent of the Charity Commissioner to amend the Governing Document in this respect.
6. 9. As part of their fiduciary duty to act in the best interests of the charity, the Trustees will have to seriously consider whether such insurance is justified after taking into account such things as the nature of the charity's activities, the degree of risk of personal liability to which the Trustees are exposed, the number of Trustees, the amount of indemnity required and the cost to the charity of effecting such liability insurance.

**Note:** It must be stressed once again that as a trustee you must act independently of the Authority in the best interests of the charity. If a conflict of interest arises at any time you should not take part in the charity's discussion of the item.

## 7. Declarations of Interest at Authority Meetings

7. 1. The Code of Conduct for members requires members to disclose to meetings of the Authority and its Committees, the existence and nature of personal interests at the commencement of the meeting, or when the interest becomes apparent.
7. 2. You must regard yourself as having a personal interest in any matter which relates to any body to which you have been appointed or nominated by the Authority or its representative, and in which you hold a position of general control or management. You must therefore disclose such interest.
7. 3. You must then go on to consider whether your interest is "prejudicial", (i.e. such that a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest). In this respect, The Code of Conduct entitles you to regard yourself as not having a prejudicial interest in a matter if the matter relates to a body to which you have been nominated or appointed by the Authority as its representative.
7. 4. You must therefore disclose such interest, but are entitled to decide that such interest is not prejudicial, and continue to speak and vote on the matter under consideration.

Nonetheless, the Local Government ombudsman (when considering the previous code of conduct, which contains similar provisions as the current Code of Conduct) believes that members should still consider whether in the light of the facts of the particular case and circumstances, it is appropriate to participate.

As an example, if the Company is at risk of trading insolvently, you as a Director should not participate in a decision by Authority to provide finance or guarantees to the Company which might avoid you, as a Director, being held personally liable. However, you are not precluded from making a factual report to the Authority of relevant information concerning the Company or its affairs.

## 8. Insurance/Indemnity from the Authority

8. 1. The potential liabilities for members of the Authority sitting on outside bodies may be summarised as follows:-

- (a) The Director of a Limited Company will generally be protected from personal liability **EXCEPT** in cases on breach of fiduciary duty to act in good faith in the interests of the Company, breach of duty to exercise due care and skill, fraudulent trading, wrongful trading, dishonoured personal guarantees and breach of statutory duties.
- (b) Members of a Management Committee/Executive Board of an Unincorporated Association may be personally liable for:-
  - (i) Debts which the Association cannot meet upon insolvency;
  - (ii) Breach of Contract with third parties;
  - (iii) Breach of Fiduciary duties to act in the best interests of the Association, and to exercise due care and skill.

8. 2. Charitable Trustees will be personally liable for breach of their fiduciary duties and breach of trust where they are held to be culpable.

8. 3. The Authority's current Financial Regulations do afford some protection against Members potential personal liability as detailed above in that an indemnity is provided to members as set out below:-

#### Indemnity

- In this indemnity:-
  - (a) "Act of Default" means any neglect, act, error or omission including any breach of Trust or duty of care of fiduciary or any other duty committed by an employee or Councillor.
  - (b) "Clerk" means the person appointed as Clerk to the Authority under S. 34 of the Local Government Act 1985, and
  - (c) "Treasurer" means the person appointed as Chief Finance Officer to the Authority under S.73 and 105 (1) of the Local Government Act 1985.
  - (d) "Officers and members" means the Chief Fire Officer and all employees of the Authority, all Councillors, the Clerk and the Treasurer of the Authority and its former Chief Fire Officers employees, Councillors, Clerk and Treasurer.
- The Authority will subject to the exceptions set out in Paragraph 3 Indemnify its officers and members against claims made against them (including costs awarded) and will not itself make claims against them for any loss or damage (other than claims falling within the cover provided to its officers and members under any policy of insurance taken out by the Authority or any motor vehicle insurance policy taken out by the officer or member) occasioned by neglect, act, error or omission including any breach of trust, or duty of care of fiduciary or any other duty committed by them:-
  - (a) Whilst acting within the scope of their employment or Authority; or
  - (b) Where they and the Authority honestly believed that they were acting within the scope of their employment or authority (even though they were not in fact acting within the scope of their employment or authority) (and the Authority required them to so act);
  - (c) Whilst acting for other persons or other bodies of whatsoever nature within the scope of their employment or authority.

- This indemnity shall not extend to loss or damage directly or indirectly caused by or arising from:
    - (a) Fraud, dishonesty or a criminal offence on the part of officers and members whilst acting on the Authority's business (except where the criminal offence is an offence under the provisions of the Health and Safety at Work etc. Act 1974 or relevant statutory provisions within the meaning of the Act, or where it is alleged that the criminal offence arose due to the wrongful but not willful act or default of any such person in which case the indemnity will continue to apply); and
    - (b) Liability in respect of losses certified by the District Auditor as caused by wilful misconduct.
  - If any part of this indemnity is declared by a judicial or other competent authority to be void, illegal or otherwise unenforceable, then such part shall be severed from the remainder of this indemnity which will continue to be valid and enforceable to the fullest extent permitted by law.
  - Wherever possible all outside bodies upon which Members are presently appointed and any outside bodies upon which Members may in the future be appointed are required to purchase and maintain henceforth insurance to cover the Member for any financial liability which might by virtue of any rule of law or otherwise attach to such Member in respect of any negligent default, breach of duty or breach of trust of which such member may be guilty.
8. 4. Ideally the individual Outside Bodies should arrange their own insurance to cover members of their Boards/Management Committees/Executive Boards as previously mentioned. However, Councillors will note that Outside Bodies are only required to have such insurance wherever possible. Some Outside Bodies do hold such insurance but many others do not.

In any event such insurance would be unlikely to extend to losses due to:-

- (a) A Councillors recklessness, wilful negligence or dishonesty; and
- (b) A situation where an Unincorporated Association breaches a contract with a third party or does not have enough assets to meet its liabilities upon insolvency, in which cases the members of the Management Committee/Executive Board would have unlimited personal liability.

#### 9. Guidelines to Avoid Liability

If you sit as a Director, Trustee or member of a Management Board/Executive Committee on an Outside Body then you should have regard to the following:-

9. 1. Make sure the body in question holds fairly regular meetings. If you cannot attend a meeting you should write to the Chair of the Body, giving any opinion which you may have on any particular item on the Agenda.
9. 2. Make sure that full and accurate Minutes are kept detailing the reasons for decisions which are made, advice received, factors taken into consideration and any arguments against a proposed course of action. If appropriate, make sure you ask for your dissenting view to be minuted. On the whole, you will not be liable for the acts of your co-directors/trustees unless you participate in any breach or wrong doing.

9. 3. Make sure you are fully and properly briefed. Ensure that the organisation's administrative arrangements are effective in providing an adequate flow of information to you, particularly with regard to financial data.
9. 4. Make sure that you seek professional advice where appropriate on significant issues, and clearly indicate that a decision is being made upon any advice received, but you must note that acting on professional advice will not of itself release you from liability if, for instance, you failed to disclose all relevant information to your adviser.
9. 5. Make sure that you exercise the skill and care appropriate to your position and qualifications.
9. 6. Make sure that you delegate with care. It is common for an organisation to delegate its powers and duties to specific directors/trustees or Committees. The scope of the duties that have been delegated should be made clear in the Minutes recording the terms of delegation.
9. 7. Make sure you are familiar with the organisations' objects and powers. Those of a Company are set out in its Memorandum of Association. Those of an Unincorporated Association will be set out in its Constitution. If the organisation sanctions any act which falls outside its powers then the Director/Trustee could be exposed to a claim for breach of duty.
9. 8. Always have in your mind what is in the best interests of the body upon which you sit.
9. 9. Make sure you address, where appropriate issues of safety. In exceptional cases it is possible for those persons who form the "guiding and controlling mind" of an organisation to be held liable for manslaughter or for criminal offences under the Health and Safety Legislation, if employees or members of the public are killed or injured as a result of the Company's activities **IF** it can be shown beyond reasonable doubt that the individual persons concerned had recklessly disregarded questions of safety.
- 9.10. Consider whether it is in the best interests of your organisation to arrange insurance against the personal liability of Directors/Trustees. If the organisation does not take out such insurance consider whether it is worth you doing so personally.

## 10. Conclusion

The above information has been prepared to make sure that you are aware of your position when being appointed to an Outside Body by the Authority. However, it is considered that **the likelihood of you actually being held personally liable is very remote.**

In essence, if you take the trouble to inform yourself of your duties and keep them at the forefront of your mind whilst serving on Outside Bodies and always act in good faith, then you will realistically provide yourself with effective protection from the risk of liability.

## Outside Bodies – A Summary of Your Duties and Liabilities

Member of Management Committee/Executive Board of Unincorporated Association

You will have unlimited Personal Liability for:-

1. Unsatisfied debts upon insolvency
2. Breach of Contract
3. Breach of Fiduciary Duty of Good Faith
4. Breach of Due Care and Skill
5. Breach of Personal Guarantee

Director of Limited Company

You are protected from Personal Liability **EXCEPT** for:-

1. Breach of Fiduciary Duty of Good Faith
2. Breach of Duty of Due Care and Skill
3. Fraudulent Trading
4. Wrongful Trading
5. Breach of Personal Guarantee
6. Breach of Miscellaneous Statutory Duties

Observer

You have no specific duties/liabilities, but be aware of your general duty to observe with reasonable diligence and report to Authority any conduct which may be detrimental to Authority interests.

Is the Body a Charity?  
If it is, you have additional liabilities for:-

1. Breach of Fiduciary Duty to act in good faith in best interests of the Charity
2. Breach of Trust

Do not rely solely on indemnity from the Authority.  
Does the body itself indemnify you for any of the above liabilities?

Does the body carry Directors/Trustee Liability Insurance for any non-culpable acts not covered by an indemnity? If not, consider whether necessary to arrange cover for yourself

## INDEMNITY GIVEN TO MEMBERS BY THE AUTHORITY

1. The Authority has determined to indemnify its Members against certain claim costs and damages against Members in the circumstances and as set out below.

### 2. Indemnity

2.1. In this indemnity :-

- (a) "Act of Default" means any neglect, act, error, or omission including any breach of trust or duty of care of fiduciary or any other duty committed by a Member.
- (b) "Member" means all Members appointed to the Authority who are at the time of the Act of Default, Members of the Authority
- (c) "Part 3 Proceedings" means any investigation report, reference, adjudication or any other proceeding pursuant to Part 3 of the Local Government Act 2000.

2.2. The Authority will, subject to the exceptions set out in paragraph 2.3, 2.4 and 2.5, indemnify its Members against claims made against them (including, all damages and costs awarded) and will not itself make claims against them for any loss or damage (other than claims falling within the cover provided to its Members under any policy of insurance taken out by the Authority or any motor vehicle insurance policy taken out by the Member) occasioned by an Act of Default :-

- (a) whilst acting within the scope of their employment or authority; or
- (b) where they reasonably believed that they were acting within the scope of their employment or authority (even though they were not in fact acting within the scope of their employment or authority);
- (c) whilst acting for other persons or other bodies of whatsoever nature within the scope of their employment or authority, or where the circumstances in 2.2. (b) above apply; whilst acting for other persons or bodies; or
- (d) comprising the issuing or authorisation of any document by a Member containing any statement as to the powers of the Authority, or any statement that certain steps have been taken or requirements fulfilled and where that Member reasonably believed that the contents of that statement were true.

2.3. This indemnity shall not extend to any Act of Default by an Member which :-

- (a) constitutes a criminal offence, or
- (b) is the result of fraud or other deliberate wrongdoing or recklessness on the part of that Member.

provided that the indemnity shall apply to the costs of defending any criminal proceedings brought against an Member and any civil liability arising as a consequence of any Act of Default which constitutes a criminal offence.

2.4. This indemnity shall not extend to the making of any claim by a Member in relation to an alleged defamation of that Member, but will extend to the defence by that Member of any allegation of defamation made against the Member.

2.5. Where the Authority has incurred costs by way of indemnity of a Member:-

(a) In respect of the Members costs of defending criminal proceedings, and that Member is convicted of a criminal offence and that conviction is not overturned following any appeal; or

(b) In respect of the defence of Part 3 Proceedings and a finding is made in those proceedings that the Member in question has failed to comply with the Code of Conduct, and that finding is not overturned following any appeal or the Member admits that they have failed to comply with the Code of Conduct for Members;

then that Member shall reimburse the Authority for any sums expended by the Authority in relation to those proceedings which shall be recoverable as a civil debt.

3. Wherever possible, all outside bodies upon which Members are presently appointed and any outside bodies upon which Members may in the future be appointed, are required to purchase and maintain henceforth insurance to cover the Member for any financial liability which might by virtue of any rule of law or otherwise attach to such Member in respect of any Act of Default.