

Health Professions Council

The Liability of Council Members

Introduction

Article 3(1) of the Health Professions Order 2001 ('the 2001 Order') provides that the Health Professions Council ('HPC') is a body corporate, in other words, it is a body with a legal personality of its own separate from those of its members.

The general rule of liability is that a person or body is liable for its own acts. Consequently, the liability for acts and omissions which arise in the proper exercise of HPC's powers will normally rest with HPC and any legal proceedings initiated by a third party are likely to be brought against HPC rather than Members of the Council.

Most liabilities can be avoided by effective management. The HPC Executive should ensure compliance with the law through training, information, supervision and appropriate professional advice. Good budgeting and forecasting will protect HPC from the risk of becoming insolvent. Having appropriate insurance cover can mitigate many other risks.

There are circumstances in which Members may incur personal liability. However, the risk is very low and, therefore, needs to be kept in perspective.

How can personal liability arise?

There are circumstances in which liability may not rest with the person who committed an act or omission. For example, a person who appoints an agent to act on his or her behalf is liable for the acts of the agent. Similarly, an employer has vicarious liability for acts committed by an employee in the course of his or her employment.

Legislation may also make one party liable for the acts of another. For example, employers are liable for acts of unlawful race, sex or disability discrimination carried out by their employees, even if they are carried out without the employer's knowledge, unless the employer can show they took all reasonable steps to prevent such discrimination from occurring.

A Member may be held personally liable for acts which are an improper use of HPC's powers, for example, misusing information gained in their capacity as a Member or permitting HPC's premises to be used for criminal purposes.

In general Members are not liable for unauthorised acts carried out by other Members. However, if more than one Member is held liable, then the liability will be joint and several. That means that each Member could be held liable for all or any part of the obligation.

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Indemnity

A Member who acts honestly, reasonably, in good faith and without negligence will not have to meet from their own resources any liability that is incurred in the execution of their Council duties.

HPC has insurance which indemnifies Members against personal liability in the course of their duties but that insurance will not provide cover for acts or omissions that a Member knew was wrong or which was committed in reckless disregard of whether it was wrong. These include:

- breach of the criminal law or a statutory duty;
- breach of trust (e.g. failing to act in the best interests of HPC by authorising spending on activities outside of HPC's remit);
- breach of contract, (e.g. failing to pay for goods or services ordered); and
- breach of fiduciary duty (e.g. permitting financial liabilities to be incurred when there is no realistic hope of HPC meeting them);

Discharging personal liability

If a Member of Council, or someone else associated with the HPC, is held personally liable for an act or omission they will have to use their own money to:

- meet the HPC's obligations;
- make good any losses suffered by HPC as a result;
- repay to HPC any personal profit they have made; and
- pay any fines or penalties arising as a result of their action.

Protecting against personal liability

Obviously, the best way of protecting against a liability is not to incur it in the first place. However, Members of Council can also reduce the risk of personal liability by ensuring that they:

- act honestly and reasonably;
- act within their powers under the 2001 Order;
- ensure that HPC employees are properly recruited, trained and supervised;

- ensure that there are proper procedures in place to mitigate risks, particularly in relation to money or contact with children or vulnerable adults;
- ensure that no one enters into a contract on behalf of HPC without appropriate authority and with reasonable certainty that HPC can meet its obligations,
- take appropriate legal advice about the possibility of limiting or excluding liability under a contract,
- declare any conflicts of interest;
- comply with the rules on payment of expenses to Members of Council,
- ensure that proper records are kept of all incidents involving personal injury, violence, trespass, damage to people's property, etc., and
- ensure that there are clear procedures for dealing with complaints.