

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL COMMITTEE – 25 AUGUST 2005

COMMUNITY COUNCIL INSURANCES

Executive Head of Finance

1 PURPOSE OF REPORT

- 1.1 The purpose of the report is to identify the legal status of Community Councils in relation to Community Council activities and the need to strongly consider effecting adequate levels of Public Liability Insurance, in an era where accountability is all and litigation is ever increasing.

2 BACKGROUND

- 2.1 This report has been prepared following the Northern Area Local Committee meeting of 4th May 2005, for the purposes as outlined in (1) above.

3 INTRODUCTION

- 3.1 A Community Council is a distinct and separate legal entity from a Local Authority. As such its activities are not and cannot be protected under the existing Council Insurance arrangements.

4 LEGAL POSITION

- 4.1 In law, we all owe a duty of care not to injure or harm our “neighbour”, which is any person that we invite into our premises, or who might use facilities we provide or who might participate in activities or events we organise/manage. This is the duty of care the law expects.

5 BREACH OF THE DUTY OF CARE

- 5.1 Where the duty of care owed has been breached by some negligent act, error or omission the negligent party can be sued in law for damages. In today’s litigious society, claims volumes are increasing and there is a high standard of care expected by the courts. The insured party must prove that it did everything reasonably practicable to avoid the injury loss or harm and that it had not been negligent. The pursuer to succeed in any claim must prove that their loss was caused by the negligence of the defendant and a direct causal link between the negligent act and the losses suffered.

6 WHY THE NEED FOR PUBLIC LIABILITY INSURANCE

- 6.1** In the event of an alleged act of negligence causing third party injury or damage, the pursuer is not likely to go away simply because a body such as a Community Council does not hold Public Liability Insurance. The fact is that an action can still be pursued in law against the Community Council and its officers. A Public/Products Liability Policy will provide a Community Council with cover for its legal liability for accidental death/bodily injury to third parties and or damage to third party property arising from the activities of the group, as long as these activities have been fully disclosed to and accepted by the insurers concerned. Failure to disclose material information on a risk/event could invalidate the policy cover.
- 6.2** Additionally, most policies will extend or can be extended to cover Member to Member liability and also to indemnify individual officers, personally, in the event that an action is presented against an individual rather than the Community Council.

7 CLAIMS COSTS

- 7.1** The highest single injury award in the United Kingdom is currently £4.37m, and no party is exempt from the law. Without the backing of an insurer, there could be situations where personal liability has to be a feature of an “uninsured” loss. Claims such as injury losses are very difficult and expensive to investigate and to defend. In the absence of an insurer to pick up legal/investigative costs and if found legally liable damages, how would a Community Council fund the loss?

8 INDEMNITY LIMIT

- 8.1** The indemnity limit is the cover limit any one loss, or series of claims arising from any one loss. Where claims costs escalate is in a situation where the third party is seriously injured and requires future care provision. The advice offered is to purchase as high a level of cover as is reasonably affordable, having given due consideration to the risks. Since the mid to late 1980's the recommended minimum cover limit for any one event has been £5m. It has to be remembered that the Indemnity Limit applies to any one event and therefore if there are multiple injuries arising from a single event the limit is the total of the insurers liability for all losses arising.

9 INSURERS

- 9.1** There is little competition in the market place today as there are fewer insurers now, following mergers/takeovers. There is a facility for Community Councils Insurance which we believe is underwritten by Zurich Insurance Group, and which can be accessed directly by contacting Zurich Municipal Community Insurance Centre, Mountbatten House, Grosvenor Square, Southampton. SO15 2RP.

10 CONCLUSION

10.1 Public Liability Insurance is not a statutory insurance coverage, but organisations that operate without this cover face the possibility of funding claims costs from their own resources and this could involve potential personal actions against committee members/officers for a recovery of third party losses. Our advice will always be to transfer these risks to the insurance market, by taking out appropriate Public/Products Liability Insurance, having first sought professional advice from an Insurer or National Broker.

10.2 All of the foregoing was discussed in detail with Mr Ashley Bell during his visit to our office in Holmquarry House on 1st June 2005.

11 RECOMMENDATIONS

It is recommended that;

- (i) members/officers note the outcome of the Community Councils Insurance Report;
- (ii) approve the proposals set out within the Report; and
- (iii) otherwise note the contents of the Report

Alex McPhee
Executive Head of Finance