

## Its a liability

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In the last issue I examined the extensive role and duties of a rugby club treasurer. With responsibility comes accountability and sometimes liability. Since the last edition of Running Rugby, the Court of Appeal has published its judgment in the case of *The Crown v RL and JF*. This case is not only relevant to rugby club committee members but should also be noted by the general members of a rugby club.

For those who are not aware of the case in which the Environment Agency prosecuted the chairman and the treasurer of a golf club, I will provide a brief summary. An underground pipe, carrying heating oil from its storage tank to the boiler, was fractured when independent building contractors carried out work on the ground above. The heating oil escaped through the ground and some 1,500 litres or more found its way into a nearby watercourse, polluting it. The land on which the tank, the boiler and the pipe all lay was occupied by an unincorporated association, a members' golf club. The club also owned those several installations.

Neither the chairman nor the treasurer of the golf club was personally to blame for what happened or had done anything beyond being a member of the club which maintained the tank and pipe. However, the two committee members were charged with a strict liability offence under Section 85 of the Water Resources Act 1991. Anyone who is convicted of the offence faces imprisonment for up to two years and/or a fine.

The case was first heard at Taunton Crown Court, where Judge Overend ruled that the golf club could have been prosecuted as an incorporated association, but none of its 900 individual members could be prosecuted in the absence of an element of personal culpability.

This judgment had some very debatable analysis of the relevant law and resulted in an appeal from The Environment Agency. The case was next heard in The Court of Appeal, where Lord Justice Hughes held that not only could the club be prosecuted but so could any of its individual members.

According to Lord Justice Hughes, "It is for the Crown in any individual case to determine the defendant(s) whom it seeks to prosecute. The court would interfere only in the very limited case of oppression involving abuse of process."

For procedural reasons, and because in this case the Crown accepted that it could take action against the club, the two men were acquitted. However, I doubt that the lives of the two gentlemen were without significant stress whilst the legal case took its course and they may well have had to finance their legal costs whilst defending themselves. It is therefore imperative that members' clubs consider how they and their committee and members would fare if they were in a similar situation.

When the case was first heard in Taunton Crown Court the judge decided on the respective liability of members of unincorporated associations and those of incorporated ones. The judge in The Court of Appeal said the trial judge was wrong to argue that there was no reason why the criminal liability of members of an unincorporated association should be any different to that of the officers of a corporation. The conclusion, therefore, is that those running an incorporated club or company are generally in a much more favorable position when it comes to liability than those running an unincorporated club.

Lord Justice Hughes, the judge in The Court of Appeal said, "A corporation has, for all legal purposes, independent personality. It is also regulated, often heavily. It must have a registered address, registered directors and a secretary."

An unincorporated association may indeed look very like a corporation in some cases and it may have standing and de facto independence, but equally, it may not.

Lord Justice concludes, "A prosecution which could only be brought against an informal grouping of building workers or sportsmen or campaigners would be likely to be wholly ineffective. It is a necessary consequence of the different nature of an unincorporated association that all its members remain jointly and severally liable for its actions done within their authority."

Many older clubs have a pre-existing structure where the significant assets, usually the land and the clubhouse, are owned and held within a limited company. This is also a sensible structure for attempting to minimise any risk to the members including those on the committee. It is not a matter of ensuring that no liability arises - the club's license to occupy the premises attaches responsibility - but insurance can minimise a lot of potential problems.

To follow are some matters to consider when assessing your position. These are simply examples. Your club should add to and tailor them to suit your structure and situation:

- Assess the major risks; utilising specialist advice if necessary;
- Take reasonable steps to minimise those risks;
- Record the process that shows that the club committee has reviewed the risks and considers that those remaining are acceptable;
- Assess which laws apply to your club and seek advice if necessary e.g. health & safety, employment, taxation, child protection, fundraising environmental etc.;
- Ensure that you comply with all the relevant laws and that members buy in to the example set by the committee;
- Assess with an insurance broker what matters can be protected by insurance;
- Make certain that you do not unwittingly breach conditions in any contract of insurance;
- As a result, consider whether your structure is the most appropriate one, do you need a structure including a corporate body and if so what type;
- Regularly repeat the process; it is not a one-off procedure.

Finally, keep the issue in perspective. Very few management committee members who act honestly and diligently and within the law when managing your club suffer any financial loss as a result of their role. However, this case and the litigious world in which we live shows you can never take it for granted.

