

LIABILITY OF GOVERNORS

The lack of legal protection for College Governors being sued in certain (extreme) circumstances has been an area of contention between Colleges and Government for some years. The Learning and Skills Act 2000 now provides a significant degree of protection through section 145. The following is an extract from a circular issued on the subject by the Association of Colleges (circular 4/00):

“In most circumstances, if there are major problems at a college which results in losses to a third party (such as a supplier) the aggrieved person is likely to sue the College as a legal entity. However, in certain situations, it would be possible for that person to sue individual governors on the basis that it was their action, or failure to act, which had resulted in, or contributed to, the loss. It might also be possible for a successor Corporation to sue their predecessor individually on a similar basis. In such circumstances, if the governor is found to be liable his/her personal assets could be at risk. The Association has long taken the view that it is unfair that governors who undertake duties for no remuneration should be at risk in this way if they have acted honestly and reasonably. In essence Section 124 now provides that where a governor is faced with civil legal proceedings, or with the possibility of legal proceedings, s/he can apply to the court to be excused liability. If it satisfied that the governor has acted honestly and reasonably, the court is then empowered to make an order extinguishing, reducing or varying the liability. Relief would not however be available in respect of any criminal proceedings.

This approach to limiting liability is similar to that adopted in Section 727 of the Companies Act 1985 and in Section 61 of the Trustee Act 1925. Section 145 of the Learning and Skills Act does however go further than either of those, in that it extends coverage to all types of civil liability and to actions by third parties as well as by the Corporation itself”

The College has governors liability insurance of £1m in a standard form which will provide protection for Governors in the unlikely event of anyone suing them as a Governor of the College.