



WATER POLLUTION AT GOLF CLUBS

Adrian Houstoun, the legal expert talks about water pollution at golf clubs to GCM editor, Alistair Dunsmuir.

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Alistair: I recently heard about a case in which the Environment Agency prosecuted the chairman and treasurer of a golf club over a water pollution issue linked to pipes owned by the golf club. What happened in this case and how can clubs minimise their liability?

Adrian Houstoun: You are referring to the recent case of *The Crown v RL and JF*. This case is not only relevant to golf club committee members but should also be noted by the general members of a golf club.

For those who are not aware of the case, 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 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.

For procedural reasons, and because in this case the Crown accepted that it could take action against the club, the two men were eventually 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.

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, for example health and safety, employment, taxation, child protection, fundraising, environmental and so on;
- ✎ 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 a 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.

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