

PERSONAL LIABILITY

The Court of Edinburgh Napier University is the University's governing body and is constituted as a body corporate under statute. This means the Court is a legal entity in its own right, separate from its individual members. In broad terms the liabilities of the Court can be enforced only against the Court (as distinct from its individual members) and can be satisfied only against its assets.

In common law, Court members have certain fiduciary duties and duties of skill and care. In observing these duties you must act *bona fide* in the best interests of the University and must not (a) make any secret profit or gain at the University's expense, (b) fetter your discretion to act in the best interests of the University or (c) place yourself in a position where your interests may conflict with those of the University. You must act honestly and reasonably.

It is unlikely that a Court member would be held liable for breach of duty or for acting negligently unless she/he had been grossly negligent.

The Human Rights Act 1998 came into force on 2 October 2000 and has clear implications for the University as a public authority, subject to terms of the Act. The Human Rights Act does not impose any particular burdens on you as a member of Court. The burden on the University as a whole is significantly increased but it does not have separate implications for an individual member of Court's own liability.

The Royal and Sun Alliance's Policy on Directors and Officers Liability Insurance provides cover for the members of the University Court as well as any Directors of the University's commercial subsidiaries.

CHARITY LAW REQUIREMENTS

The Charities and Trustee Investment (Scotland) Act 2005 came into full effect on 24 April 2006 and established the Office of the Scottish Charity Regulator (OSCR). All universities in Scotland are also registered charities and are therefore subject to this legislation. OSCR intends to conduct a Rolling Review of existing charities to ensure that they comply with the charity test set out in Section 7 of the Act. Universities and students' associations are due to be included in the first phase of the Review, although at the time of writing the timescale for this is not yet clear.

For the purposes of this legislation, members of Court are regarded as 'charity trustees'.

The Act specifies that a charity trustee must:

- act in the interests of the charity
- seek, in good faith, to ensure that the charity operates in a manner that is consistent with its objects or purposes
- act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person
- ensure that the charity complies with the provisions of the Act, and other relevant legislation.

In addition to the general duties of charity trustees, the Act also puts specific duties on charities which charity trustees must ensure are met. These additional duties include:

- logging charity details on the Scottish Charity Register
- reporting to OSCR
- financial record keeping and reporting
- control of fundraising activities
- providing information to the public

OSCR has published detailed guidance for charity trustees on its website: <http://www.oscr.org.uk/PublicationItem.aspx?ID=5b7d7df4-8d70-4aa7-af64-2d65c21ae22d>

The Protection of Children and Vulnerable Adults (Scotland) Act 2007 means HEI charity trustees fall within the scope of regulations governing work with children. As an HEI charity trustee, you are therefore required to obtain a 'disclosure' certificate. The University Secretary's office will co-ordinate the process of obtaining your disclosure certificate as part of the annual update of the Register of Interests.

Other useful information and guidance can be accessed from the OSCR website homepage at: <http://www.oscr.org.uk/Index.stm>

REGISTER OF INTERESTS

You must disclose any pecuniary or other material interest which might conflict with any business coming before the Court or its sub committees. This code of practice is necessary to ensure the highest standards of probity are observed by the University in the conduct of its business.

The Central Register of Interests is kept in the University Secretary's office and is available for public inspection. The individual declarations of interests are updated annually at the beginning of each Academic Session (eg early October) but any significant changes in your interests which occur during the Academic Session must be notified immediately to the Secretary.

You are expected to declare your interests in any item of business considered by the Court or its sub committees before the item is discussed and any declaration is recorded in the minutes of the meeting of the Court or its sub committees. The Chairman of Court or its sub committees will then rule on the appropriate behaviour expected of you. This will depend upon the particular circumstances of the item of business. The options open to the Chairman are:

- a) allow you to remain, speak and vote on the item
- b) permit you to remain but not to speak or vote on the item
- c) request you to leave the meeting for the duration of the item

If in doubt, speak with the Chairman or the University Secretary.