

LEGAL POSITION OF COMMUNITY HEALTH COUNCILS

It will be recalled that at the meeting held on 11 January 1978 the legal position of Community Health Councils Corporate of individual members and officers was briefly discussed and it was agreed to take advice from the Regional Health Authority's legal department. This advice is as follows:-

1. STATUS OF COMMUNITY HEALTH COUNCILS

Under s.20(1) and (2) of the National Health Service Act 1977 it is the duty of the Secretary of State to establish Community Health Councils.

Community Health Councils are corporate and autonomous bodies. Their primary duty is set out in s.18 of the governing Regulations as follows:-

"It shall be the duty of each Council to keep under review the operation of the health service in its district and make recommendations for the improvement of that service or otherwise advise any relevant District Authority and any relevant Committee upon such matters relating to the operation of the health service within its district as the Council thinks fit".

There are obligations to give information to a Council with rights of appeal against refusal (but this does not apply to a proposal to establish an NHS Trust or where the appropriate authority is satisfied that a decision must be taken without consultation - there are rights of "appeal" on the latter point) and limited rights to enter premises (including Trust premises) but it is provided that.

"Confidential information about the diagnosis and treatment of individual patients or any personnel matters relating to individual officers employed by a health authority or Committee shall not be given to any Council or member or officer of a Council and subject to [appeal] a District Authority or Committee may refuse to disclose to a Council any other information which the Authority or Committee regards as confidential".

Specific provisions for consultation of CHC's include:-

National Health Service Trusts (Consultation on Dissolution) Regulations 1991 (S.I. 1991 No 1347)

National Health Service (Service Committee and Tribunal) Regulations 1977 (S.I. 1974 No 455)

National Health Service (General Medical and Pharmaceutical Services) Regulations 1974 (S.I. 971 No 160)

The publication "Consultation and Involving the Consumer" published by the NHS Management Executive gives further details as to the rights and duties of CHC's.

There is also an Association of Community Health Councils (see S.I. 1977 No 874).

Members should properly disclose their interest in any matter before the Council or its Committees.

The Community Health Councils (Access to Information) Act 1988 provides for public access to meetings documents and membership information relating to CHC's. There are provisions for the public to be excluded from proceedings in various cases including where "information relating to the financial or business affairs of any particular person" is concerned. It will normally be appropriate to invoke this right in such matters in order to avoid defamation risks (see below) and to observe natural justice in favour of those individuals.

2. RESPONSIBILITIES

The Regional Health Authority exercises an agency function on behalf of the Secretary of State in accordance with NHS (Community Health Councils) Regulations 1985 (S.I. 1985 No 304) as amended by the 1990 (S.I. 1990 No 1375) and 1991 (S.I. 1991 No 275) Amendment Regulations ("Regulations") in respect of the establishment of the Councils the appointment of officers the administrative arrangements made for provision of accommodation services etc the payment of approved expenses and the payment of travelling and other allowances to members. However the Regional Health Authority has no statutory control over a Community Health Council in the discharge of its functions. If malfunctioning were suspected or evident the Regional Health Authority could make representation to (1) the Community Health Council Chairman and then if necessary (2) the Department of Health. In the matter of administrative arrangements and expenditure ie pay travelling expenses and members allowances etc they would need to be satisfied that the statutory requirements and Whitley Council Conditions of Services were met.

The Regulations spell out the rights details and procedures of CHC's in considerable detail and should always be consulted on any relevant point.

3. EMPLOYMENT OF COMMUNITY HEALTH COUNCIL STAFF

Under the relevant Regulations Community Health Council staff are appointed by the establishing authority (the Regional Health Authority) but only such staff as are acceptable to the Community Health Council shall be appointed. The termination of the services of an officer would be by the same token subject to the views of the Community Health Council.

4. LEGAL LIABILITY

The Regional Health Authority or District Health Authority would have the same legal liability to members of the Community Health Councils visiting National Health Service property as it does to other people properly on such premises and it would therefore be liable for loss or injury caused to a Community Health Council member either by a failure to take the reasonable care of "visitors" required under the Occupiers Liability Act and the Health and Safety at Work Act or by the negligence of a member of the Authority's staff acting in the course of his/her employment.

There is also a provision for a Community Health Council to exercise its functions through a committee appointed by it. A Community Health Council must also report annually to the establishing authority on the performance of its functions.

The above Regulations provide that CHCs should direct their representation or recommendations about the general practitioner services to the Family Health Services Authority. Such matters to which CHCs might wish to direct their attention may include the general effectiveness of the service collaboration between the health services and related local authority services and the availability and standards of services.

The Regional Health Authority's legal involvement with and for Community Health Councils is normally limited to matters of property purchase and leases. However the services of the Regional Health Authority's legal advisers are always available to give advice on any matter including legal action claims for damages against the Community Health Council its members or servants. Requests for advice must be directed through the designated regional officer and not made direct to the solicitors.

5. DEFAMATION

Community Health Councils as bodies or their members individually may be concerned that as a result of their reports and proceedings of the Council an action for defamation might lie. However a report or statement made by a Community Health Council or Committee in the discharge of its public duty whether legal or moral to a person or body under a corresponding interest or duty to receive that report or statement is protected in regard to possible defamation proceedings by the defence of Qualified Privilege. The defence of Qualified Privilege would be lost if the report or statement were activated by malice (which does not require malice in the common sense of the word but only the establishment of an improper notice or a belief or knowledge that a statement is not true) or if the degree of publication is excessive i.e. if it were published beyond the limits of those who have a duty of interest in receiving it.

Further possible defence against claims for defamation are Justification (that the statement complained of is true) and Fair Comment. Fair Comment as a defence has 3 elements:-

the statement in question must be a comment and not a statement of fact;

it must be honest comment based on facts truly stated; imputations of corrupt and dishonourable motives must be warranted by the facts;

the matter commented on must be a matter of public interest such as the manner in which a public body performs its functions or the management of a public institution.

Provided members confine their comments and reports to matters within the scope of the Community Health Council's functions and the individual members are definitely exercising functions delegated to them by the Community Health Council and provided they are free from malice the above defence should be available to them subject of course to the same limitations. However care must be taken because

of the disproportionate effect of costs and charges in defamation actions upon the ability to defend them.

Members of the Community Health Councils are in no different position than other members of Health Authorities. It is one of the hazards of public life that comments made publicly are subject to scrutiny and for this reason it is important that comments are not made which would place the members in a position when an action for defamation could be brought against them.

6. **COMPLAINTS**

When dealing with complaints members of Community Health Councils should be very careful to maintain "leak-proof" confidentiality.

7. **TERMINATION OF MEMBERSHIP**

Under the CHC Regulation s.9(3): if the establishing authority is of the opinion that a member has been guilty of misconduct such as to render him unfit to be a member it may having consulted the relevant appointing body and the Council terminate that member's term of office.

8. **MEMBERS EXPENSES**

Under s.16(4) of the above Regulation it shall be the duty of a Council not to incur expenses in excess of the expenses approved for that Council by the establishing authority.

SOUTH EAST THAMES REGIONAL HEALTH AUTHORITY

COMMUNITY HEALTH COUNCILS - ACCIDENT INSURANCE FOR MEMBERS

1. The Department of Health and Social Security has advised that if a Community Health Council member was to be injured or killed during the course of his or her service as a member his/her case would be sympathetically considered on its merits and the Secretary of State has power to pay compensation at his discretion to the member or the widow or widower. In considering the case regard would be taken of all relevant factors including the nature of the accident and the resulting degree of impairment and in the unfortunate event of death to the circumstances of any dependents such as the age of the widow or widower and the age of any children.
2. Where Community Health Council members undertake activities off National Health Service premises but in pursuance of Health Authority business the Department has advised that Health Authorities should apply the principles outlined in Circular HM(72)6 relating to voluntary workers These provide that:-
 - 2.1 the acceptance of responsibility and liability for activities undertaken within the scope of their work;
 - 2.2 the provision of legal representation where civil proceedings arise from prescribed activities and the reimbursements of any damages awarded against such workers;
 - 2.3 where an accident occurs a claim may be relevant against the Health Authority if no legal liability exists a claim for an ex gratia payment would be considered on its merits;
 - 2.4 no responsibility can be accepted for loss or damage to personal property on Health Authority premises however caused.
3. Where a member uses his/her car on official business and claims mileage allowances it is a requirement that his/her insurance policy provides cover while the car is on official business for full third party insurance including cover against risk of injury to or death of passengers and damage to property.
4. Members during the course of their duties will visit hospitals and use the car parks provided. In such instances vehicles are left at their owners' risk and the Health Authority would not be liable for any loss or damage to such vehicles or their fixed accessories unless it could be proved that this was caused by the negligence of the Authority's staff or for any loss of contents (including loose accessories).