

Section 8

Legal and insurance

Introduction

Educational off-site activities carry with them the potential for incident and accident. The number of reported, serious incidents is small due to the care and professionalism of teachers, leaders and the managers of those involved in. However, organisers and leaders are understandably concerned to know what their legal position would be in the event of an accident or injury to participants.

Statutory law

- 1) Those who have responsibility for schools or other premises should make themselves aware of their obligations under the following legislation.
 - The Health and Safety at Work act (1974)
 - The Occupiers Liability Acts (1957 and 1984)
- 2) In general, the provisions of these Acts do not relate to activities away from the school premises, however, duties under the Occupiers Liability Act fall upon the occupiers of any land or premises to which pupils may be taken. Some occupiers may request to be indemnified against any claims in connection with this Act. County regulations require that any such requests be referred to the Council's Legal Section before being accepted (see paragraphs 48 onwards).

Common law

- 3) Common law concerns itself with act of negligence. Negligence can only be established where there exists a "duty of care", and where the loss or injury suffered was a foreseeable consequence of an alleged act of negligence.
- 4) The duty of care, which applies, to a teacher/leader in charge of young people under the age of 18 is that which is understood by the term "in loco parentis". In order to fulfil this staff must:
 - ensure that their actions are compatible with those expected of a careful and prudent parent
 - ensure that their actions take account of the age and known propensities of particular children
 - exercise sound judgement, commensurate with their knowledge, experience and training
 - ensure that their actions are in line with well developed and accepted practice

- 5) Provided that a teacher/leader s considered to have fulfilled these obligations placed upon them, they should be in a position to defend themselves against any claims of alleged negligence arising from an accident to a young person in his or her care.
- 6) In deciding whether a member of staff has exercised reasonable care, a court would take into account their knowledge, experience and training. If an injury occurred as a result of negligence, or lack of training or experience on the part of a teacher/leader then not only would the teacher/leader be liable in law but also the LEA would be vicariously liable as the employer provided that the teacher/leader acted within the scope of their employment. Where an Education Authority has issued regulations and guidance on safe practice, then the teacher would also be expected to be familiar with this and, as far as is reasonable, to have acted in accordance with it.
- 7) In order to meet its legal obligations and to safeguard its staff, the Council holds public and employer's liability insurance policies through which it insures its legal liability for loss or injury, to any person or property arising through the negligence of itself or its staff.

Activities which have the approval of the Deputy Director Office of Children and Young People's Services may take place on school premises during or after school hours and away from school premises with or without direct supervision. The insurance policies held should not be considered in isolation. The Deputy Director Office of Children and Young People's Services sets health and safety guidance and minimum standards covering activities taking place within the education sphere and from time to time he issues directives and circulars on various subjects. These give delegated authority to headteachers to arrange visits etc and lay down minimum standards of supervision, levels of qualification and rules applicable to specific activities.

- 8) Claims for damages may arise in any situation and the standard of care required of the Authority and any employee acting on its behalf varies according to the nature of the activity and the age of those taking part. Higher risk places are probably easy to identify, ie laboratories, workshops and gymnasias and a greater degree of care and control would be expected here. Similarly some outdoor pursuits carry a greater risk of injury to the participants, for example sailing, rock climbing and mountain walking.

Insurances

GOVERNING BODIES WHICH HAVE CHOSEN NOT TO INSURE WITH THE LEA SHOULD ENSURE THAT THE PROCEDURES IN THIS MANUAL SATISFY THEIR INSURER'S REQUIREMENTS.

Insurance provided by the LEA

Legal liabilities

- 9) Liability may be defined as being legally answerable for something carelessly or negligently done or omitted and may arise in connection with the actions of an employee or the ownership or occupation of property or land. Whether it is an individual or a corporate body that duty of care remains.

- 10) By taking out policies of insurance the Authority is protecting itself and the governing body of the school or college against the financial consequences if the injured party successfully brings claims for damages against either of them. Liability risks are normally divided into employer liability (for injury to employees) and third party - also called public liability - for injury/damage to all persons.

Employer's liability

- 11) This policy covers the legal liability of the Authority to its staff. An employer's liability claim is a negligence claim brought against an employer by a member of staff who has suffered injury at work.
- 12) Should another employee cause the accident the employer would normally be liable provided that the employee responsible was acting within his authority. If the claim is directed against the employee, or he/she is sued along with the Council, the policy has been endorsed to give the defendant employee a personal indemnity from damages.
- 13) The employer has a general duty to all employees to maintain safe plant and machinery, a safe system of work and safe premises and to ensure adequate instruction, training and supervision of all staff. Damages are normally claimed for alleged negligence or breaches of duty under specific regulations such as the Health & Safety at Work Act 1974.
- 14) Most employers are obliged by law to hold employer's liability cover and to display a current certificate of insurance at each place of business. This is laid down in the Employer's Liability (Compulsory Insurance) Act 1969. Local Authorities are exempt from the requirement to insure but the liability to employees still remains. Cambridgeshire Council has chosen to hold insurance rather than carry the risk but is not required to display certificates of insurance at its premises.
- 15) The employer has a general duty to all employees to maintain safe plant and machinery, a safe system of work and safe premises and to ensure adequate instruction, training and supervision of all staff. The Council is not obliged by law to hold employers' liability insurance. A policy decision has been taken to effect such cover and the policy provides an indemnity of £20 million.
- 16) It should also be stated that if the injury is not attributable to negligence on the Authority's part but is caused by a third party, for example the driver of another car involved in a road accident, the employee's redress in law lies against that person or corporate body rather than the LEA.

Public liability

- 17) This policy covers the legal liability of the Authority to a third party. A liability claim is a claim for compensation arising from an incident which has caused loss, damage or nuisance to another for which they feel the Council may be responsible.
- 18) This policy protects the Authority against the financial consequence of such a claim. The policy jointly indemnifies the Council, any employee acting in the course of their employment and any volunteer acting within the scope of their authority.

- 19) Insurers will not provide cover for deliberate acts, which are certain to cause damage to property or personal injury, therefore the accident must arise from the occurrence of a fortuitous event. The main exclusions in the policy are risks, which are more properly insured elsewhere, such as motor, engineering, employer's liability, flying and fidelity risks.
- 20) A limit of indemnity of £30 million currently applies to this policy.

Voluntary assistance

- 21) The LEA encourages the appropriate use of volunteers in schools and colleges. Heads should be aware of what action they must take and what insurance cover is provided when volunteers are used. The following notes must be read in conjunction with any safety rules and regulations, which have already been issued covering specific activities, and particular attention should be given to the Notes of Guidance in this manual on the supervision of educational visits.
- 22) When voluntary helpers are permitted to assist with sporting and other specialised activities under the overall direction of an appropriate member of the school teaching staff, it is essential that they have the same standard of proficiency for dealing with that activity that would be expected of a council employee to whom the head would entrust such responsibility. Voluntary helpers who are to be in sole charge of such specialised activities must have the appropriate knowledge and relevant qualifications.
- 23) **HEADS/SENIOR YOUTH WORKERS MUST:**
- **KEEP A SPECIFIC LIST OF ALL HELPERS THAT THEY WISH CURRENTLY TO USE**
 - **ENSURE APPROPRIATE CRB CHECKS HAVE BEEN CARRIED OUT**
 - **GIVE SPECIFIC INSTRUCTIONS TO THE VOLUNTEERS AS TO THE ACTIVITIES WITH WHICH THEY MAY HELP AND THE LIMITS OF THEIR RESPONSIBILITY AND GIVE CLEAR INSTRUCTIONS ON SAFE PRACTICE WHEN USING SPECIALISED EQUIPMENT.**
 - **ENSURE THAT ALL VOLUNTEERS ARE AWARE OF SAFETY REQUIREMENTS AND EMERGENCY PROCEDURES.**
- 24) For volunteers regularly, frequently or extensively assisting with school activities it is recommended that the form 'Authorised Volunteers Record' be used to clarify understanding and to formalise the use of such volunteers.

Insurance cover for volunteers

- 25) The Council's liability policy covers legal liabilities of the Council and voluntary helpers acting on its behalf. The Council insures its liability to the voluntary helpers should they sustain injury and pursue a claim for damages and liability for their activities in the event of a claim resulting from those activities being made against either the Council or the voluntary helper personally. This policy covers all authorised educational activities run by the Council but specifically excludes motor vehicle risks.

- 26) Where privately owned vehicles are used the responsibility for insurance of the vehicle rests with the owner and driver concerned. The Council cannot provide insurance to protect the interests of the car owner/driver in the event of an accident (see paragraphs 36-38).
- 27) The Council has a responsibility for the actions of volunteers authorised to perform duties on its behalf, should they cause accidental personal injury or damage to someone's property. As would be the case for employees it is expected that volunteers will take all reasonable care to prevent accidents occurring. Special care and consideration is needed when dealing with young children, the elderly and handicapped persons.
- 28) Volunteers should be aware that if they act beyond the scope of instructions given, they would be legally responsible for any claims that arise as a result of their actions.
- 29) In addition to the legal liability cover, arrangements have been made by the Authority to take out a personal accident insurance for volunteers. This insurance provides an agreed capital sum in compensation, irrespective of blame, for death or serious disabling injury. For temporary total disablement a weekly benefit would be payable for up to 104 weeks.
- 30) Personal property is brought onto Council premises at the owner's risk. The exception to this rule is where property is handed to teacher for safekeeping, as happens in games lessons or when the pupil's property is confiscated during classes.

Use of motor vehicles

County and school owned vehicles

- 31) The Council holds comprehensive insurance cover in respect of the vehicles owns, leased or hired by it. School minibuses are included under this policy only where formal notification has taken place.
- 32) Vehicles must only be used on official business and by drivers who have the approval of the principal or head. A minibus driver permit is issued to drivers authorised to drive minibuses following a proficiency test taken by the driver (see below).

Minibuses

- 33) The operation of minibuses is subject to Council policy as detailed in the "Minibuses: Regulations and Operational Guidelines, 1997 (Revised 2002). These are available hard copy from Insurance & Risk Management / Transport Officer or electronically from the following web link <http://camweb/resources/audit/minibuses/index.cfm>

Privately owned vehicles

- 34) The responsibility for insurance of private vehicles belonging to governors, employees and voluntary helpers (including parents) rests with the owner or driver concerned. Any employee planning to use his or her must hold a 'business use' extension within their motor insurance policy. It is essential that employees hold the appropriate form of insurance permitting business use and that this is verified in accordance with Council policies.

- 35) For non-employees there is no similar 'business use' requirement because social, domestic and pleasure normally suffices, where a volunteer driver is undertaking regular paid journeys they should notify their insurance company.
- 36) The LEA is indemnified in respect of inadvertent failure of individual policies by employees/governors/students/voluntary helpers/councillors to provide adequate cover when using their own private cars on school business. The policy would not protect the driver's interests but is solely intended to deal with a claim directed against the Authority arising out of the failure of the driver's insurance.

Contract school buses and taxis

- 37) Insurance of these vehicles rests with the firm or individual who has contracted with the LEA to provide the service.

Motor contingent liability policy

Vehicles on temporary hire

- 38) If an employee hires a self-drive minibus for use in connection with a school trip, he or she must arrange insurance through the Council's insurance policy by prior notification to the Insurance & Risk Management Section. Phone 01223 717267 / Loans & Insurance Section, Peterborough, tel : 01733 742050. A premium will be charged for the insurance of temporary vehicles.
- 39) Within the terms of the 4th EU Motor Directive details of all temporary vehicles must be submitted to the government Motor Insurance Database (MID). The information required will be the period of hire, vehicle registration number, make model and vehicle derivative, engine size, weight and number of seats. This information should be obtained from the hiring company at the time of hire and provided to Education Finance who will undertake submission of the data. Failure to provide this information for submission to the MID could result in a £5000 fine and, should the vehicle be abroad at the time possibly result in additional administrative difficulties.

Use of vehicles abroad

- 40) The motor vehicle policy can be extended to cover the use of vehicles on visits abroad. Drivers must be aged 25 or over and have had several years experience of driving minibuses. A letter of authority will be issued for the visit in the names of the Council and the drivers concerned. It is strongly recommended that a Travel Insurance package should be taken out to cover vehicle break down or damage in an accident and additional travel/accommodation expenses.

Uninsured risks

Personal injury

- 41) There is no automatic right of compensation for injury for any employee, student or third party who sustains injury as a result of an accident in connection with the Authority's activities. With the exception of the personal accident policies arranged in accordance with nationally agreed conditions of service, compensation would only be payable if the Authority were held to be legally liable and a successful claim could be made against either the third party or employer's liability policy.

Personal property

- 42) The Authority does not accept responsibility for loss of damage to personal property (including vehicles) belonging to employees, students or club members. All property is considered to be brought onto the premises at the owner's risk. This applies generally to property held there during the day or overnight.
- 43) The exception to this rule is where property is handed to teacher/leader for safekeeping, as happens in games lessons or when the pupil's property is confiscated during classes. In such instances the school/centre accepts the responsibility for any loss or damage, as this will not be covered by insurance.

Travel insurance

- 44) This is recommended for organised trips. Please see details of the scheme available from Insurance & Risk Management, Resources Directorate, Shire Hall / Loans & Insurance Section, Peterborough, tel : 01733 742050

Recommended additional insurance

- 45) It is important for the organisers of school visits and journeys to:
- obtain parental consent (see Section 2);
 - consider taking out additional travel insurance, including personal accident cover for participants, appropriate to the nature of the visit. For example:
 - recommended insurance content for journeys within the UK;
 - expenses that may be incurred by one of the organisers staying behind with a sick member detained at a distant centre
 - additional expenses in transporting home any sick or injured person on medical advice or, in the event of death, the body or ashes of such person
 - expenses necessarily incurred by the parent or guardian of a sick or injured person
 - travelling to visit such person on medical advice
 - loss and/or damage to personal luggage and loss of money
 - additional expenses incurred through the enforced extension or curtailment of, or forced change in the planned itinerary of the journey, by reason of strike, riot or civil commotion

- loss of deposits owing to compulsory abandonment of the proposed holiday or journey
- personal accident compensation in the event of any member of the party sustaining permanent disabling injury or death
- additional expenses if the death, injury or illness of an immediate relative of a member of the party results in the member having to return home

46) Additionally for visits abroad (see also Section 4) it is important to take out cover for medical, surgical, nursing and other like expenses incurred as a direct result of illness or injury to any member of the party and to apply for the reciprocal (E111 form) arrangements available for EEC countries. All travel insurance arrangements should be in the joint names of the organiser and the LEA.

Visits to industrial premises

- 47) Such visits may well carry specific hazard as a result of the nature of the site, which may result in a claim of negligence being made against the factory occupier. As a result many industrial concerns require the Council to indemnify them against possible third party claims.
- 48) In such cases headteachers should critically review the visit, assess the potential hazards and, if the visit is still deemed essential, refer any indemnity forms to Legal Services to be checked and signed on the LEA's behalf. An extension of the insurance cover held may need to be considered in such cases.

The LEA school journey insurance scheme

Summary of cover

The policy covers the following:

- Cancellation and other expenses up to £1,000 per person
- Losses due to the failure of the tour company are excluded
- An excess of £15 applies to each and every claim, excluding loss of deposits only
- Medical, transport and funeral expenses, and parents visiting sick party members in hospital, up to £250,000 per person
- Emergency medical assistance by Axa Assistance UK Ltd.
- Excluded:
 - war risks
 - expenses as a result of sexually transmitted diseases
 - expenses as a result of air travel other than as a fare paying passenger in a licensed passenger carrying aircraft

- The limit of indemnity under Sections 2 and 3 is £2 million in the aggregate.
- An excess of £15 each and every claim applies.
- Personal Accident cover including death, permanent total disablement, permanent partial disablement from any occupation, permanent facial disfigurement, loss of or damage to teeth and dentures and temporary total disablement. The amount of cover depends on the type of injury and age of the claimant.
- Exclusions, limits of indemnity and excess as in Section 2 above.
- Personal Effects and Money
 - Delayed baggage up to £50 per person
 - Theft / loss of personal effects up to £250 any one article
 - Theft / loss of money up to £500 per person.
- For all property belonging to each person the max limit is £1,000.
- In relation to theft of money / personal items the incident must be reported to the police within 24 hours. Claims will not be considered unless this condition is met.
- Exception include contact lenses, fragile / brittle articles and atmospheric or climatic conditions.
- Excess of £15 each and every claim applies.
- Legal liability with a limit of indemnity of £1,000,000. This is in addition to the County's existing third party liability insurance arrangements.
- Pollution, contamination are excluded
- Legal liability other than sudden / accidental subject to a limit of £1 million in the aggregate any one period of insurance.

The above is a brief summary of the cover available. Full details of the policy are available on request to: Insurance & Risk Management Section, Resources Directorate, Shire Hall, Cambridge CB3 0AP. Tel. 01223 717267 / Loans and Insurance Section : 01733 742050.

