

## 3. The Legal Framework for Offsite Visits

For further information, see the Outdoor Education Adviser Panel national guidance webpages via: [www.oeapng.info](http://www.oeapng.info)

### 3.1 Duty of care

- In the context of educational/offsite visits, legal requirements are largely defined by the interface of Health and Safety with Employment Law. The main points of statutory reference have been:
  - Health and Safety at Work Acts
  - Management of Health and Safety at Work Regulations
  - Children Acts
- The above have to be set within the well-established (but evolutionary context) of Common Law, set down in case law, but developed by judges to reflect the changing needs of society.
- All those involved in the planning, leadership and supervision of educational visits have a legal “duty of care” to the young people for whom they are responsible. They have a duty to ensure that those being looked after are kept safe from harm.
- This continues until they return to the care of their parents or guardians.
- Group leaders should note that when they are in charge of young people during offsite visits, the duty of care is a full-time (i.e. twenty-four hours a day, seven days a week) obligation.
- The duty of care is not confined to “normal working hours”, and the use of words such as “holiday” or “weekend break” cannot dilute the duty of care.
- The standard of care that the court expects might vary according to the type of activity, the age and maturity of students and changing conditions.
- Where a non-specialist or non-professional adult (the person traditionally described in Common Law as “the man on the Clapham omnibus”) takes on responsibility for young people, the legal expectation of the standard of care is described as that of a “reasonably prudent parent”. However, when the adult taking on the duty of care has specialist knowledge and/or is working in a professional or employment context, then the law expects a higher standard of care, usually described as the over-arching “Higher Duty of Care”.
- To exercise the Higher Duty of Care, Common Law expectation is that Offsite Visit Leaders ensure that young people are supervised in accordance with the principles of “Effective Supervision”, requiring them to take account of:
  - The nature of the activity (including its duration).
  - The location and environment in which the activity is to take place.
  - The age and gender (including developmental age) of the young people to be supervised.
  - The ability of the young people (including their behavioural, medical, emotional and educational needs).
  - Staff competence and experience requirements.

### 3.2 Discharging duty of care

- The leader’s duty of care can be passed on only at times when responsibility for the care of young people can be reasonably delegated to some other person or persons.
- For example, when a group visits a residential or outdoor activity centre, the group leader can reasonably allow children to be supervised by the Centre’s own staff, provided that he or she is fully satisfied that they are able to do so safely.
- Mr Justice Nield, summed this up in a 1971 case:  
*“... where a school must take their pupils to other premises, they discharge their duty of care if they know the premises and if the premises are apparently safe and if they know that the premises are staffed by competent and careful persons. They further discharge their duty if they permit their pupils there to use equipment which is apparently safe, and is under the control of competent and careful persons who supervise the use of such equipment.”*

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- Therefore to discharge the duty of care, the leader who is responsible for preparing the visit must be able to show that all reasonable steps have been made to establish safe conditions for the children.
- This might, for example, involve pre-visiting a proposed venue, and obtaining written information and assurances that the venue's safety management systems are adequate.
- When duty of care is discharged to others, it is important for all leaders involved to understand and agree beforehand the extent of each others' responsibilities. For example, when a group takes part in an outdoor adventure activity at a residential outdoor centre, the visit leader will normally maintain overall responsibility for the pastoral care of young people, even when instructors with specific technical expertise may be in charge of directing the activity.

### 3.3 Parent and Volunteer assistance

- Many establishments make use of the valuable contributions of adult volunteers (including parents) on offsite visits to help with supervision.
- Volunteer leaders must accept the normal Common Law duty of care towards the young people.
- All volunteer leaders must receive training, appropriate to the role they will be undertaking.
- The role and responsibilities of volunteers must be clearly explained and understood.
- The help of a volunteer is acceptable provided that they have the appropriate experience or competence, and they meet the relevant requirements of the Children Act regarding child protection.
- They should always work under the direct or indirect supervision of a competent Overall Group Leader who remains ultimately responsible.
- Volunteers should not be left to work totally on their own with young people, but if they have been assessed as suitable and competent, they may work independently under the indirect supervision of the employed member of staff.
- Care should be taken to ensure that the insurance arrangements are adequate to cover volunteers.

### 3.4 Acting in accordance with recognised good practice

- In order to fulfil their duty of care, visit leaders should be aware of what is recognised and accepted as normal good practice in the leadership of offsite visits and activities, and they must keep themselves informed of any new developments, and adapt their practices accordingly.
- The LA's "Guidance for the Management and Leadership of Offsite Visits" provides employees with detailed, helpful guidance regarding good practice, and visit leaders should ensure that they are familiar with the current guidance, and understand the general principles involved. However, by definition, guidance is seldom rigid or prescriptive, and therefore visit leaders and managers may still need to discuss and agree at times what is acceptable, and to interpret the guidance according to what is reasonable and practicable in each circumstance.
- Most sports and outdoor adventure activities have recognised governing bodies (for example, the British Canoe Union is the governing body for all canoesports in the UK). These governing bodies have, over the years, established good practice guidelines, and it is vital that all staff who lead these activities operate in accordance with them.

### 3.5 Negligence

- Leaders are obliged to take all reasonable measures to ensure that every young person under their control and supervision is safe and protected from any unacceptable risks.
- The leader must be careful, not careless, or, as it is known in legal terms, negligent.
- Negligence at law means either doing something that the reasonable person in the same circumstances would not do, or failing to do what the reasonable person would have done.
- A group leader should therefore be aware of and comply with current best practice, and be sufficiently knowledgeable and competent to fulfil their leadership responsibilities.

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- The leader can only be expected to act as a reasonable group leader would do - the law expects nobody to be perfect or to do the impossible!
- Those taking responsibility for visits should be reassured that the law takes due account of the principle of proportionality. In general terms, legal expectation is to do that which is “reasonably practicable” and does not require an attainment of “perfection”. Therefore, it is recognised that the systems and procedures put in place to support activity will have taken into account the resource implications.
- The courts do not rush to find school/establishments and teachers/leaders negligent – they accept that accidents can and do happen.
- However, all those with responsibility for planning and leading visits must be able to show that they have taken reasonable steps to plan visits thoroughly and assess and control risks, and should be able to demonstrate that their responses to an incident were within the range of the reasonable responses of a parent.
- A claim for damages on grounds of negligence will only succeed if it can be shown that the party leader or suitable person has not acted reasonably and this failure has directly resulted in injury to a young person or another person.
- The claim would normally be against the Council or governing body on the grounds that they, as employers, are liable for the negligent acts of their employees (see section on “Vicarious Liability” later).
- It is most unusual for an employee or volunteer to be sued personally.
- Employees are protected by the Council’s general insurance policies provided they are acting within the course of their employment (see VG 10 - Insurance and Finance Arrangements).

### 3.6 Claims of negligence

Claims of negligence are much easier to defend if it can be shown that:

- DfE, Local Authority and School/establishment policy and guidance has been adhered to.
- The group leader was appropriately qualified and experienced to supervise or instruct the activity, and that adequate supervision was provided.
- All those going on the activity were fully aware of their roles in respect of each activity.
- The visit was adequately risk assessed, and that all reasonable steps were taken to ensure the safety of the activity before AND during the activity
- The group were adequately briefed about the need for safety, and were warned against foolhardiness, taking into consideration the age, ability and experience of the group members.
- The group were well prepared for the activities, and attention was paid to appropriate footwear, clothing and equipment etc.
- Good practice was adopted in accordance with the relevant sports governing body.
- Parents were fully informed about the visit/activity and that parental consent was granted prior to the visit or activity.
- Full approval was obtained from the relevant levels of authority.
- Technical or expert advice was sought where appropriate, and taken heed of.

### 3.7 Vicarious liability

- In law, provided the employer knows of, and has approved, the visit in question, then an employee will be acting in the course of his or her normal employment while in charge of young people during the visit just as if they were at their normal place of work.
- As a result, if an accident happens on a visit and a leader has been negligent, then the Local Authority will be responsible for the leader’s negligence in exactly the same way as if he/she were working at the school/establishment. This is known as ‘vicarious liability’.
- Any claim for compensation is therefore likely to be directed against the employer, who would look to its employers’ liability insurance to meet the claim.
- Only in circumstances where a teacher commits an act (or omits to do something) which the employer can describe as being too outrageous to be regarded as being in the course of the employee’s employment can the employer decline to accept liability.

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- Employees should be aware that vicarious liability would not apply to activities carried out without the approval of the establishment in accordance with the Terms and Conditions of Employment.
- The procedures set down in these guidelines must be followed during the planning process and whilst undertaking visits if employees, volunteers and young people are to receive indemnity from the Council against all claims, whether or not negligence can be shown.
- The Governors/Headteachers/Group Leaders could be liable in the civil and criminal courts if a serious incident occurs.
- If it can be demonstrated that these guidelines have been followed, then anyone subject to such proceedings will be better able to defend their actions.
- It is required that all supervising adults only embark on the organisation of a visit if they have the necessary knowledge, skills and understanding of all the activities included.

### 3.8 The Health and Safety at Work Act

- This legislation requires employers and governing bodies of all establishments to do all that is reasonably practicable to ensure the health and safety of all persons, and they must supply their employees with the information necessary to carry out their duties safely.
- The Act therefore places overall responsibility for health and safety with the employer. Who this is, varies with the type of establishment or setting:
- The employer is the local authority for community schools, community special schools, voluntary controlled schools, maintained nursery schools and pupil referral units (PRUs).
- The employer is usually the governing body for trust schools, city technology colleges, foundation schools, foundation special schools and voluntary aided schools. However, these establishments may choose to opt into the local authority visit guidance and its supporting systems as if the local authority were the employer.
- The employer is usually the governing body or proprietor for independent schools and Academies. However, these establishments may choose to opt into the local authority visit guidance and its supporting systems.
- The employer is currently the local authority for various other Children's Services functions, such as Youth and Family Support Service, Music Service, Social Services, Looked After Children.

#### **Section 2(3): -**

- Places a *duty* on every employer to prepare and to revise, when appropriate, a safety policy. This must also include visits and activities.
- The employer must also bring the statement and any revision of it to the notice of employees.

#### **Section 7: -**

Employees have a: -

- duty to take reasonable care for the health and safety of themselves and other persons affected by their acts and omissions.
- duty or requirement imposed on his/her employer or any other person by or under any of the relevant statutory provisions, to co-operate with him/her so far as is necessary to enable that duty or requirement to be performed or complied with.

#### **Section 8: -**

- No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions.
- Legislation requires for the provision of safe premises and a safe environment. This is an important consideration for visits and activities away from the establishment.
- Failure to comply with the Health and Safety legislation could lead to prosecution of the Council, governors or employees. This may result in a fine against an individual person or, in a rare instance, imprisonment.

**3.9 The reporting of serious injuries and incidents**

- Accidents or dangerous occurrences must be recorded and reported in accordance with the Council's accident and incident reporting procedures (refer to guidance provided by the Local Authority's Safety Services), even if such events occur away from the establishment. Failure to comply may result in prosecution.

**3.10 The Management of Health and Safety at Work Regulations**

- An employer has a legal duty to ensure that suitable and sufficient risk management systems are in place, requiring them to provide such support, training and resources to employees as is necessary to implement policy, including access to competent advice. Employers are required to introduce measures for planning, organising, controlling, monitoring and reviewing their arrangements for the management of health and safety.
- Assessments must be made of the risks to which employees, young people and others are exposed, in order that appropriate action might be taken to protect their health and safety.
- The governing body, management team and the staff of the relevant establishment need to work together to develop and implement risk assessments.
- Employees must be provided with information on these measures and given adequate health and safety training.
- In accordance with these requirements, the Local Authority makes available to employees a wide range of Generic Risk Assessments that are applicable to most educational visits.
- All establishments will have a copy of the Management of Health and Safety at Work Regulations, together with other advice and guidance issued by the Local Authority's Safety Services.

**3.11 Foreign Law**

- Young people may still be considered responsible for their own criminal acts, and therefore problems may arise where civil or criminal offences are committed in a foreign country. It is not possible to provide detailed guidance on relevant aspects of foreign law, which varies considerably between countries.
- It is suggested, however, that teachers leading visits abroad should adopt as a minimum standard that which would be expected under UK Law. They should make young people aware of the very serious implications of any involvement in illegal drugs in many countries.
- Leaders should obtain information on basic legal requirements from the Foreign and Commonwealth Office's Travel Advice web site and the appropriate embassy or high commission or the national tourist office and the country to be visited, recognising that the information provided will not be exhaustive.
- Leaders should decide if they need to obtain parental consent for specific activities if they would be contrary to English Law, and not to that of the country being visited. For example, the age at which cigarettes may be purchased or alcohol consumed is different in some other countries than the UK.

**3.12 Young People aged over 18**

- With these young people, the legal principle of *in loco parentis* does not apply.
- However leaders responsible for them, should assume that the standard of duty of care which is owed to them is the same as for young people aged under 18, and that the recommendations within this document still apply.