

## Liabilities and the Covid-19 Situation

These notes have been compiled to assist schools' understanding of the question of liability under the current situation and to assuage concerns that have arisen.

### Managing the risk

For years, schools have had in place risk assessments for general workplace tasks including site management, curriculum activities and off-site trips. Many schools make effective use of the templates ('Toolkits') published on the Safety, Health & Environment (SHE) webpages. This means that the responsibility to have '*suitable and sufficient*' risk assessments in place is achieved.

*Monitoring the effectiveness* of measures put in place to manage risks is undertaken by staff on a day-by-day basis supplemented by contributions from Governors' inspections and checks. For those schools buying the SHE SLA, an audit of your safety management system (including risk assessments) offers an independent check on local arrangements.

*Review* occurs when factors influencing risk assessments change; for example, installing new machines in D&T, a change to premises, science curriculum alterations or new risks such as buying a minibus. *Control measures* will be similar across schools though some may have innovative ways to reduce the risk further; other schools may be influenced perhaps by a bad experience or importing practices from another school – this is understandable but the key principle remains that each school manages risks in a manner which it feels is sensible and proportionate and works for them.

### Covid-19 situation

The advent of the corona virus meant that an unexpected and arguably unforeseeable *change to the risk profile* of schools had occurred. Therefore, there is a responsibility on the employer *to ensure that risk assessments are reviewed and new/altered control measures are in place to manage this new and changing situation.*

For Gloucestershire schools, the approach taken was for the SHE team to adopt *guidance from HM Government* and turn it in to a *school risk assessment template*. This has been published on Schoolsnet and circulated to schools. Evidence indicates that there has been widespread use of this template and close attention given to determining local practices to manage the risk. Again, variations will exist around the county reflecting the different premises, for example; however, many control measures will be common across all schools.

*Engagement with members of staff and Governors* is imperative so that workable and realistic measures can be implemented. Over time, *monitoring the effectiveness* of your local measures will be vital; consequential *review* will be necessary though it

is feasible that your review will simply confirm that arrangements are effective. Easing lockdown (or imposing tighter restrictions) will also initiate reviews.

## **Liability**

Ultimate accountability for managing the risk depends on the *status of the school*. Therefore, in the case of Community and Voluntary Controlled schools the LA is the employer and could be held responsible for any statutory breaches. By providing competent advice and support, such as the Covid-19 risk assessment template and the recent risk assessment training courses, the LA is likely to have discharged part of its duties but needs schools to follow the advice and implement preventative measures. For other schools and academies, ultimate accountability will rest with the Governing Body/Trust depending on your particular format. Using material from the LA will assist you but responsibility rests with your governance structure. Conceivably, an individual could be held culpable if there had been not effort made to comply or if wanton disregard for risk control measures had been evident. Although this is unlikely, it is important to be aware that *everyone* has a part to play in managing workplace risks and a duty to cooperate with their employer.

## **Summary of steps to follow**

To conclude, in order to achieve *compliance*, the *steps to be taken* are:

- update your specific local risk assessment to take into account the Covid-19 risks;
- use the school template which incorporates advice from HM Government;
- engage with members of staff and governors;
- implement your control measures including providing instruction etc for those in the school and visitors/ contractors coming on site;
- monitor the effectiveness of your control measures;
- review risk assessments either periodically or if there is concern that measures need rethinking;
- seek advice if needed.

By following these steps schools should be able to demonstrate that they are discharging their statutory duties *to manage the health, safety and welfare of employees and others affected by your activities* and the question of liability will greatly diminish as will the ability of anyone to claim that the employer has been negligent.

Safety, Health & Environment (SHE)

01452 425350

[she@gloucestershire.gov.uk](mailto:she@gloucestershire.gov.uk)

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