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## ARMED – ACTIVE RISK MANAGEMENT in EDUCATION

# Student placements and overseas study

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### Document Notes

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Authors	Mr Noel Doran, Eversheds Mr William Evans, University of the West of England Ms Jan Harris, Eversheds Mr Stephen Smith, The Nottingham Trent University Mr Scott Wagland, Eversheds
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### Summary

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This unit has been designed to assist higher education institutions in evaluation of risks associated with student placements, both at home and overseas, together with recommendations for management of such risks. The unit does not extend to issues arising in respect of franchise arrangements or other activities outside a programme of study, such as term-time or vacation work.

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### Feedback

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Users of this unit are encouraged to submit comments and case studies, which may be helpful to the project team and colleagues in other institutions. Please follow the site instructions on feedback or contact Nick Saunders at [nicholassaunders@eversheds.com](mailto:nicholassaunders@eversheds.com).

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## Contents

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1.	INTRODUCTION.....	4
2.	IMPORTANCE OF THE TOPIC.....	4
3.	OVERVIEW OF THE LAW .....	5
4.	STUDENT ACTIVITY ABROAD.....	12
5.	FUTURE DEVELOPMENTS.....	12
6.	IMPLICATIONS .....	13
7.	MATERIALS .....	15
8.	SOURCES OF HELP AND LINKS.....	19
9.	ABOUT THE AUTHORS .....	21

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## 1. INTRODUCTION

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A placement means a period of learning usually planned to take place outside the institution, in the UK or overseas. The learning outcomes are an intended part of the programme of study. Placements may be facilitated by a placement organiser, or an independent individual or entity retained by the institution specifically to organise and, if lawful, approve placements on behalf of institutions. Alternatively, placements may be organised directly between the institution and the placement provider. Whilst the issues to be considered when contracting with a placement organiser are broadly similar to the issues to be considered when dealing directly with a placement provider, this unit will focus on the institution's dealings directly with the placement provider.

The types of placements vary, for example:

- full-time/part-time
- short/extended
- paid/unpaid
- assessed/non-assessed
- involving formal learning/experience-based learning

The placement may be with a single employer, or a programme of study at an overseas university, or a student-negotiated work placement, or a field trip.

The manner in which institutions meet their responsibilities varies in accordance with the nature of the placement, the course and the student themselves, but all placements should be the subject of good, well-documented processes which take account of the need for risk management, with policies and procedures clearly established.

"Placement provider" includes persons, partnerships, companies, institutions and organisations providing opportunities for placement learning.

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## 2. IMPORTANCE OF THE TOPIC

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### 2.1 Reasons for action

Concerns have grown in the higher education sector about the exposure of institutions to liability arising out of placements, in the UK or overseas, in respect of the student's conduct and that of others involved in the placement. Liability may arise particularly in the general areas of health and safety, disability, discrimination, data protection and human rights. Such issues may give rise to civil proceedings, including action for breach of contract and negligence, or criminal proceedings. Therefore there is a need for guidance by way of training, policies and procedures to help reduce the risks.

### 2.2 Key issues

Broadly, the key issues to be borne in mind are:

- Liabilities and obligations arising under the law generally, in particular those relating to health and safety, disability, discrimination, data protection, human rights and, where the activity is overseas, application of the law of the host country
- Identification of the respective responsibilities of those involved
- Formulation, implementation and monitoring of good practice, to reduce the risk of any liability (statutory, contractual or in tort)
- A procedure for prior appraisal and approval of placements
- A procedure for subsequent review of, and reflection about, the placement
- Ensuring students communicate with the institution while on placement
- Appropriate briefing and training of both the institution's staff and its students
- Appropriate contractual arrangements between the institution and the placement organiser or placement provider
- Existence and adequacy of insurance arrangements for the home institution, the placement organiser or provider, and the student

## 2.3 Case Studies

### Case Study A

A student on the second year of a Social Work course is on a placement, as part of his course, with a Special Needs Unit arranged through the Local Authority. The Head of the Special Needs Unit complains that she had spent all morning trying to placate the mother of one of her pupils, who alleges that she had been standing in a queue at the Post Office on Thursday, just behind the student, who was telling another person all about a pupil and how behaviorally difficult he was and how problematic his home environment was. The Local Authority has cancelled the placement, although it has another week to run, because of what it says was a clear breach of confidentiality, and says it will no longer offer placements to the institution.

### Case Study B

Two students attend a European university for the third year of a four-year course. They receive poor marks for the third year, which is assessed entirely by the European university. These marks are quite out of line with the students' marks for their other three years of study in the UK. The marks for the third year bring their degrees down by one class. Both students appeal against their degree classification, saying that the organisation of the programme in their European year was poor and the marking system was unfair. The UK institution is embarrassed by the appeal, which damages its relationship with the host university abroad. However it concedes the appeal, having had no part in the assessment process and having undertaken no quality assurance measures.

### Case Study C

On the recommendation of her supervisor, a PhD student went to Africa for three months, to study the behaviour of people living in a remote area of an unsettled country. There was civil unrest while she was there and she was left without food for four days. During this time, she had no means of communicating with the outside world. Her supervisor had not undertaken any risk assessment, nor stayed in touch with the student, nor ensured that she had ways of leaving the area in the event that trouble arose. The student had a breakdown, failed to complete her PhD, and brought a case for damages against the institution and her supervisor.

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## 3. OVERVIEW OF THE LAW

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### 3.1 Liability in contract

The legal relationship between a student and an institution is founded primarily upon a contract. For further details, please see Unit 1, student contracts and charters. The contract may, by either choice or necessity (for example professional rules or obligations), include an obligation on the institution to arrange a placement. An institution which fails to deliver placements, either at all or to the expected and required standard, may be open to a breach of contract action, and will be so exposed in particular where the course is advertised as leading to a professional qualification, a pre-requisite of which is passing placement assessments.

The institution might seek to protect itself to a certain extent by the insertion in key documents such as an offer letter, prospectus and certainly in enrolment conditions, of appropriate exclusion clauses (clauses seeking to minimise or extinguish any liability for the institution's failure to provide what it promised). However, the institution's ability to protect itself by these means will be limited. There will be a need to consider both the Unfair Contract Terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999 (see Unit 1) before assessing whether the institution can rely on these clauses. Furthermore, if the institution makes a firm offer of a place to a student before an appropriate placement can be set up, it will be difficult for the institution to escape liability if that placement is not forthcoming. However, there may still be steps which the institution can take in order to reduce its exposure to liability.

### 3.2 Health and safety

The health and safety liabilities of those engaged in student placements may be summarised as set out below.

#### Institutions

Institutions have a statutory duty to ensure, in so far as is reasonably practicable, the health, safety and welfare of their employees. Institutions have responsibility, likewise, to conduct their undertaking so as to ensure, in so far as is reasonably practicable, the health, safety and welfare of non-employees, which will include students and placement providers. In this way they will also have responsibilities to the staff and customers of the placement provider, for example not to place with them a student who is known to present a danger to them.

Institutions retain a responsibility for the health and safety of students while with employers on placement. A student will normally be present on a placement as a result of the institution's undertaking, even though the institution may have no direct control over the student's activities on placement. In *R -v- Associated Octel Limited* [1996] 4 All ER 846, the House of Lords held that maintenance work carried out by a contractor formed part of the employer's undertaking, even though the employer did not exercise control over the way in which the contractor performed its work. Hence, where students are on placement with an employer as part of the course offered by the institution (part of its undertaking), the institution remains under a duty to ensure, so far as is reasonably practicable, the students' health and safety.

Liability is strict but not absolute. Institutions have a defence to criminal charges if they can prove, on the balance of probabilities, that they have taken all reasonably practicable steps to avoid the accident. This is, however, an onerous duty, requiring risk reducing measures to be pursued until there is a gross disproportion between the low level of residual risk and the resource, in terms of time, money or effort, necessary to address it, hence the importance of taking adequate precautions. In the case of civil liability, it would be for the student to prove, on the balance of probabilities, that the injuries to the student or damage to property were reasonably foreseeable by the institution, and that the institution had not taken reasonable steps to avoid the injury or damage. Identification of duties and obligations, and agreed apportionment of tasks between the institution, the placement provider and the student, is an integral part of risk management.

### **Employers**

Employers who take students on placements are in the same position as institutions, in relation to health and safety duties. The employer must assess risks to employees and to those who may be exposed to risk through the conduct of the employer's undertaking, which, one way or another, will include students on placements with the employer. The employer must provide reasonable and appropriate health and safety information, instruction, training, clothing (or other necessary equipment) and supervision.

The prime responsibility for complying with health and safety legislation rests with the employer, but there remains a duty with the institution. It has been suggested that the taking of an indemnity in respect of civil proceedings from an employer would be a sensible precaution by an institution, although this by itself would not afford a defence to the institution in criminal proceedings.

### **Placement organisers**

The civil duty of such organisers is to take reasonable care of themselves and others who are affected by their acts or omissions, which will include their visitors, customers and clients. For health and safety purposes, they too, must do all that is reasonably practicable to ensure the safety of their employees and those who may be put at risk through the conduct of their undertaking. Providers must, accordingly, conduct their business properly and comply with legislation and guidance on their duties. An institution must check and monitor providers' arrangements.

### **Tutors**

Visiting tutors must comply with good health and safety practice and any instructions by the placement provider on visits to the student at the placement. They must also respond to information and take such action as would be appropriate to ensure their own and a student's safety while on placement. The tutor must take any matter up with the employer or other institution and with his or her own institution for action.

### **Students**

The civil duties of students are much the same as those of employees, in taking care of their own health and safety and that of colleagues. Health and safety law is of less relevance unless they are actually employed during their placement, but they remain subject to the ordinary criminal law.

### 3.3 Criminal Convictions

Under the Rehabilitation of Offenders Act 1974, applicants for any programme which involves a placement in teaching, medicine, health, social work or other courses involving work with children or vulnerable adults ('a Caring Course') can be required to answer questions about spent as well as live criminal convictions.

Therefore, it is important that institutions have a safeguard (e.g in their application/enrolment forms) which asks applicants for Caring Courses to declare non-spent and spent criminal convictions. No promises should be made to applicants for Caring Courses that they will be able to do a particular course until the relevance of any disclosures have been considered. Only thereafter should the offer of a place be made to the applicant because this is when the student contract is formed. If they do not take this precaution, institutions may find themselves in a position where, because a student has a conviction, they do not wish to provide that student with a placement relevant to the course but they have a contractual obligation to do so.

Institutions should also ensure that the obligation upon applicants for Caring Courses to disclose their convictions is expressed to be ongoing to cover the situation where a student gains a conviction mid-way through a course.

### 3.4 Criminal Records Bureau ("CRB")

The aim of the CRB is to help organisations make safer recruitment decisions by identifying candidates who may be unsuitable for certain work, particularly that which involves children or vulnerable adults.

CRB checks can only be carried out on applicants or students if they fall within one of the exceptions under the Rehabilitation of Offenders Act 1974 e.g. they are intending to work in teaching, medicine, health, social work or other courses involving work with children or vulnerable adults. Provided the institution has the consent of the applicant or student, institutions can make a request to the CRB for disclosure of information pertaining to criminal records held on such applicants/students.

Although there is no statutory obligation on an institution to carry out a CRB check on any applicant or student, organisations which are likely to include many of the institution's placement providers, do have statutory obligations under the Protection of Children Act 1999, the Criminal Justice and Court Services Act 2000 and the Care Standards Act 2000 which makes it an offence for them to take on people who are not allowed to work with children or vulnerable adults. Therefore, the institution should generally be carrying out CRB checks on those who have applied for a place on a Caring Course in the event that those applicants are successful in their application.

Accordingly, applicants for Caring Courses should be informed that CRB checks will be required, that they will be asked to consent to such checks and that the availability of places, placements and possible future employment in their chosen area may be affected by the results.

### 3.5 Student Teacher Placements

The issues are treated under two broad headings:

- Potential liability of an institution for the acts and omissions of student teachers
- Potential liability of an institution to student teachers

See also Unit 21 on child protection and Unit 7 on fitness to practise.

#### **Liability for the Acts and Omissions of Student Teachers**

Broad principles in two key areas apply:

- The standards which generally apply in the legal relationship between teachers and school pupils
- The principles of vicarious liability

#### **General Standards of Liability**

There have been many cases concerning liability for accidents suffered by school pupils while at school (although not, it would seem, where student teachers are concerned). Out of these cases has evolved a general principle, which identifies the standard of care for teachers as that of a reasonably prudent parent, taking into account the fact that a teacher will have responsibility for a whole class of children and will be in a school environment and not a family home. This means that teachers are not

required to achieve perfection with regard to their supervision of children, but that if they fall below the standards of a reasonably prudent parent and injury is suffered as a result, the teacher may be held to have acted negligently.

### **Vicarious Liability**

Under the general legal principle of vicarious liability, where an employee is responsible for an act or omission occurring in the course of his or her employment, which leads to liability for negligence, the employer will also be liable. This can apply even if the employee is acting contrary to express instructions. If a teacher is the subject of a negligence claim, it is almost certain that in a maintained school the Local Education Authority (LEA) would be joined as a defendant in the action.

Clearly, student teachers are not employed by the LEA. Whilst that would not necessarily allow the LEA to escape liability in certain cases, such liability would need to be established as a result of the LEA's direct duty of care to pupils, and not under the principles of vicarious liability. It is possible that the LEA and the individual student teacher would both be liable under separate duties, which may leave the student personally liable for his or her actions. If a student is found personally liable, the claimant may seek to make the institution liable in respect of its general training or specific guidance provided (or not) before the placement.

### **Liability for Student Teachers**

There is no limit to the range of situations in which a student teacher might negligently cause injury to a pupil.

In some circumstances, this might be attributable to the class teacher and thus through the class teacher involve the LEA under the principles of vicarious liability. This would be so, for example, if by leaving a student teacher unsupervised with a class of pupils, the class teacher had not achieved the standards of a reasonably careful teacher.

In other circumstances, it might be the case that there was no negligence on the part of the individual class teacher, but that there was a breach of the LEA's general duty of care towards its pupils; for example, if the way in which the LEA generally allows student teachers to be utilised increases the likelihood of accidents.

In some cases it will not be possible to attribute responsibility for an accident either to the class teacher or to the LEA. For instance, the class teacher may supervise the activities of a student teacher properly (and thus discharge his/her responsibilities as a teacher and that of the institution as a provider of teaching facilities) but an accident may nevertheless occur. In these circumstances, a pupil taking legal action would probably still sue the student teacher, the teacher and the Local Education Authority. If it were established that negligence had occurred, but that it could not be laid at the door of the teacher or the LEA, the pupil would be left with an action only against the student teacher, which in most cases would be virtually worthless because most student teachers lack assets.

Where a student teacher is a defendant, the pupil might seek to recover against the institution for having been negligent in putting the student teacher into the position in the first place, or for failure of general training or omissions from specific pre-placement guidance. Alternatively, the student teacher might seek to recover against the institution for exposing him/her to the possibility of liability. In the Joint Declaration of Universities UK (UUK) and the NHS Executive concerning nurse training, there is a recognition that the higher education body may have to accept responsibility for failing to prepare or select student nurses properly for the particular assessment. This highlights the importance of having justifiable, comprehensive, documented preparation and training, monitoring and vetting procedures. The school/LEA will be responsible for discharging its duty under the Health and Safety at Work Act 1974 to student teachers while on teaching practice. However, as discussed earlier, this section also imposes some duty upon the institution to ensure the health and safety of students. This point is relevant to all placements organised by the institution, not simply student teachers. It is suggested that this can be addressed by the appropriate vetting and monitoring of the employer's safety practices and procedures and, for the purposes of civil liability, by the insertion of an appropriate statement in the contract between the institution and individual schools. This should simply clarify that responsibility for health and safety lies with the school/LEA.

This ought not to be a source of anxiety for schools, which will, in any event, be exposed to this broad type of liability to student teachers (as to any visitors to their premises) under the Occupier's Liability Acts as well as the duties under the Health and Safety At Work Act that have been discussed above. The issue of health and safety has attracted attention in the context of franchising of education by Further Education Colleges. The former Further Education Funding Councils, whose guidance is

presumed to have been adopted by the Learning and Skills Council, insisted that the health and safety position be clarified in written agreements.

The first practical action which the institution should take is to check the insurance position, both with regard to its own cover and that taken out by schools. Some schools take out insurance against liability of volunteer helpers in schools. It is likely that there will be variations in insurance cover on a local or even a school-by-school basis.

Further practical action is more difficult, as it is fully recognised that the institution is dependent upon the goodwill of local schools in order to secure teaching practice placements. At the very least it would be worth giving some thought to making some provision about liability or indemnities in written agreements.

### **Liability to Student Teachers**

There are broadly two situations in which an institution might be exposed to claims by student teachers:

- Where the institution has failed to deliver a course (including appropriate training practice placements), in accordance with the student's contract or other legitimate expectation
- Where the student suffers injury as a result of having been put on a placement by the institution without reasonable and appropriate training, guidance and supervision.

## **3.6 Student Nurses**

A broadly similar question relating to liability arises within the National Health Service, in connection with student nurses and trainees in other professions allied to medicine. Perhaps because incidents of liability are more frequent with regard to clinical negligence, and also perhaps because the provision of education to student nurses has been the subject of national restructuring, the problem has been addressed at regional and national level.

Now that nursing students are no longer employed within the NHS, but are enrolled as students of universities and colleges, NHS bodies are no longer vicariously liable under the civil law for the acts or defaults of nursing students on placement.

The solution has, in many cases, been to require student nurses to enter into what are termed honorary contracts. This practice arises from a statement in a Joint Declaration of Principles issued by the NHS Executive and UUK, to the effect that hospitals will be deemed to be employers of student nurses whilst on their premises. Whilst the legal basis for this statement is not clear, it has resulted in hospitals using honorary contracts (which are signed by student nurses), in order to bring students within the regulatory and disciplinary framework of the hospital concerned, so that the NHS body's exposure to liability can be controlled by practical means.

## **3.7 Contractual issues and indemnities from employers**

An appropriately drafted indemnity from an employer to the institution may assist the institution in respect of civil claims brought by the student. However, an indemnity affords no defence in criminal proceedings. An indemnity would be valuable only if legally enforceable and the employer was not under-insured or insolvent. An indemnity is, nonetheless, of value as a means to reduce risk. The indemnity combined with a questionnaire, properly utilised, would be an effective protective measure. For a draft form of indemnity see the Materials section of this unit.

It may be difficult to obtain an indemnity from employers. Each institution will need to carry out a balanced appraisal, weighing the legal benefits of the indemnity against the fact that employers may be less inclined to take students, as well as considering its statutory obligation to do all that is reasonably practicable to ensure the safety of its students.

In that there is a duty of care owed by the institution, the normal law of negligence applies. Where a duty of care is owed, and there is a breach of such duty of care (failure to act to the requisite standard), and damage arises, then there is liability. This also applies to vicarious liability, where the employer is liable for the acts of employees "acting in the normal course of employment".

The extent of the institution's duty of care in respect of student activity overseas will depend on the extent to which it undertakes actively to provide a placement. The more the involvement in the arrangement and facilitation of the placement by the institution, the greater will be the duty of care. In assessing liability for injuries suffered by a student, other than liability in tort, the term "injury" needs to be construed widely to include psychiatric damage, exposure to harassment etc.

### 3.8 Liability in Negligence

The tort of negligence covers a wide area of potential claims. To be able to claim under this tort, any student would have to prove that an institution owed the student a duty of care, the duty was breached and there was damage to the student resulting from that breach. When considering its duty, an institution needs to look forward to assess the likelihood of a problem arising or the obviousness of an accident waiting to happen. It should consider the cost of preventing or reducing the risk and also the unavoidable risk in the activity itself. It should also consider staff expertise, travel arrangements and the checks made on the placement provider or other institution. Consideration should be given to sharing with the student any risk assessments undertaken, especially where awareness or action is expected of the student.

When considering how to avoid a breach of duty an institution should always look at approved practice and/or guidelines issues by the Department for Education and Skills (DfES) or other appropriate source.

Institutions cannot exclude liability for personal injury or death by disclaimers, so consent forms are of limited use. In certain cases it is possible for a case to be brought both in negligence and in contract, as they are not mutually exclusive. An institution might be liable in tort to a student other than one having a contract with the institution; for example, there would be a potential liability to students attending the institution as exchange students from another institution.

### 3.9 Statutory Liability

The Health and Safety at Work Act 1974 imposes duties not only on educational institutions, as employers, but also on employees (i.e. the staff of an institution) to take reasonable care for the health and safety of themselves and of others who may be affected by their acts or omissions at work. Any breach of these duties is punishable by criminal prosecution.

Should an institution or individual be convicted of an offence under the Health and Safety at Work Act 1974, it, or they, may face a fine of up to £20,000 should the matter be dealt with in the Magistrates' Court. However, should the matter be considered sufficiently serious to be beyond the sentencing powers of the Magistrates' Court, it can be referred to the Crown Court for trial or sentence. There is no limit to the fine that the Crown Court can impose for such an offence.

In the leading case on sentencing, *R v F Howe* [1992] 2 All ER 249, the Court of Appeal said that any fine should reflect not only the gravity of the offence but also the means of the offender. The case advises magistrates to consider carefully before accepting jurisdiction in health and safety at work cases where it is arguable that the appropriate fine might exceed the limit of their jurisdiction or where death or serious injury has resulted from the offence.

The judges went on to say that where the defendant was a company, a fine needed to be large enough to bring home the message of ensuring a safe environment, for workers and for members of the public who might be affected, not only to those who manage the company but also to its shareholders. There is nothing in the case or the judicial comments to suggest that there should be any distinction drawn between a company and any other form of corporate entity, including educational institutions.

In addition to the potential criminal liability of the institution and individual employees outlined above, more senior staff are potentially subject to additional criminal liability. Section 37 of the Health and Safety at Work Act 1974 states "where an offence under any of the relevant statutory provisions [e.g. of the HSWA 1974] committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly." Where the affairs of a body corporate are managed by its members, this will apply to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

The powers of sentence against an individual for a breach of this section are the same as the powers against a company or individual for a breach of the general duties, and the same considerations with regard to sentencing will also apply.

### **3.10 Equal Opportunities**

Institutions should take particular care to ensure that any students sent to work on practice placements or overseas study are not exposed to sexual, racial or other discrimination and/or harassment or discrimination on the grounds of disability. In the United States there has been considerable attention paid to this question, and students are entitled to sue schools and colleges for unlimited damages where sexual harassment is alleged. No such claims have been reported in the United Kingdom, although claims have been made against institutions. A claim by a Scottish student against her institution for compensation for the fact that she was raped while on a study year in Russia is currently before the Scottish courts.

There is also a need to consider the institution's Student Charter, which may contain statements on equal opportunities and particularly any statement that the institution will aim for a "community that is free from intimidation and discrimination".

Clearly, the institution cannot be expected to anticipate harassment or discrimination in unforeseen circumstances. However, the institution will have a statutory liability to respond efficiently and properly to any complaint made by a student that he/she is suffering harassment or discrimination while on a practice placement. Also, the institution should take care not to place students repeatedly in a situation in which it is known that harassment is more likely to occur. The risk of that can be reduced by asking students for feedback after placements.

There may also be a need to consider some protection for the institution in enrolment conditions, although it is not possible to delegate or exclude liability under anti-discrimination legislation. These matters should be capable of resolution by management practices within the institution.

### **3.11 Confidential information**

Confidentiality is an issue which may straddle the institution's potential liability to and for students on placement. It will arise in situations where, for example, the institution has been made aware of information about a particular student which might suggest that there is a greater likelihood of injury to school pupils, perhaps because of a criminal record or earlier complaints.

The institution might be held liable in such circumstances if a pupil suffered injury. However, the institution would also need to consider its position with regard to the student if it were to disclose to others information which was given in confidence. This is an extremely complex area, and it is likely that advice would need to be taken on a case-by-case basis, with variables including the precise circumstances of the placement and the way in which the information had been received. As a first practical step, however, it is suggested that the institution should undertake an internal review of the type of information which is typically sought from students on courses which involve work placements.

### **3.12 Data Protection**

Placements will inevitably involve a disclosure of student's personal data, in order to facilitate and administer that placement. Indeed, such disclosure may be necessary so as to enable both the institution and the organisation accepting the placement to comply with its legal obligations, for example in relation to health and safety. As an example, an institution may pass on details of a student's disability to ensure that the needs of that student are met during the period of the placement. On many occasions, as with this example, the information disclosed will be sensitive personal data for the purposes of the Data Protection Act 1998 ("DPA").

Before making any disclosure of a student's personal data, the institution should ensure that the requirements of the DPA are satisfied. In practice, this means informing the student of the fact that the disclosure will take place and seeking explicit consent to that disclosure (particularly in relation to sensitive personal data such as that relating to health, racial/ethnic origin or criminal records). Institutions transferring data outside the European Union in connection with overseas placements should also be aware that the student's consent will generally be required before that disclosure can be made.

Ideally, the institution will have obtained a comprehensive and explicit consent from the student at the time of enrolment, authorising the disclosure of his/her personal data in connection with placements. In the absence of such an explicit consent, or if, on checking, that consent is not wide enough to cover disclosures in connection with placements, the consent of the student to the disclosure should be sought. Where sensitive personal data is to be disclosed, reliance should not be put solely on the consent provided at enrolment. In practice, consent is likely to be forthcoming, given that the

disclosure will be in the student's interest. Ideally, it will be a term of the student contract (see unit 1) that the student's consent will not be unreasonably withheld; if consent is withheld an institution may not be able to arrange a placement and, primarily, will be in breach of contract.

In order to comply with the security obligations placed on the institution by the DPA, the institution should also seek appropriate written assurances from the organisation accepting the placement that any personal data disclosed to and processed by it will be kept securely, used only for the purposes of administering the placement, retained only as long as is necessary and not disclosed to third parties. It may also be prudent to require the return or destruction of the personal data at the end of the placement.

Failures to comply with the requirements of the DPA can result in enforcement action and fines being imposed by the Information Commissioner. In addition, a student may also be entitled to compensation if he/she suffers damage as a result of such contravention.

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## 4. STUDENT ACTIVITY ABROAD

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Student activity abroad includes placements, study and field trips. Some risks involved with work, study and travel overseas can be avoided if identified. This may involve minor changes to the practices and procedures which would normally be followed if the work were being conducted in the UK. Strategies and checklists developed using previous experiences of placements in the same country or practice can be employed to improve the safety and enjoyment of those working and studying overseas.

Staff and students are recommended to become familiar with suggested checks for any travel overseas. However, it is important to recognise that such checks should be monitored and developed regularly, preferably alongside the reviews of the placements themselves.

Checklists, briefings and risk assessments relevant to the work or study to be performed overseas should, wherever practicable, be completed before the visit. Notwithstanding, such risk assessments should be further reviewed on arrival, in case there is need of modification in the light of particular circumstances and the local conditions at the time. The Foreign Office, for example, will advise on risks in countries subject to political change, internal disorder or natural disasters; the Department of Health will advise on what medical precautions need to be taken in which countries. Such information may also be available from local authority environmental health departments, or from the infectious diseases section of the public health department of NHS strategic authorities.

However there will be occasions, especially in the case of some student placements, when work activities will be embarked on without the institution knowing about the placement provider. There is a particular risk of this where the institution requires the student to find and negotiate a placement. A risk assessment will then need to be completed as soon as possible. Some overseas work may not be dissimilar to fieldwork in the UK.

The guidance produced by UKCOSA, the Council for International Education, provides information on establishing the activity, pre-departure activity and general legal issues to overseas activity as defined above, see <http://www.ukcosa.org.uk/>.

As well as having safeguards in place for the student's welfare abroad, institutions are advised to ensure that their student code of conduct and disciplinary procedures stipulate that their procedures apply at all times, both on and off campus and in term and non-term time, in order to extend the institution's jurisdiction to students on placements and work experience abroad.

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## 5. FUTURE DEVELOPMENTS

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There are no current proposals affecting the general law relating to health and safety which are likely to have a significant effect on the potential liabilities of educational institutions providing placements and overseas study to their students. However there is considerable political pressure driving stricter and more active enforcement of health and safety law in general. There is also proposed legislation in the area of discrimination on the grounds of religion and age (see Units 10 and 19 on equal opportunities).

As part of the drive towards improvements in health and safety, the Government and the Health & Safety Commission launched the Revitalising Health & Safety Strategy in June 2000. It is a 10-year strategy seeking significant improvements in workplace health and safety by setting targets aimed at reducing the incidence of work related ill health, the number of fatal and major injuries and working days lost caused by injuries and ill health.

The strategy is underpinned by a 10-point strategy statement supported by a 44-point action plan requiring, amongst other things, the publication of a code of practice on directors' responsibility for health and safety. This code of practice seeks to ensure that responsibility for health and safety rests at the highest level within organisations and recommends that boards appoint one of their number to be the health and safety "champion".

New legislation that has been proposed by the Government to back up this increased emphasis on health and safety responsibility at the highest level includes the Health and Safety at Work (Offences) Bill, which, amongst other things, will raise the powers of sentencing in the Magistrates' Court for most health and safety regulations offences, and the introduction of a new statutory offence of "corporate manslaughter" (the Government has made it clear that it proposes "corporate" to include bodies incorporated by statute or royal charter and it will therefore, almost certainly, extend to many educational institutions).

A draft Corporate Manslaughter Bill was published for consultation in March 2005 and the post-election Queen's speech in May reiterated the government's intention to take these proposals forward. The new law is intended to make it possible to make the organisation itself more easily accountable in criminal law. The proposals will not affect the position of individuals concerned with the direction of organisations, who may still potentially be individually liable if a death has occurred as the result of their gross negligence. A copy of the draft Corporate Manslaughter Bill can be found at [http://www.homeoffice.gov.uk/docs4/con\\_corp\\_mans.html](http://www.homeoffice.gov.uk/docs4/con_corp_mans.html)

The failings of the current law and the vigour with which such cases are pursued have been highlighted by the unsuccessful prosecution of Barrow Borough Council for corporate manslaughter following deaths from Legionnaires' Disease which was traced to air-conditioning units at a council-run arts centre. Despite the failure of the corporate manslaughter charges, both the Council and its design services manager have been convicted of health and safety offences and the unfortunate individual faces a re-trial in connection with manslaughter.

The amendment of the Management of Health and Safety at Work Regulations 1999 in 2003 to enable employees to bring civil claims against their employers where they are in breach of their duties under the 1999 Regulations is likely to increase the number of civil claims brought as a result of health and safety breaches.

Members of the European parliament are proposing to implement mutual recognition of criminal fines, to prevent defendants based in one European Union country refusing to pay fines imposed in another. This will mean that, within the European Union at least, fines imposed as a result of incidents occurring during overseas travel will become enforceable in the United Kingdom.

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## **6. IMPLICATIONS**

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### **6.1 Governance**

Governing bodies need to satisfy themselves that the institution has taken comprehensive steps to ensure that appropriate procedures and policies have been established and implemented, so as to identify, assess and manage the risk of liability, ensuring that the reputation of the institution is protected and unnecessary costs and claims by students are avoided. Such procedures and policies should be subject to regular review.

### **6.2 Funding**

The prospect that HEFCE may make its funding conditional on implementation of appropriate policies and procedures in a range of matters, including student placements, places an emphasis on adequate assessment of risk and risk management, and the recording of the same.

### **6.3 Quality**

Absence of appropriate procedures or failure to ensure compliance leading to student death or injury or damage to property, including that of third parties, would inevitably lead to questions as to the standard of quality of not only the student's training or induction/preparation (possibly giving rise to a claim by the student for breach of contract) but also the general administration of the institution and, ultimately, the institution's reputation.

### **6.4 Employment relations**

Failure to establish appropriate procedures including provision of adequate training and information to staff can only lead to concern as to personal liability, likelihood of failure in complying with procedures and decline in good industrial relations.

### **6.5 Public relations**

Any proceedings, particularly criminal charges, will clearly have damaging consequences for the reputation of the institution in the eyes of the students and prospective students, the higher education sector and the communities in which the institution seeks to maintain a good reputation.

### **6.6 Information management**

Many institutions have a diffuse management structure and acknowledge a high degree of autonomy on the part of members of staff. The institution must, nonetheless, ensure that all members of staff are aware of the detail of the institution's policies, regulations and procedures, the rationale behind those policies and individuals' own personal responsibilities to ensure the effective implementation of policies.

Awareness of data protection rights has increased recently following changes in the law, and in the future greater emphasis is likely to be placed on enforcement by the Information Commissioner. Data protection issues can generally be avoided by providing full and transparent information to students and obtaining appropriate consents.

### **6.7 Health and safety**

The topic falls squarely in the risk management of health and safety, which is a key element in the establishment of sound management and good governance.

### **6.8 Staff development**

The need for staff development and training to ensure an effective implementation and dissemination of policies and practice has been noted above.

### **6.9 Insurance**

UK placements introduce the issue of health and safety and the suitability of the placement. Risk assessments should be carried out and will include an inspection of the insurance protection provided by the host. For example, a company that employs staff must purchase Employers Liability Insurance. The definition of persons covered should include 'those on work placement or work experience' (or similar). In the case of placements where there are no employees, i.e. self-employed persons, then the institution's own cover should be extended to include contingent liability.

UK issued liability policies will carry a UK Jurisdiction Law Clause, meaning that cover will only extend to claims brought under UK law in the UK courts. This is particularly relevant where foreign students are concerned and actions may be brought abroad.

The question of public liability should also be addressed, both for the student and the institution. This will provide protection against claims for injury to persons or damage to property brought by a third party, while the student is on placement.

A further issue arises through the possible use of vehicles belonging to students to travel to placements, often carrying other students. The institution should ensure that their own policies will provide motor contingent liability cover to protect the institution against possible claims. As an aside, it is worth suggesting that all students who drive in their own cars with other students as passengers,

while engaged in activities associated with the institution, be asked to prove that they have adequate motor insurance protection in their own right.

For trips abroad, students should purchase travel insurance for the duration of the trip, either in their own right or through the institution's own insurance arrangements or facility made available to students. Particular emphasis should be placed on Medical Expenses Insurance, where a limit of cover of £1 million must be considered as a minimum. Many policies are unlimited in this respect.

Care should be taken in identifying any hazardous pursuits in which students may become involved. These will include bungee jumping, white-water rafting, free-fall parachuting and the like. Insurers should be asked to identify any pursuits that will not be covered.

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## 7. MATERIALS

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### 7.1 Checklist

#### Placements

- Arrange placements, qualifying the institution's obligations as appropriate
- Vet placement providers before and during placements, by sending questionnaires and visiting
- Ensure that the placement provider complies with health and safety requirements
- Vet placements to ensure they are equal opportunities employers and comply with disability discrimination legislation
- Vet placements for learning outcomes, assessment, supervision etc
- Ensure students are suitable for the placement (including considering spent and non-spent criminal convictions and carrying out CRB checks where appropriate)
- Undertake risk assessments, involving the student in the process
- Ensure that the student knows, in advance, what the placement involves and what is expected of him or her
- Ensure that the institution can take action under its disciplinary procedure against any student who fails to comply with contractual obligations
- Ensure there is a watertight contract between the institution and the placement provider, with any necessary indemnities, noting that this is a triangular relationship between the student, the institution and the placement provider
- Consult the institution's insurance brokers, as either the institution or the placement provider should have insurance for all relevant areas which could cause the student loss, or which could cause loss to any third party by the student's actions; examples might include an agricultural student who drives a tractor into a farm building, a student who contracts e-coli, or a student mechanic who does not test brakes properly

#### Placements at another educational institution

- Undertake quality assurance measures, as appropriate
- Ensure that the host institution provides adequate teaching and supervision, and that the staff/student ratio is acceptable
- Ensure that the placement, if part of the student's course, is relevant and appropriate
- Course literature should be clear as to what is included and what the programme involves

#### Trips

- The institution should have as its priority to ensure the safety of its students at all times
- Undertake risk assessments
- Institutions should be absolutely clear who is organising and regulating an excursion - for example, is it an institutional course trip? Or an institutional excursion which is not course-related? Or an excursion organised and run by an institutional club, or by a member of staff as an individual, or by the student union? Where the trip is not part of the course and not covered by the tuition fee, and the organiser is providing at least two out of the following: namely transport, tourism and accommodation, and the trip will last more than 24 hours, advice should be taken, as the Package Travel, Package Holidays and Tours Regulations 1992 may apply.
- Are those responsible properly qualified and trained?
- Make sure appropriate insurance cover is in place
- Ensure that there is an additional contract with students for matters which are not covered in the student contract, for example payment for the trip, additional insurance issues and behavioural issues

- ❑ Ensure there is a contract with any other relevant third parties, such as carriers, hoteliers, tour operators, etc, with necessary indemnities
- ❑ Consider staff/student ratios and male/female ratios of the group

## 7.2 Specimen policy

### HEALTH AND SAFETY OF STUDENTS ON PLACEMENT

#### Introduction

This policy sets out the institution's response to the "Health and Safety Guidance for the Placement of HE Students" published by CVCP and UCEA. The policy sets out arrangements which should be put in place in order for the institution to discharge its responsibilities under the Health and Safety at Work Act 1974, section 3(1) of which states:

It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

It is the view of legal advisers that a court would hold, as a matter of law, that students on placement remain within the institution's undertaking or business. The institution's responsibilities under the Health and Safety at Work Act therefore extend to student activities while on placement. The institution has a duty to conduct its arrangements for the organisation of student placements in such a way that it can ensure, as far as is reasonably practicable, the health and safety of those students while they are working on their placement.

#### Responsibilities

Heads of department must ensure that the contents of this policy are applied in practice and that the arrangements are monitored through departmental health and safety management systems. The documents included as appendices to the policy are provided as examples of good practice. If a head of department wishes to implement different arrangements to those specified, then he or she should ensure that the principles of the policy are applied in practice and the approval of the Safety Office is obtained prior to implementation.

#### Training

Persons who are involved in the arranging of placements and in visiting students on placement are required to undergo appropriate training. Training is arranged through the Safety Office. The content of the training programme is included in Appendix I.

#### Health and Safety Performance of Placement Providers

The Placement Health and Safety Checklist at Appendix II must be sent to each provider who has agreed to offer a placement, together with a letter explaining the purpose of the checklist and its legal context. The letter should request a prompt response. The checklist should be sent to each provider each year. A YES reply to every question would normally mean that the provider would be approved. Any NO responses require further consideration. The action to be taken by placement staff following receipt of NO responses is outlined on the reverse of Appendix II. Placement approval should not be given until a satisfactory response to the questionnaire has been received.

#### Student Induction

The institution has a responsibility to ensure that its students are adequately briefed prior to their going out on placement. Students should receive information on:

- ❑ Action to be taken in the event of emergency
- ❑ Fire precautions
- ❑ Seeking of information upon commencement of placement
- ❑ Electrical hazards

The information may vary depending on the host department and the type of placement. However the information has to be appropriate and easily understood. Advice on appropriate information is included in Appendix 3 of the CVCP document.

Students should also be issued with an induction checklist, which must be completed within the first week of the placement.

#### Review of Provider Arrangements

Placement tutors must contact the student at the end of the first week of the placement to ensure that their induction checklist has been completed. Any omissions must be discussed with the provider. Visiting tutors are required to make simple health and safety checks on provider's arrangements. This will be carried out through visiting the student during the course of their placement. The purpose of

these checks is to monitor the validity of the responses to the health and safety checklist and to gauge the effectiveness of the provider's health and safety arrangements.

The timing and frequency of visits must be appropriate to the placement. Factors which should be taken into account when deciding upon the frequency of visits are as follows:

- The response to the checklist and to any other preliminary enquiries
- The level of risk (where there is a higher risk, for example because of the activities involved, visits may be needed more often)
- Changes in the placement (location, take-over of company)
- The duration of the placement
- Feedback from all sources (the student, the provider, the visiting tutor, others)

"It will not be possible for a university to fulfill its obligations to review the placement if no visits at all are made, unless the placement is exceptionally short (i.e. a few weeks) and in a very low-risk environment." (CVCP Management Guidance, Health and Safety Guidance for the Placement of HE Students). (Note, this guidance is (July 2005) currently being revised by the Universities Health and Safety Association.)

Providers will be issued with a health and safety arrangements monitoring form (Appendix III) prior to the visits. This should be completed by a representative of the provider and should identify the health and safety arrangements currently in place. Completed forms will be checked by the visiting tutor and negative responses discussed with the provider. Sufficient contact should be maintained with the student throughout the placement to enable significant changes in the placement to be identified, for example takeover of the company, or relocation of the company. Where significant change takes place, then a further health and safety arrangements monitoring form must be completed and reviewed at the following visit. Should the student raise any health and safety concerns during the visit then the visiting tutor should discuss these with the provider during the visit. Where issues cannot be addressed during discussions with the provider, further advice must be sought from the Safety Office.

### **Records**

Records of action taken in arranging placements must be kept. An example of the records which are required to be kept are in Appendix IV. Records of visits made and any action taken during or subsequent to the visit must also be kept. Records will need to be kept for the duration of the placement and for five years after completion of the placement.

### **APPENDIX I**

Training syllabus for those involved in arranging placements and visiting students on placement:

- Health and safety law applicable to placements
- Interpretation of responses to health and safety checklist
- Student induction
- Reviewing provider's health and safety arrangements
- Student limitation, for example in relation to health or disability
- Records

### **APPENDIX II**

Placement Health & Safety

Name of Employer

Address

Telephone Number

Fax

Do you have a written health and safety policy?

Do you have a policy regarding health and safety and for training people working in your undertaking, including use of vehicles, plant and all equipment, and will you provide all necessary health and safety training for the placement student?

Insurance:

Is Employer and Public Liability insurance held ?

Will your insurances cover any liability incurred by a placement student as a result of their duties with you as an employee?

Risk Assessment:

Have you carried out risk assessment of your work practices to identify possible risks, whether to your own employees or to others in your undertaking?

Are risk assessments kept under review?

Are the results of risk assessment implemented?

Accidents and Incidents: Reporting accidents and ill health is a legal requirement.

Is there a formal procedure for reporting and recording accidents in accordance with RIDDOR?

Have you procedures to follow in the event of serious and imminent danger to people at work in your undertaking?

Will you report to the institution all recorded accidents involving placement students ?

Will you report to the institution any sickness involving placement students, which may be attributable to the work?

Contact personnel:

Your nominated contact for compliance with the requirements of health and safety legislation:

Name

Position

Telephone number

The above statements are true to the best of my knowledge and belief.

Signed:

Position

Date

Thank you for completing the questionnaire. Please return as soon as possible to:

Record of dates

Course

### **Information for the reverse of Appendix II**

Action following receipt of completed Health and Safety questionnaire

Upon receipt of completed health and safety questionnaires, placement staff should undertake the following:

- Where the responses to the questions are all "YES", the placement can be approved and the student notified accordingly.
- Where any "NO" responses are received, then, in the first instance, placement staff should contact the person nominated by the provider and ask for clarification. If a positive response is received, the questionnaire can be amended. If all questions are then answered "YES", the placement can proceed.
- If upon contacting the provider, placement staff do not receive a satisfactory response, they should inform the Safety Office who will contact the provider and notify the department of any recommended action.

### **APPENDIX III**

Review of placement provider's health and safety arrangements

Name of Placement Provider

Address

Telephone

Fax

Name of student

Has the student been issued with the company Health and Safety Policy?

Has the student received a Health and Safety induction?

Did this include fire evacuation and other emergency procedures; how to contact a first aider; how to report an accident?

Has the student been given adequate information regarding the risk assessments associated with their work activities?

Has the student been given adequate information and instruction in the control measures to be applied during work activities?

Are suitable and sufficient fire fighting appliances provided?

Are fire fighting appliances checked and maintained?

Are fire evacuation procedures posted at suitable places?

Are fire exit routes identified by suitable signs?

Are fire exits routes and final exits kept clear of obstruction?

Are sufficient first aiders appointed?

Is access to workstations kept clear and free from obstruction?

Is adequate ventilation provided at the workplace?

Are adequate toilet and washing facilities provided?

Are arrangements in place to adequately dispose of waste?

Are any disabilities of the student taken into account?

Review completed on (date)  
The above comments are true to the best of my knowledge and belief.  
Signed  
Position

#### **APPENDIX IV**

This record sheet should be held and maintained by the person responsible for the placements

Student

Attended health and safety briefing

Health and safety pack received

Placement confirmed

Placement documents sent to student

Letter sent to employer

Reply from employer

Further action

Authority sent to student

Enrolment authorised

### **7.3 Deed of Indemnity**

BETWEEN: (1) [EMPLOYER] of [Address] ("The Placement Provider")  
(2) [INSTITUTION] of [Address] ("The Institution")

#### **RECITALS**

1 The Placement Provider provides work experience placements for students registered on courses provided by the Institution ("the Students").

2 The Placements Provider has agreed to indemnify the Institution against claims by Students as set out in the Deed.

#### **NOW THIS DEED WITNESSES AS FOLLOWS:**

1. The Placements Provider agrees to indemnify and to keep indemnified the Institution in respect of all claims, demands, proceedings, damages, costs, charges and expenses and any other liability (whether criminal or civil) ("Losses") incurred by the Institution arising directly or indirectly out of the death and/or personal injury to Students during the placement period, to the extent that such Losses are caused by the Placement Provider's negligence and/or breach of statutory duty by the Placement Provider or breach of statutory duty by the Institution, to the extent that it results from an act or omission of the Placement Provider, his employees, agents or sub-contractors.

2. This Deed shall be binding on the Placement Provider and its successors and assigns and shall be subject to the laws of England and the non-exclusive jurisdiction of the English Courts.

IN WITNESS of which the parties hereto executed this Deed on ...

EXECUTED by [Service Provider Limited] AND DELIVERED as a Deed pursuant to s.36A of the Companies Act 1985 under the hands of:

..... DIRECTOR

..... DIRECTOR/SECRETARY

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## **8. SOURCES OF HELP AND LINKS**

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Home Office <http://www.homeoffice.gov.uk>

The Association of Colleges has a useful section on health and safety issues. Their website is at <http://www.aoc.co.uk> or, alternatively, <http://www.feonline.net/feonline/home>.

The British Safety Council <http://www.britishsafetycouncil.co.uk>

The Department for Education and Skills has useful information on health and safety regarding educational visits, see <http://www.dfes.gov.uk>

Recently published updated DfES guidance on Health and Safety on Educational Visits can be found at [http://www.teachernet.gov.uk/management/guidance\\_and\\_legislation/visits/](http://www.teachernet.gov.uk/management/guidance_and_legislation/visits/)

The Health & Safety Executive is generally required to ensure that risks to people's health and safety from work activities are properly controlled, see <http://www.hse.gov.uk>

UKCOSA, the Council for International Education <http://www.ukcosa.org.uk/>

University and Colleges Employers Association <http://www.ucea.ac.uk>



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## 9. ABOUT THE AUTHORS

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### **Noel Doran**

Eversheds  
Eversheds House  
70 Great Bridgewater Street  
Manchester, M1 5ES  
[noeldoran@eversheds.com](mailto:noeldoran@eversheds.com)

### **William Evans**

Wallscourt Foundation  
University of the West of England  
Frenchay Campus  
Coldharbour Lane  
Bristol BS16 1QY  
[William.Evans@uwe.ac.uk](mailto:William.Evans@uwe.ac.uk)

### **Jan Harris**

Eversheds  
Franciscan House  
Princes Street  
Ipswich, IP1 1UR  
[janharris@eversheds.com](mailto:janharris@eversheds.com)

### **Stephen Smith**

The Nottingham Trent University  
Legal Services  
Burton Street  
Nottingham NG1 4BU  
[stephen.smith@ntu.ac.uk](mailto:stephen.smith@ntu.ac.uk)

### **Scott Wagland**

Eversheds  
1 Royal Standard Place  
Nottingham NG1 6FZ  
[scottwagland@eversheds.com](mailto:scottwagland@eversheds.com)