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Health and Safety Notes for Placement Managers

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These notes state the law as I believe it to be in December 2006. However, the law is complex and ever changing. In the event of a legal problem or general compliance, the responsibility remains with the reader to take appropriate advice.

In the interests of developing and sharing good practice, comments, queries and corrections of anything in these notes are welcomed.

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Note :

This paper specifically relates to the law of England and Wales. Health and safety provisions are largely the same in Scotland and Northern Ireland. Court procedures are different in those two regions and statutory references are, in some instances, different in Northern Ireland. In Scotland, tort law (delict) is one of the areas which deviates from the English position. Those operating outside England and Wales will need to take local advice on the law. The general suggestions on the administrative aspects of managing placements and good practice are, of course, applicable throughout the United Kingdom.

The management and responsibility of the health, safety and welfare of students in higher education and on work placement is of great importance to higher education institutions (HEIs) and their employment managers and officers. Employers' liability is relatively clear and will govern the student / employer relationship but the student is not, of course, an employee of the HEI. There is, however, the understanding that there are strong links between the institution and the student and that there is a level of responsibility.

These notes seek to set out, in brief, the scope of that responsibility and to suggest procedures for placement officers for governing the placement / sandwich process which may help fulfill the legal (and moral) duties of the HEI. They are not a statement of law, but of the author's view of the position - compliance remains the responsibility of the HEI. There are many issues surrounding the definition of what the phrase 'placement student' covers. For the purposes of these notes, it is assumed that we are discussing a student in traditional employment, off campus, formally employed by a third party, or a formal employment relationship between the student and their HEI. This 'employment' includes unpaid positions where an element of training is involved.¹

Although health and safety responsibilities cover a wide remit and are relevant to any employment situation, there have been particular concerns raised where students are going into what are seen as higher risk areas - industries

¹ Health and Safety (Training for Employment) Regulations 1990.

where statistics tell us that most fatalities and serious injuries occur.² This paper highlights particularly the construction industry, agriculture, equine and forestry but, clearly, other industries and situations may well come into the 'high risk' category. The noted industries have been particularly highlighted as being the cause of 43% of workplace deaths in 2005/06 and 50% in 2004/05³, although employing only 9% of the workforce. Overseas placements also give rise to additional concerns - although not, of course, necessarily high risk, but there may be potential problems of communication, lack of opportunity to visit, insurance issues and local health and safety standards.

So - as well as a general coverage of good practice for HEI health and safety officers, then, the particular concerns of placing students in such areas as construction sites, farm, forest and equine yards and overseas will be considered.

It may be noted that liability for health, safety and welfare does, of course, embrace wider issues than physical safety including discrimination, harassment, disability and mental health matters. This paper does not expressly cover these areas but placement managers and HEIs will need to address these areas in their policies and practice.

This paper will look at the potential liabilities of the different parties in the student placement relationship. Under the heading 'Placement Manager' some practical suggestions for fulfilling the legal obligations to the student will be made.

Legal Responsibility

Various parties have a legal responsibility towards the health and safety of the student or others affected by the student's work. These will be looked at in turn, with a consideration of the various sources of potential liability.

- HEI
- placement manager
- visiting tutor
- student
- employer

² Health and Safety Commission (2006) *Statistics of Fatal Injuries 2005/06*. National Statistics Publication. Sudbury : HSE Books.

³ But only 9.2% of the workforce in 2004 - *Employment in Europe 2005*, European Commission.

Higher Education Institution

Contractual Liability

- **Contract between HEI and student.**

The contractual relationship between the HEI and the student is established in the admittance of a student onto a course and the acceptance of fees. Health and safety law, although often thought of in an employer / employee context, extends to ensuring that 'persons other than' employees are not exposed to health and safety risks, 'so far as is reasonably practicable'.⁴ Students, with or without the contractual link, are clearly persons 'who may be affected'⁵ by the work of the HEI. The terms of the HEI / student relationship may be drawn from any assertions by the institution and will include the prospectus, other promotional material, information in websites, induction material, placement handbooks and the like, and the student charter.

Having established the nature of the HEI / student relationship,⁶ it is working out how to comply with the Health and Safety at Work Act, supporting legislation, such as the Management of Health and Safety at Work Regulations 1999⁷ and common law⁸ duties, in practical terms, that this paper is largely concerned with. What must HEIs, and their servants in the form of placement managers, actually *do*?

The HEI is likely, and reasonably, to rely on the guidance of codes of practice. It is important to note that these do not have the force of law (which, of course, comes from the primary sources of legislation and judicial precedent). The courts do, normally, accept that compliance with industry standards will fulfill legal obligations of care. Importantly, however, courts do not *always* accept this⁹ and the HEI is ultimately responsible for ensuring that they comply with primary legislation.

Industry statements in somewhat vague, theoretical terms are to be found in the QAA *Code of practice for the assurance of academic quality and standards in high education : placement learning*¹⁰. More detailed, practical advice is to be found in *Health and Safety Guidance for the Placement of HE Students : Management Guidance*.¹¹ This

⁴ Section 3, Health and Safety at Work Act 1974.

⁵ Section 3(1) Health and Safety at Work Act 1974.

⁶ See further in Palfreyman, D (1999) 'The HEI-student legal relationship with special reference to the USA experience.' *Education and the Law* 11 (1) 1999, pp 5 - 20.

⁷ Section 3(1)(b) extends the application of these Regulations to persons other than employees.

⁸ Largely the duty of care under the principles of negligence.

⁹ *Izzard v Field Palmer* [1999] EWCA Civ. 2045

¹⁰ Quality Assurance Agency for Higher Education (2001)

¹¹ (1997) London: UCEA/CVCP. At the time of writing (December 2006) USHA/UCEA have had

paper will draw on the UCEA 1997 *Guidance*, along with other sources of practice.

Attempt may be made to minimize or extinguish contractual liability to the student by the use of appropriate exclusion clauses, subject to the restrictions of the Unfair Contract Terms Act 1977 (and subsequent legislation) which particularly seeks to protect contracting parties of unequal bargaining power and severely limits the use of such clauses. However, it will be an effective and prudent protection to avoid over-enthusiastic promises in any literature (or verbal discussions). HEIs should 'support' the placement process, not 'promise' or 'guarantee' to find the perfect job or intimate unnecessarily high levels of 'care' or 'supervision'.

- **Quasi-contract between HEI and employer.**

There is a quasi-contractual relationship of mutual expectation and responsibility between the HEI and the employer. Although there has not normally been the passing of the most usual form of contractual consideration (i.e. money) to validate the relationship, the implicit and implied expectations, coupled with ideas of benefit and detriment,¹² formalise this side of the triangular relationship underpinning student placement. Although day to day management of the student will, of course, be the responsibility of the employer, it will be incumbent upon the HEI to approve the employer as appropriate, the particular position as appropriate, the particular student as appropriate and to provide access (for both student and employer) to the HEI personnel, i.e. normally a placement manager and / or visiting tutor backed up with out of hours access to Student Services or the like, the student still being under the HEI's care by virtue of being a registered student and paying fees during the placement year.

Legal Redress

Contractual remedies are sought in the civil courts (County Court or High Court in England and Wales) or in the Employment Tribunal, for employment matters. The remedy will normally be financial compensation, i.e. damages, but discretionary remedies are available where more appropriate, e.g. an injunction or, say, re-instatement in a job in a successful action against unfair dismissal.

Tortious Liability

Under the common law of negligence, the HEI has a duty of care towards the student and employer. This is a civil matter, pursued in the County Court or the High Court, for which damages might be sought in the event of a breach.

a draft update in progress for some time but the final publication date is not yet known.

¹² *Laythoarp v Bryant* (1836) 2 Bing NC 735., *Currie v Misa* (1875) LR 10 Exch. 153

This section is a brief explanation of the principles involved. It should be noted that any given scenario could result in legal actions under a number of different heads in different courts.

Example : a student is sent to a high risk job (e.g. on a construction site) where no health and safety assurances from the employer have been sought and no site visit made to an employer who turns out to have been successfully prosecuted in the past for breaches of health and safety legislation. When the student is hurt as a result of a lack of training there is likely to be a criminal prosecution in the Magistrates' or Crown Court for breach of the Health and Safety at Work, etc. Act (and related legislation), together with a civil action in the County or High Court for negligence.

The idea of negligence was discussed at least as far back as the 19th century¹³ but the modern law was clarified and developed in the judgment in *Donaghue v Stevenson* [1932].¹⁴

In short, three matters have to be established to succeed in a negligence action :

- The defendant must owe the claimant (victim) a duty of care.
- The duty of care must have been breached.
- The damage to the claimant, unintended by the defendant, must be a (relatively) foreseeable result of that breach.

To whom is a duty of care owed?

Care is owed to those who are foreseeably likely to be affected by one's actions, sometimes referred to in law as one's neighbours.¹⁵ This clearly sets out a duty on employers for employees and also on HEIs for students and on individual placement managers. This duty must be seen in the context of the placement. The potential scope of duty has given rise for much concern in the USA and the UK with student actions in tort in many contexts, e.g. for an HEI's failure to prevent injury on campus¹⁶ or for academic negligence /

¹³ See *Blyth v Birmingham Waterworks Co.* (1856) 11 Exch. 781

¹⁴ [1932] AC 562, [1932] All ER 1 - a House of Lords decision coming down on appeal from the Scottish courts.

¹⁵ Lord Atkin in *Donaghue v Stevenson* : 'The rule of law that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer's question, who is my neighbour? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be like to injure your neighbour. ... persons who are so closely and directly affected by my act that I ought to reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question'.

¹⁶ An action in occupiers' liability which failed in the Court of Appeal in England is *Ratcliffe v McConnell* [1999] 1WLR 523 where a student injured on campus was trespassing over a high wall to a locked swimming pool in the early hours of the morning.

failure to teach.¹⁷ The historical development, scope and policy of the duty of care owed by an HEI for its students is usefully and widely explored by Bickel and Lake.¹⁸ Although looking at the American experience, the common law is similar and the situations provide invaluable illustrations. There is no general duty to supervise adult students outside the campus / placement context.¹⁹ A line of thinking in a number of US cases indicates the common sense approach that ‘... there is no broad duty of care to supervise students as adults in their social / recreational and sporting activities on or off campus ...’²⁰ and that it is ‘... unrealistic to impose upon an institution of higher education the additional role of custodian over its adult students.’²¹ This is echoed by the English approach to occupiers’ liability, such that (briefly) adults of sound mind must take some responsibility for their own actions and decisions.²² ‘Of course there is some risk of accident arising out of the *joie de vivre* of the young. But that is no reason for imposing a grey and dull safety regime on everyone.’²³

The position would, of course, be different where a duty of care has been assumed, e.g. in most social drinking situations there is likely to be no duty owed to the student.²⁴ However, where some control is taken, such as transport being provided, then care will be assumed.²⁵ Similarly, where the HEI is on notice of dangerous conditions, whether in the workplace during office hours or outside,²⁶ then a duty may well arise.

In a placement context the idea of being on notice, of having been made aware of a risk, will be highly relevant, whether that notice is from a pre-placement Health and Safety checklist form, site visits or feedback from current or past placement students.

Having established that a duty of care owed is only the first hurdle in the triple

¹⁷ As yet no successful court actions in the UK although there have been out of court settlements by the Universities of Greenwich and Wolverhampton - both, as a matter of fact, relating to law courses, so presumably the litigious students picked up *some* law (Palfreyman, David in Palfreyman, D and Warner, D (2002)).

¹⁸ Bickel, Robert D and Lake, Peter F (1999) *The Rights and Responsibilities of the Modern University : who assumes the risks of college life?* Chapel Hill, North Carolina : Carolina Academic Press.

¹⁹ See *Ratcliffe v McConnell* [1999] 1WLR 523
McLean v University of St Andrews (2004) Outer House, Court of Session, 25/02/2004, A1143/01.

Hoye, William P (2000) ‘What a Difference a Millennium Makes: Tort Litigation in Higher Education, Circa Y2K.’ *Education Law Reporter*, Vol. 147, No. 3.

²⁰ Palfreyman, David ‘Students Abroad : out of sight, out of mind and beyond the HEI’s duty of care in English Law?’ in Palfreyman, D. and Warner, D. (2002) *Higher Education Law*, Bristol : Jordans.

²¹ *Bradshaw v Rawlings* 612 F.2d 135 (3rd Cir. 1979)

²² *Tomlinson v Congleton Borough Council* [2003] UKHL 47

²³ Lord Scott of Foscote, para. 94 in *Tomlinson v Congleton Borough Council* [2003].

²⁴ *McLean v University of St Andrews* [2004]

²⁵ *Jebson v Ministry of Defence* [2000] 1 WLR 2055

²⁶ See *Knoll v Board of Regents of the University of Nebraska* 258 Neb. 1 (1999) and *obiter* statements in *McLean v University of St Andrews* [2003].

fence of the test of negligence. We must then look to :

What constitutes a breach of duty of care?

Once a duty is established (and as we have seen, this will be clear in terms of the placement process and work but may extend wider), in general terms, there is an objective standard of ordinary prudence, care and skill. Where one is acting in a skilled or professional capacity (whether or not one actually *has* the skill required!) then the guide is a competent member of the trade or profession in question.²⁷ It will be a question of fact, based on good practice and the experience of the various parties involved.

A duty of care case watched closely by HEIs with overseas placements / study periods was *Erin McClean v University of St Andrew's*.²⁸ The university was held *not* to have breached its duty of care to a female student raped whilst on an overseas placement (walking along the beach late at night). The student claimed that the HEI was negligent in placing her in Odessa - a Russian city with a high crime rate. The court held that the HEI had discharged its duty by providing appropriate warnings and could not be held responsible for an adult student, walking of her own free will, in a dangerous area at night. Clearly, had there been no student briefings, had the rape taken place in HEI provided accommodation or had the placement been in a country against which the Foreign Office warns UK travelers against visiting, the outcome might have been different. The potentially wide scope of the duty of care for overseas placements, and consequent risk management required, was explored by Tim Birtwistle²⁹ and Wallace and Chan,³⁰ stressing the idea of informed consent on the part of the student, as seen in *McLean*.

To fulfill their duty of care the HEI needs to ensure that it has acted 'reasonably'. This will include demonstrating, by way of documentation, that there has been effective risk assessment and management. This is explored below under 'Placement Managers'.

Resultant Damage

The third requirement in establishing negligence is less likely to be at issue. If the damage resulting from the breach is completely unforeseeable³¹ or if the damage did not *result* from the breach,³² then the action will fail.

²⁷ *Bolan v Friern Hospital Management Committee* [1957] 2 All ER 118

²⁸ (2004)

²⁹ Birtwistle, T (2001) 'Higher Education and the Duty of Care: the law is on the move and much remains uncertain'. *Education Law* Vol 2 (2), pp 87 - 94.

³⁰ Wallace, J D and Chan, S (1999) 'ACT-TIONS: a model for student safety and institutional responsibility in study abroad.' *Perspectives* Vol. 3 (4), pp 123 - 127.

³¹ *The Wagon Mound* [1961] - *Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co. Ltd* [1961] AC 388, [1961] 1 All ER 414 - where a freak fire was caused by a combination of wind and other conditions.

³² *Barnet v Kensington and Chelsea Hospital Committee* [1967] 1 QB 428 - where poor hospital

Also there may be a break in the chain of causation - an example would be where relatively minor injuries are sustained after an accident, caused by another's negligence, but serious injury or death ultimately results due to poor hospital treatment. *But for* the accident the claimant would not have been in hospital, but is it just to sue the instigator of a minor incident for death? It will be a matter of fact and degree as to whether the intervening event (hospital treatment in this example) is sufficient to break the chain of causation.³³ This issue can become even more emotive in the criminal context : where someone is in hospital due to a minor assault and dies due to poor treatment, does one charge the aggressor with manslaughter?

The practical aspects of this paper concentrate on the second stage of the negligence test, i.e. what is 'reasonable' care. In instances where there are complications regarding the chain of causation, legal advice will clearly be required,

As with health and safety, the negligence cases could also (and possibly with greater chance of success³⁴) be brought in contract.

Criminal Liability

Breach of health and safety legislation is a criminal matter, whereas breaches of contract or duty of care are civil. The consequence of this is that civil wrongs can result in being sued with, most likely, damages (compensation) being awarded to the successful claimant. Contravention of criminal law results in a prosecution and can, in addition to financial penalties³⁵ and a criminal record, result in a prison sentence. Successful prosecutions by the Health and Safety Executive are detailed on the internet.³⁶ Although relatively rare where people are acting in the course of employment, if fault is clearly traced to an individual then there will be prosecution of that individual, rather than an organisation, and imprisonment is available to the courts.³⁷

Health and Safety at Work Act 1974

The Health and Safety at Work Act 1974 forms the legislative base of health and safety law, stating the duties of employers, employees and others affected by an employer's management and control of work. The HEI is not, of course, the student's employer but there is still a duty of care under the Act by virtue of s.3 (1) :

It shall be the duty of every employer to conduct his undertaking in such a

treatment of an arsenic victim did not *cause* the death as there is no cure for arsenic poisoning.

³³ *Morris v Solihull Health Care NHS Trust* [1999] *Horse Law*, vol 5, iss 1.

³⁴ Palfreyman (2002). This book has been updated as Farrington, D J and Palfreyman, D (2006) *The Law of Higher Education*, Oxford : Oxford HEI Press.

³⁵ Up to £20,000 in the Magistrates' Court and unlimited in the Crown Court.

³⁶ www.hse-databases.co.uk/prosecutions/ - searchable by name, industry and area.

³⁷ See 'Placement Managers' below.

way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby³⁸ are not thereby exposed to risks to their health or safety.

There is then a liability under these provisions to students, who are clearly not employees, of the HEI but are 'affected' by the HEI's operations.

The duty not to expose people to risks is not an absolute duty. The HEI must only ensure that persons are not exposed to risks 'so far as is reasonably practicable'.³⁹

This area of law has, since 1974, had considerable detail added by a number of statutory instruments. Attention is particularly drawn to the 'six pack' regulations,⁴⁰ originally implemented in 1992 as a result of a European directive.⁴¹ The Regulation affecting all places of work and setting out duties of both HEIs and placement providers is :

Management of Health and Safety at Work Regulations 1999

The Management of Health and Safety at Work Regulations 1999 set out risk assessment requirements.⁴² Clearly, again, the main duties in the legislation fall on the employer.⁴³ However, the HEI also has a duty of care regarding risks arising from or connected with their undertaking affecting persons not in their employment.⁴⁴ Good practice regarding risk assessment and the elimination or mitigation of risk would include:

- The requirement for placement providers to sign an acknowledgement of compliance with health and safety law to confirm that the placement provider has consciously adopted responsibility. An example of this form is to be found on p.18 of the *Health and Safety Guidance for the Placement of HE Students*.⁴⁵ This guidance is currently being updated. The new draft suggests a brief statement of compliance by employers, (underpinning their primary responsibility) rather than the

³⁸ Author's emphasis.

³⁹ Health and Safety at Work Act 1974, s 2(1).

⁴⁰ Management of Health and Safety at Work Regulations 1999 (as amended 2003)

Provision and Use of Work Equipment Regulations 1998

Manual Handling Operations Regulations 1992

Workplace (Health, Safety and Welfare) Regulations 1992 (as amended by the Quarries Miscellaneous Health and Safety Provisions Regulations 1995)

Personal Protective Equipment at Work Regulations 1992

Health and Safety (Display Screen Equipment) Regulations 1992 as amended by the Health and Safety (Miscellaneous Amendments) Regulations 2002

⁴¹ Framework Directive 89/391/EEC.

⁴² Section 3(1).

⁴³ Section 3(1)(a).

⁴⁴ Section 3(1)(b).

⁴⁵ (1999), UCEA.

detailed checklist recommended by the 1997 guidance. Pending any clear legal advice to the contrary, the author and ASET favour the detailed list in the 1997 guidance. Answers given must be reviewed and be satisfactory - HEIs will be deemed to have notice of anything untoward raised by the checklist answers and may thus find themselves assuming a higher level of responsibility.⁴⁶

- Appropriate provision of information, training and supervision of students. The UCEA *Health and Safety Guidance* booklet also includes suggested health and safety notes to be given to all students as part of health and safety briefing.⁴⁷
- Due vigilance by HEI staff on workplace visits, with any queries being reported to the placement manager and followed up.

Corporate Manslaughter

In addition to prosecution for breach of the Health and Safety at Work Act or related provisions, an organisation, as well as an individual, may be prosecuted for manslaughter in the event of a fatality. However, organisations (as opposed to individuals) can only be prosecuted in England and Wales for manslaughter if the directors or superior officers can be deemed to be 'the company' and culpable of the crime (the doctrine of identification). This has only occasionally happened,⁴⁸ due to the technical difficulties of successfully prosecuting organisations. As a response, the government has produced the Corporate Manslaughter and Corporate Homicide Bill.⁴⁹ If it is introduced in its current form, the resultant legislation will make it easier to obtain a conviction when death occurs due to senior management failure, i.e. a fundamental failure of systems. This could be applied to the placement provider or, of course, the HEI.

Delegation of placement procurement / management

Although the delegation of the procurement of student employment positions and / or the management thereof (i.e. the use of an employment agency) will give rise to a responsibility on the part of the relevant agent, it will not release the HEI from its own responsibilities. In particular, great care must be taken in appointing such agents to ensure that the appointment itself does not imply a lack of care.

⁴⁶ The potential problems of this are part of the thinking behind the new draft guidance

⁴⁷ (1999), UCEA p.23.

⁴⁸ See, for example, *R v Kite and OLL*, 8th December 1994, unreported, Winchester Crown Court; *R v Roy Bowles Transport Ltd*, 10th December 1999, unreported, Central Criminal Court.

⁴⁹ First reading in the House of Commons on 20th July 2006 : www.publications.parliament.uk/pa/pabills/200506/corporate_manslaughter_and_corporate_homicide.htm

PLACEMENT MANAGERS / SUPERVISORS

An employer will normally have vicarious liability for the civil wrongs or crimes of its employees carried out 'in the course of employment'⁵⁰ thus, if the placement manager is negligent in the conduct of his or her duties, or breaches health and safety requirements, legal action will normally be brought against the HEI.

This does not, however, mean that there is no personal responsibility - the placement manager, in both a personal and corporate capacity will, in order to fulfill their duty of care, need to ensure, so far as is 'reasonable' :

- **Adequate preparation of students for placement**, which is likely to include briefings, possibly 1:1 talks and access to a HEI placement supervisor and / or visiting tutor. A written copy of information imparted should be given to the students and should, ideally, be available online. The briefing will include health and safety provisions *and* obligations. As always, HEI staff should be acting within their areas of competence, thus it may be appropriate for health and safety briefings to be given by the placement manager, but HEI or outside health and safety specialists may be more appropriate.⁵¹ Industry specific provisions will be borne in mind, e.g. students working with animals will be warned of the danger of zoonoses⁵² and a small card to be carried and given to doctors in the case of ill health might be appropriate. This is an example given to students at the author's institution:

The holder of this card is a student / employee of ... and works with farm animals / horses. He / she may have been exposed to an animal related disease including :

<i>brucellosis</i>	<i>orf</i>	<i>salmonella</i>
<i>enzootic abortion</i>	<i>ringworm</i>	<i>tuberculosis</i>
<i>leptospirosis</i>	<i>pasteurella</i>	

- **Adequate approval of employers** in the form of vetting the employer's health and safety provisions. The 1997 guidance suggests a checklist will certainly be required to be completed, signed and retained on file with any doubtful responses followed up. UCEA *Guidelines* indicate that a form should be sent out annually, even where employers have had previous students.⁵³ Guidance notes for

⁵⁰ *Limpus v London General Omnibus Co* (1862) 1 H&C 526, *Lister v Romford Ice & Cold Storage Co. Ltd.* [1957] 1 All ER 125.

⁵¹ The author's institution has secured an agricultural specialist from the Health and Safety Executive to acquaint students with the specific hazards of the agriculture, forestry, countryside and food processing industries.

⁵² Diseases which can be transmitted from animals to humans.

⁵³ (1999) UUK, p 12.

the employer on the completion of the health and safety checklist will aid understanding and ensure that employers are properly briefed. The new draft guidance emphasises the employer's primary responsibility and has thus replaced the detailed checklist with a statement of employer responsibility and compliance. Whether operating a full checklist or a revised note of compliance, good practice requires a signed copy to be returned to the HEI and retained on file.

- **Pre-placement visits** - the 1997 guidance and legal advisers⁵⁴ formerly indicated that a pre-placement visit should *always* be carried out as part of the risk assessment for new placement providers. Anecdotal evidence indicates that this is neither practical nor general practice. Common law indicates a 'reasonable' level of care whilst health and safety legislation is couched in terms of 'reasonably practicable.'⁵⁵ However, each case should be looked at in terms of a range of factors such as :
 - nature of the work
 - age of student
 - experience of student
 - any special vulnerabilities of student
 - nature of the employer
 - responses to telephone contact
 - third party corroboration of working practices⁵⁶

Comment : given that placement managers and visiting tutors are not expected to be health and safety risk assessment experts, that students may well work on several different sites and that jobs may change and given the problems of the 'assumption of liability', lack of pre-placement visits or the limited scope of visits should be robustly defended on the grounds of 'reasonable practicability' and the primary nature of employers responsibility. Although much available advice talks about pre-placement visits, observing the workplace, etc.⁵⁷ when the nature and practicalities of student work is analysed to any extent, how meaningful can such an approach be?

Again - there will be a heavier onus on the HEI in areas of higher risk - agriculture, construction and the like - or other employments, as determined from the risk assessment (e.g. a review of the above bullet points), which will determine the necessity of pre-placement visiting.

- **Appropriate 'matching' of students to jobs** - clearly this is not an

⁵⁴ Proceedings of the ASET Annual Conference 2005, Eversheds LLP - Health and Safety Question and Answer Session, pp 7 – 13. Sheffield : ASET.

⁵⁵ Health and Safety at Work Act 1974, s2 (1).

⁵⁶ E.g. from local professional associations.

⁵⁷ As well as general guidance see industry specific notes such as: 'University responsibility for health and safety of students on placement', Briefing Paper 4, Educational Quality in Placements in Engineering (EQUIPE); Sinclair-Williams, M and K (2006) *Health and Safety Guidance for Inspections of Horse Riding Establishments and Livery Yards*. Chartered Institute of Environmental Health.

exact science and the student and employer take the primary responsibility, but the nature and conditions of work, age of student, any disabilities or mental health issues of which the placement manager is aware, or should be aware, must all be taken into consideration. Note that where courses lead to jobs where Criminal Records Bureau checks are required these need to be done⁵⁸ - although there will be a duty on the placement provider to do such checks, it avoids students being accepted onto courses and subsequently being unable to do relevant work.

- **Adequate management of the placement** with student access to HEI staff and (normally) a visit by HEI staff to the student and employer at the place of work. The UCEA *Management Guidance* clearly states : 'It will not be possible for a HEI 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.'⁵⁹ HEIs will particularly need to be alert to following up any negative feedback from students or concerns raised by employers or during visits.
- **Adequate briefing of employers**⁶⁰ to ensure that they are aware of the HEI placement system in general (including health and safety matters) and any student specific issues in particular.
- **Obtaining student and employer feedback**, and acting on any matters raised, as appropriate. This will aid future management and may highlight issues which may need addressing, but which fell short of complaint, whether a health and safety issue or other matters such as discrimination or harassment.
- **Compliance with in-house placement policies** - many areas of placement management are subject to discretion rather than specific rules. HEIs must, however, ensure that anything specifically stated is carried out, e.g. in terms of number of student visits. As with the advice on contracts, use words such as 'likely' and 'aim' rather than 'will'.
- **Briefing and monitoring of placement visitors** - ensure that HEI staff visiting students on placement are aware of, and understand, their health and safety monitoring role (within the parameters discussed below).
- **Data Protection Act compliance** will mean that where there is to be disclosure of student details then consent must be sought. A blanket consent as part of the placement process would be prudent, in addition

⁵⁸ Under the Protection of Children Act 1999, the Criminal Justice and Court Services Act 2000 and the Care Standards Act 2000.

⁵⁹ (1999) *Management Guidance*, p 14.

⁶⁰ QAA *Code of practice for the assurance of academic quality and standards in high education : placement learning* p 6.

to any consent on first admission to the HEI on induction.

- **Overseas placement management** - all guidance in this paper applies but overseas placements may require additional risk assessments, student and employer briefings. Additional guidance may usefully be obtained from UKCOSA - The Council for International Education.⁶¹ Detailed guidance on overseas placements is outside the scope of these notes.

- **Disability issues** - reference might usefully be made to *Providing Work Placements for Disabled Students : a good practice guide for further and higher education institutions*⁶² where appropriate.

⁶¹ See 'Student Activity Abroad: Risk Assessment frequently asked questions' at www.ukcosa.org.uk/pages/liability.htm.

⁶² (2002) Department for Education and Skills, available online at www.lifelonglearning.co.uk/placements/

VISITING TUTORS

HEI staff visiting students on work placement have a duty of care, under the basic principles of negligence and within Health and Safety at Work, etc. Act provisions, to observe the health and safety practices when on visits and to take any action they consider to be necessary, consequent upon those observations. In extreme cases this might mean instigating the cessation of employment, but will more likely be discussions with the employer, student, HEI placement manager or health and safety officer to ensure :

- correct implementation of risk assessment procedures and the elimination or mitigation of those risks, as appropriate
- suitable training and / or supervision
- a return visit, at the discretion of the parties involved, to check on the revised arrangements

It is not 'reasonably practicable' to expect all placement visitors to be health and safety experts and, given the primary responsibility of the placement provider, and the signed assurances that the employer is complying with their legal obligations, the placement visitors should not normally be carrying out formal risk assessments. Indeed, to do so may give rise to additional legal exposure.

Again, the higher risk industries under consideration may warrant more specialist placement visitors and this is, anecdotally, common practice with many HEIs.

In brief, visiting tutors must be alert to health and safety issues and, importantly, respond to any concerns, either observed or raised the by the student (or, indeed, the employer), taking the matter up with the employer and / or the HEI as appropriate.

STUDENTS

In common with all employees, as well as rights and protections, students have duties and responsibilities attached to their role.

They have a common law duty to take reasonable care of their own health and safety and that of their 'neighbours', i.e. others likely to be affected by their acts or omissions, be they colleagues in the workplace or others they come into contact with.

Under the Health and Safety at Work Act⁶³ employees must:

- take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and
- co-operate with his employer in terms of any requirements necessary to enable compliance with the employer's legal duties regarding health, safety and welfare

Also, 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.⁶⁴

The students must attend health and safety briefings prior to placement and their attendance should be documented as a mandatory requirement of them commencing work.⁶⁵

They must also agree to attend workplace induction and to inform the HEI of their attendance. A written checklist / note of attendance, signed by the student and, preferably, the employer, would be good practice.

In order to maintain the protection of HEI control and responsibility the student must inform their placement manager or visiting tutor of any change to employer, place of work or conditions of work.

Computerised placement management systems often allow records of induction, changes of address, etc. to be completed by students online. Many of us, however, are still working with paper. The important factor is that some sort of easily accessible record is maintained in an accurate and timely way.

⁶³ Section 7.

⁶⁴ Section 8.

⁶⁵ See suggested checklist - Appendix 2.

EMPLOYERS

As noted above, the primary responsibility for the health and safety of student employees lies with the employers, whether or not they are paying the student. They have the same legal liabilities as they owe to any other employees.

Their duties, as with HEIs (see above) are governed by contract, tort and criminal law. Limited detail is given below as the detailed issues are the concern of the employer, rather than the HEI.

Contract

This contract underpins the primary responsibility for the student's health and safety and it is in place, by reason of the student working for the employer, whether or not payment is made and whether or not there is written documentation although, of course, there should be paperwork in place in accordance with employment law requirements.⁶⁶ Both the employer and the student will be required to comply with the health and safety obligations implicit in the employment relationship⁶⁷ (as explored above).

It must be noted that, although the employer has the primary liability for its student employee and the HEI clearly cannot control the student's work, the HEI still has a measure of liability⁶⁸ - as explored under 'Health and Safety at Work Act', above.

It is an implied (if not an express) term of a contract of employment that reasonable care will be taken of an employees health, safety and welfare. This provision has, of course, been largely superceded by the more specific requirements of health and safety legislation.

Tort

An employer owes a duty of care in negligence as discussed above. They will also be vicariously liable for the negligent acts or omissions of their employees.

Criminal

The Health and Safety at Work Act stipulates in s.2 (1) that :

It is the duty of every employer to ensure, so far as is reasonably practicable,

⁶⁶ Section 1, Employment Rights Act 1996 requires that a written statement of particulars be given within two months of the commencement of employment but good placement practice should ensure this is provided *prior* to the start date.

⁶⁷ The basic provisions are set out in the Health and Safety at Work Act 1974 with detail added by many regulations and codes of practice - some of general applicability, such as the Management of Health and Safety at Work Regulations 1999, others industry specific, e.g. the Approved Code of Practice to the Construction (Design and Management) Regulations 1994 - see further above.

⁶⁸ *R. v Associated Octel Company Limited* [1996] 4 All ER 846.

the health, safety and welfare at work of all his employees, with particular reference to :

- (a) the provision and maintenance of safe plant and safe systems of work.
- (b) the safe use, handling, storage and transport of articles and substances.
- (c) information, instruction, training and supervision
- (d) maintaining safe conditions with adequate access in and out.
- (e) overall provision of a safe working environment.

The Management of Health and Safety at Work Regulations set out the detail of compliance.

The HEI or the placement manager can take no responsibility for the day-to-day management of workplace health, safety and welfare. What they can do, as detailed above, is to establish, so far as is reasonably practicable, that the firm is complying with their legal obligations and to document that confirmation in their records.

SUPPORTING LAW AND PRACTICE

The applicable law is noted where relevant above, but to summarise, the major sources of health and safety law, as relevant to HEI liabilities, are :

Legislation

- Health and Safety at Work Act 1974
- Management of Health and Safety at Work Regulations 1999

Employers will also be aware of employment legislation such as the Employment Rights Act 1996.

Common Law

- The common law of contract and negligence are relevant as discussed.

Codes of practice

- HEI and Colleges Employers Association *Health and Safety Guidance for the Placement of HE Students : Management Guidance*, last published in 1997, revision proposed 2006 / 07
- The Quality Assurance Agency for Higher Education *Code of practice for the assurance of academic quality and standards in higher*

education. Section 9 : Placement Learning.

These codes of practice do not have the force of law in themselves, under our legal system. However, failure to follow their recommendations is likely to be indicative of a breach of duty of care and give rise to an action in negligence.

KEY DOCUMENTATION

- health and safety compliance form signed by employer
- guidance notes on the above form to aid employer understanding and informed consent
- health and safety briefing and materials - attendance and receipt signed by student
- health and safety briefing materials lodged online
- health and safety training completed by student
- confirmation of workplace induction by employer, including health and safety information, signed by student
- notes of placement visits

These forms, together with any other correspondence with employers or students, should be kept for three years after the end of the placement.

Depending on the numbers of students involved and the timing of employments, placement managers might implement a *Placement Agreement* for each student (example attached), incorporating tick boxes on :

- signed employer health and safety form receipt
- student placement briefing attendance
- student health and safety materials received
- workplace induction confirmation received

Others might simply have checklists of all of the above with briefing attendance registers.

Information

There are a number of websites which placement managers might usefully review to keep up to date with health and safety law. In particular :

www.parliament.uk/pa/pabills.htm

This site has emerging legislation in the form of bills presented to Parliament, with the current status, debates and explanatory notes.

www.opsi.gov.uk/acts.htm

Full transcripts of all UK Acts of Parliament from 1988 and Statutory Instruments from 1987.

www.hse.gov.uk/aboutus/regulations/index.htm

The Health and Safety Executive website should need no introduction. This section lists forthcoming legislative and regulatory changes to be aware of.

www.tuc.org.uk/h_and_s

The Trades Union Congress website, closely connected with www.hazards.org - 'the workers' health and safety quarterly', both sites being a useful online read for staying abreast of current health and safety issues.

Example Placement Agreement

Name of student

Course

Employer

Contact name

Employer's address

.....

1. Employer's health and safety checklist received _____
2. Student passed online health and safety test _____
3. Student attended first aid training _____
4. Student attended placement briefing _____
5. Student returned health and safety induction checklist _____

The affirmative completion of numbers 1 – 4 above is required prior to the student named commencing their placement.

This document permits the named student to commence placement on the dated agreed with the named employer, on or after the date of signatures below.

This authority may be withdrawn if circumstances are identified which warrant withdrawal.

.....
Placement Manager Date

.....
Student Date