

## Civil claims in schools

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Civil claims are an ongoing area of concern for schools, with the potential for financial and reputational implications. Here at Browne Jacobson we assist both maintained schools and academies in dealing with the full range of civil claims that schools face, as well as providing advice on risk management in order to mitigate the likelihood of incidents occurring. This article explores some of the more common types of claim that arise in a school setting to provide insight into the principles that will be considered when civil claims are brought and steps that can be taken by schools when implementing policies and procedures.

### Personal injury claims

Schools will be familiar with the risk of accidents occurring on their premises and it is important to emphasise at the outset that the standard of care owed is to take reasonable care and schools cannot be a risk-free environment. Measures such as good quality risk assessments (which remain dynamic and are revised in response to incidents), retention of training records and written confirmation of inspection and maintenance procedures can drastically reduce the risk of an accident occurring and improve the prospects of defending a claim by demonstrating that reasonable and proportionate steps have been taken.

## Injuries to pupils

One of the more common types of claims we see are a result of injuries to pupils suffered either during lessons or outside of the classroom.

The overriding principle is 'loco parentis', in that schools essentially step into the shoes of the child's parents during the school day, when they are responsible for the safety of the children in their care. This duty is one of reasonableness (with reference often made to the 'reasonably careful parent'), with the precise standard of care expected varying depending on the circumstances and the age of the child.

In a recent case in which we represented the school, a pupil was injured on the premises after they arrived early in the morning before the school day started and found one of the school gates to be locked. Rather than using the next nearest gate as other pupils had done, she climbed the gate and unfortunately sustained a significant injury. In this case there were challenges arising from some uncertainty in terms of procedures; for example, the school rules around opening time, what times pupils were allowed on site and the supervision in place prior to the school day starting. However, the school were ultimately found not to be liable. A key issue was that the pupil was in the Sixth Form and as such the duty to supervise was not as onerous as would have been the case for a primary age pupil – it was accepted that there was not a duty to warn a pupil of that age and maturity of an obvious hazard. Further details on the case can be found [here](#).

Pupils attending activities off site is another area of risk that schools are required to grapple with. Although schools are generally well aware of the need for robust processes around school trips, similar care must be taken for more routine visits such as offsite PE, work placements and visits to local FE colleges. Evidence that the school has considered the risks and taken reasonable steps to mitigate the risks identified is essential to defend such claims. Again, this does not require the removal of all risks and the courts will take into account the age of the pupils and the need for them to develop independence. Adopting the reasonably careful parent principle to the specific circumstances will go some way to guide the approach and, providing that there is good evidence that consideration has been given to the risks in an age appropriate manner, the duty owed will have been complied with.

# Injuries to staff

Claims for injuries to staff typically involve trips, slips, and falls while moving around the school, teaching or supervising break times. Claims of this nature relating to the state of the premises will be judged to the same standard as accidents involving visitors to premises, which is considered below. However, of increasing concern to schools are injuries suffered by staff members following incidents involving assaults by pupils, or from physical interventions by a staff member with pupils.

In 'assault' cases it is necessary to demonstrate that adequate steps have been taken to provide a safe system of work, which will commonly require:

- an overarching policy dealing with violence towards staff within the school;
- individual risk assessments for pupils identified as presenting a risk of violence and proportionate control measures put in place (to include communication of those control measures with staff);
- review and revision of individual and generic risk assessments following any incident;
- evidenced training of staff on intervention techniques/advice on when intervention is appropriate; and
- support for staff members who are the victim of an assault.

Deficiencies in procedures can have a catastrophic effect on staff and will also bring a risk of reputational damage to a school. It is therefore essential to ensure robust systems are in place, with retention of documents, in particular risk assessments, training records and training content (to include previous documents since superseded), being absolutely key.

# Injuries to visitors

A duty of care will be owed to any visitor to a school, whether that is a parent, a member of the public who has booked the use of sports facilities, a supplier or a sub-contractor. If the duty is breached and an accident occurs, there will be a civil liability.

Schools are required under the Occupiers Liability Act 1957 to take *reasonable care* to ensure that visitors are *reasonably safe*, with an expectation that children will naturally be less careful than adults. There is an expectation there will be a proactive system demonstrating that steps are in place to manage the safety of visitors.

As well as a documented inspection and maintenance regime dealing with the state of the premises, it is important that risk assessments take into account both regular and infrequent visitors to the school and that procedures such as booking systems and signing in systems are in place. Where sports facilities are made available to the public all users should be made aware of safety information.

Consideration should also be given to those on site outside standard hours, such as contactors or those running after-school activities. Risks may differ outside standard hours, for example wet floors due to evening cleaning taking place, or people arriving before walkways have been gritted in winter.

As well as the duty to 'lawful visitors', a less onerous duty might be owed to trespassers under the Occupiers Liability Act 1984 and schools will need to be aware of their obligations. Broadly speaking, a duty can arise to take reasonable steps to protect against dangers arising from the state of the premises, where it is foreseeable that someone might come into contact with the danger – generally the school will therefore need to be on notice of the risk.

In order to defend cases involving trespassers, it will be important to show what action has been taken in response to any knowledge or suspicion of unauthorised access to the site, as well as taking reasonable steps to address any known dangerous features of the site. A common scenario for schools is children trespassing on the premises and that is an issue the courts have been required to reflect on, to include in the case of [Thomas Buckett v Staffordshire County Council](#).

## Non-Injury Claims

# Data breaches

Following the changes implemented by the GDPR and the Data Protection Act 2018, we are seeing an increase in the number of claims for damages arising from data breaches by schools. The breaches can range from sharing the personal data of one parent with their ex-partner, or sharing special category data about a child's special education or health needs with the parents of the whole year group in error.

Schools will be aware of their duties in managing personal data securely but human error or weak systems can lead to a data breach. Data subjects then pursue the school for damages for loss or personal injury in the form of stress, etc.

Schools should ensure they have robust processes in place to manage personal data and breaches and that all staff receive appropriate training relating to the same. Where there is a breach it should be investigated and contained and processes reviewed to avoid the same happening again. Further information about issues which can also impact on schools can be found in this [article](#).

## Discrimination claims

Issues giving rise to discrimination under the Equality Act 2010 in schools are typically dealt with via school complaints procedures in the first instance and may proceed to a tribunal, but in some circumstances progress to a civil claim, particularly where there is an allegation of financial loss or psychological harm.

The Equality Act includes the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

Allegations of discrimination are, by their very nature, extremely sensitive and can be challenging for all involved. It will be necessary to deal with the allegations and any civil claim sympathetically, with a clear understanding of the responsibilities of the school and accountability vital in order to demonstrate that a pupil has not been treated less favourably as a result of a protected characteristic.

## Claims relating to educational provision

We are also seeing a rise in the number of claims relating to the educational provision, which typically concern allegations of failure to identify special educational needs, or to make adequate provisions for a child once special educational needs have been identified. Often the local education authority will be involved.

Rather than simply utilising complaints procedures and tribunals, claimants are increasingly bringing civil claims, with an associated psychiatric injury often pursued.

From a claims perspective the claimant must show that the standard of care fell below that of a reasonably competent teacher. Further, the claimant must establish that any breach caused the damage and the courts do recognise that the pupil has a duty to progress their own learning too.

It is important for schools to retain records relating to any decision-making process relating to whether to refer a child to an educational psychologist, make any adjustments or arrange additional special educational needs provision. Pupils in isolation or being taught outside regular classes are also a potential risk and again it is important to retain records of decision-making processes and measures put in place.

While we hope that you will not be subject to any civil claims, if you do receive notification of a claim or are concerned that an incident may give rise to a claim please do not hesitate to [contact us](#) for advice.

## Contact

Katherine Langley  
Senior Associate

katherine.langley@brownejacobson.com

+44 (0)115 934 2038

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