

## STUDENT PLACEMENT GUIDELINES

### LIABILITY COVER

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#### 1. **INTRODUCTION**

This guidance addresses the perennial questions to HMSL/UMAL arising around legal liability coverage in place for:

- placement students,
- the home institution (university or college),
- or the host

in the United Kingdom or overseas.

#### 2. **WHAT LIABILITY COVER SHOULD THE HOST HAVE IN PLACE?**

##### **A: In the United Kingdom**

As a rule the host can be expected to hold both Employers' Liability and Public Liability insurances, and these respond to claims alleging legal liability to compensate financially for an injury or death (i.e. not an automatic benefit) meaning the claimant must demonstrate negligence by the party causing the injury (or other loss). Both Employers' Liability and Public Liability insurances will have specific limits of indemnity selected by the host.

Whilst the Employers' Liability Insurance compulsory minimum limit is GBP 5M, the standard minimum limit in the insurance market is GBP 10M.

Public Liability limits of indemnity vary - from as little as GBP 0.25M to GBP 50M+.

Therefore it is relevant to check the limits held, and take a view as to whether they are adequate for the risk exposure.

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## Placement student suffering an injury due to the host organisation's negligence

Generally, liability insurers in the United Kingdom have extended their definition of "Employee" to include students on work experience or similar schemes such as placements.

Although this is the understanding in the insurance industry, the Employers' Liability Insurance compulsory legislation does not make it clear that those on unpaid work placements should be considered to be employees – in fact, in the guidance notes they are a possible exception (see below).

Generally, therefore, the insurance market approach means that if the student on placement is injured they will be regarded as an employee of the host and if a claim for damages (financial compensation) is brought against the host it will be referred to their Employers' Liability insurers.

## Placement student causing an injury due to the host organisation's negligence

If the placement student were to cause injury or damage to other parties during placement work activities then the Public Liability/Employers' Liability cover of the host organisation would be expected to deal with the claim, unless it can be shown that negligence rests with another party.

## Exceptions to the Employers' Liability (Compulsory Insurance) Act 1969 legislation

Employers' Liability insurance is compulsory in Great Britain (there is similar compulsory legislation for Northern Ireland, the Isle of Man and the Channel Islands), but with some exceptions:

- *The State/NHS/Public bodies – where Crown Indemnity or the like may operate, but is applicable in a similar way to insurance (should still be checked)*
- *Family businesses*
- *Self-employed*

The legislation states that an organisation may not need Employers' Liability Insurance for people who work for them where:

- *Students work unpaid*
- *People who are not employed but taking part in a youth or adult training programme*
- *A school student on a work experience programme*

In the absence of Employers' Liability insurance, a family business or self-employed person may have Public Liability insurance that could respond to a claim from a placement student suffering an injury.

**Indemnity Form A** provided at the end of this paper has been drawn up with the purpose of assisting the home institution to establish that insurance/indemnity is in place on the part of the host organisation.

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## B: Overseas

Each territory has its own legislation and regulations governing insurance and indemnity, and while some may be broadly similar to that of the UK, there will be marked differences.

HMSL, through its subscription to insurance information services company Axco, is able to pass on that information to UMAL Members on the insurance and legislative position around the World, upon request.

**Indemnity Form A** may not be entirely relevant to overseas placements, and therefore a covering note to the host organisation explaining that it is designed principally for use in the UK can be appropriate, requesting responses that will help understand the local position.

Because there are so many variations the Indemnity Form is unlikely to elicit all answers needed on first enquiry; follow up as necessary.

### 3. GAPS IN COVER - WHY MIGHT THERE BE AN ISSUE?

Insurance/indemnity availability and products vary world-wide and additionally legal liability to financially compensate for injury or damage depends upon there being a negligent party, **but** the negligent party may:

- *have no insurance or indemnity and/or insufficient funds*
- *have inadequate insurance or indemnity/funds*
- *not be traceable*
- *be the individual(s) suffering the injury or death*

## OR

- *there may be no negligent party*
- *the legal process to claim/sue in the host territory may take many years*
- *there may be insufficient funds available to the student placement to instigate legal proceedings or to demonstrate legal liability against the negligent party*
- *the placement may have waived their right to claim (not lawful for injury claims in the UK, and inadvisable)*
- *there may be multiple parties negligent to varying degrees in a combination of the above listed categories*

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## 4. IS PERSONAL ACCIDENT COVER A SUBSTITUTE?

Legal liability (third party) insurance or indemnity should not be confused with Personal Accident (first party) insurance/cover, the latter being payable to the beneficiary usually regardless of fault (subject to wording exceptions), and not linked to demonstrating legal liability. The ‘benefit’ is a fixed amount agreed from inception of cover.

A Personal Accident benefit payment ordinarily has no bearing on a legal liability claim, so would be in addition to a successful legal liability claim for compensation. *It is, however, one way of mitigating a potential lack of compensation* (see above lists) but is unlikely to compensate as adequately, especially in the case of a life changing injury (due to cost and availability).

Personal Accident cover may be arranged by the individual or an institution. If ‘Travel’ cover is operative, there may be a level of Personal Accident cover already in place.

## 5. WHAT IF THE NEGLIGENT PARTY IS THE STUDENT?

### Home Institution’s cover

If the home institution is held to be responsible for an injury/loss, their Public Liability cover (which extends to include Medical Malpractice for students working under the supervision of a medically qualified person) may respond and is the initial cover for notification of the circumstances.

If the student is personally held to be responsible for an injury/loss, the home institution may request that their cover responds, which it may do if on the facts the home institution could have been held to be responsible for an injury/loss in place of the student (because the student was on their authorised business).

### Placement Student’s cover

Where the Travel cover is operative (i.e. an overseas placement), the student will also benefit from Public Liability cover (aka Personal Liability). In addition to the placement activities, the student benefits from cover should they be held to be responsible for an injury/loss arising from an incident in their social/leisure time.

### Host’s cover

In the generality, for a placement student under the control and supervision of the host, the host is most likely to receive a claim should an incident arise. Whether or not the host has adequate cover or sufficient funds to respond to a claim is an issue for clarification, and can be pre determined by requesting insurance details.

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## 6. CAN YOU, THE HOME INSTITUTION, PROVIDE LIABILITY COVER FOR THE HOST?

No\* – because the home institution has no ‘insurable interest’ in an external party’s legal liability. If the host accepting the placement is a separate legal entity, independent of the home institution, they will not be indemnified by the home institution.

\*In theory the home institution could be asked to provide the host with funds to purchase appropriate and/or adequate liability insurance/cover for themselves in exchange for the placement opportunity

## 7. CAN THE HOME INSTITUTION BE HELD TO BE RESPONSIBLE FOR AN INJURY/LOSS IN THE PLACE OF THE HOST?

In theory, ‘yes’, but only to the extent that the home institution could be held to be legally liable, and it would need to be demonstrated by the claimant that the institution has in some way been negligent. ‘Vicarious liability’ (being held responsible for the actions of others) is by no means automatic in relation to placements - if the home institution has done all it could reasonably do in the circumstances, it may not be legally liable, vicariously or otherwise.

## 8. WHAT ELSE CAN OR SHOULD THE HOME INSTITUTION DO?

It is the home institution’s decision whether or not to authorise a placement– UMAL relies upon the institution making a decision based upon a risk assessment.

It is expected that the host will also carry out a risk assessment by a person qualified to do so.

Looking at the insurance or indemnity position is only part of the home institutions risk assessment of the placement.

As previously mentioned, UMAL ‘**Indemnity Form A**’ has been drawn up to assist in this process, (see below). For overseas placements particularly this may need to be adjusted – e.g. checking the limits of cover, too.

Current experience is that for overseas placements to third world countries in particular, the lack of insurance or inadequate insurance remains commonplace.

Managing/mitigating risk will be a key feature.

Looking at all the circumstances, the home institution may decide to proceed in the full knowledge of inadequate or no liability cover from the host, where the risks are considered to be acceptable against the benefits of the placement.

# **Hasilwood Management Services Ltd**

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**Indemnity Form A – to be issued on the home institutions' letter headed paper for completion by the Host Organisation**

**Institution** \_\_\_\_\_

**Host Organisation (organisation providing placement)** \_\_\_\_\_

**Name of Student** \_\_\_\_\_

**Duration of placement From** \_\_\_\_\_ **To** \_\_\_\_\_

**Host Organisation Declaration**

- a) We confirm we have a written Health and Safety Policy
- b) We accept responsibility for the student under the Health and Safety at Work Act 1974
- c) We confirm we have in force Employers' and Public Liability (and where relevant, Professional Indemnity/Medical Malpractice) insurances and that the student and/or accompanying teacher is deemed to be an employee for the purposes of these insurance policies
- d) We confirm having advised the appropriate insurers of the proposed placement
- e) Should the student be expected to work with machinery, equipment or substances hazardous to health safety precautions will first have been taken, first aid facilities will be available and training, supervision and protective clothing will be provided
- f) We confirm we will advise the Institution immediately of any injury or damage involving the student

**Signed on behalf of the Host Organisation**

**Name** \_\_\_\_\_

**Position held** \_\_\_\_\_

**Date** \_\_\_\_\_

**(Please return completed form to the originator at the Institution)**