

BLOWING HOT AND COLD

Some temperature issues for Schools

We all know about the changeability and extremes of weather that is climate change. Add to this the fragility of those brought up in the age of central heating and air conditioning. These are giving the modern Head Teacher some issues to worry about that those of earlier times would have scoffed at. Here are some of the legal issues when the weather is hot and when the weather is cold.

The Common Law

For the clearest statement of the essence of the tort of negligence, see Lord Atkin in the case of *Donoghue v Stevenson* (1932) :

"... You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law is my neighbour? The answer seems to be - persons who are so closely and directly affected by my act that I ought 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. "

The school clearly has a responsibility for its pupils, its staff and those persons who lawfully visit the school premises. If they suffer due to extremes of temperature on the school premises then the school may be liable in negligence. However, the law imposes limits on this principle. The injury must be "reasonably foreseeable" ? Is the claimant "sufficiently proximate" to the Defendant ? Is it fair just and reasonable to hold the Defendant responsible ? For example, the school would certainly not be liable if the injury occurs on the journey to and from school. The school clearly has no control over the Queen's Highway. It clearly does have control over, say, the snowball fight mayhem that takes place in the playground, or whether the windows of the school are open or closed.



Statute and Regulations

The Health and Safety at Work Act 1974 imposes statutory duties on employers to provide safe environments for their employees. The Workplace (Health, Safety and Welfare) Regulations 1992 apply to most workplaces, including schools. The Act and Regulations impose various requirements including that there is : suitable ventilation; a reasonable working temperature; and an adequate supply of drinking water.

The Education (School Premises) Regulations 1999 contain, at regulation 20 some specific minimum heating requirements for the school differentiating between three different types of room :

- (1) Sick rooms and isolations rooms with a “lower than normal level of physical activity” - minimum temperature 21C;
- (2) Classrooms and other such rooms with a “normal degree of physical activity” – minimum temperature 18C;
- (3) Gyms and corridors and such rooms with a “higher than normal degree of physical activity” - minimum temperature 15C.

The regulations do not specify what type of heating is required. If the central heating system breaks down there is no reason why a range of different heaters cannot be deployed. If this is not possible then there may be no alternative to sending children home.

Regulation 16 says that the school building must provide reasonable resistance to penetration by rain, snow and wind and to moisture rising from the ground.

Regulation 21 on ventilation includes a requirement that all occupied areas in a school building have a controllable ventilation at a minimum rate of 3 litres of fresh air per second for each of the maximum number of persons the area will accommodate.



Feel the Heat

The regulations, by providing minimum temperatures, but no maximum temperatures, reflect the traditional patterns of British weather. This is changing. The National Union of Teachers notes the World Health Organisation recommendation of 24C as a maximum for comfortable working and maintains that anything above 26C is unacceptable. There are regulations in England that require that new schools should be built so that temperatures do not exceed 28C for more than 120 hours during the school year, but existing schools are exempt. Whilst there may be no upper limit there comes a point when the temperature in a particular classroom, allied perhaps with inadequate ventilation, takes it outside of the bounds of what the Health and Safety at Work Act would consider a reasonable working temperature. It is also possible to imagine scenarios, of pupils suffering heatstroke or dehydration, say from long periods in the playing fields or on school trips.

The Big Freeze

At least once a year we have a “big freeze” usually predicted about a day or two in advance. It should not be such a big deal, but, of course, given our transport systems it is. The Head Teacher must decide whether or not to open the school. The newspapers sometimes give the impression that the “education chiefs” in the Town Hall have decided to close all the schools in their area. As a matter of law they cannot do this as it is a “day to day” decision of the Head Teacher not of the local education authority as to whether a school opens or closes. However, strong advice from the LEA and information about transport and other problems in the area is bound to be persuasive. There are no easy answers. Issues that the school will take into account include : the dangers of ice and snow in the school grounds; frozen and burst pipes; staff failing to arrive to be able to supervise pupils; school meals and other service delivery issues; the hazards and likely length of journeys to and from the school. Whilst the school is not liable if children are injured on the way to or from school, naturally the hazards of and likely lengths of journeys is something that should be taken into account. It is clearly unacceptable to close the school gates at extremely short notice and risk, particularly younger children returning to empty homes. The phones need to be worked and the school building at least used as a safe haven for those who have arrived. Further, there is a limit to how often schools can close down given the legal requirement that there be 380 school sessions in the school year.



You might consider suggesting in your Parents' Handbook, or similar document, something along the lines of "The Head Teacher will make every effort to keep the school open but it is up to the parent to decide whether it is safe for the child to travel to school and home again". Also note that the Department for Children, Schools and Families has given permission for schools to mark as authorised, rather than unauthorised, incidents of absence due to very adverse weather.

Increasingly schools are using risk assessment systems which list the significant hazards and set a framework for an assessment of the different risks. Brent Health and Safety can advise on these systems. Brent Council Governor Services have produced Guidance for Heads and Governors on "Emergency Planning for School/Children's Centres".

Clive Romain
Senior Education Lawyer