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Someone to watch over me

How do the courts balance expectations of supervision with the realities of school life? Laura Johnson and Andrew Spencer report

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'Schools are not generally required to provide levels of staffing such that no child can ever misbehave or no accident could take place without it being witnessed.'

Big Brother is on our screens at the moment and, from personal experience, there is a tendency for litigators to assume that reasonable supervision in schools requires a similar standard – if a teacher, supervisor or coach was not watching a child claimant at the time of an accident, then liability must attach. In reality, supervision is fact sensitive: a much wider concept that embraces the system a school has in place, the ratio of adults to children, the rules that are in place and the method of enforcement of those rules. When considering claims, it is important for parties to reflect carefully on the level of supervision the law requires. This allows claimant representatives to protect child claimants from the distress of an unsuccessful trial (where they might be found to be the author of their own misfortune) and defendant representatives to know when to stand up for the systems their client has in place.

This article will consider issues of supervision both on school trips and on the school premises. Claims of this sort turn on their own facts and it is not possible within the scope of this article to do more than touch on some examples.

School trips

With the summer school trips upon us, teachers and parents will be hoping not to see the annual headlines about terrible accidents involving school children. However, it is useful to keep perspective by remembering how rare fatalities on trips actually are. A child is about as likely to be struck by lightning as killed on a school trip (although these are not mutually exclusive).

Clearly, schools owe a duty of care to pupils during any school trips and excursions that they organise. The more difficult question is: what is the standard of that duty? Often, liability will turn on whether the level of supervision has been adequate. The particular standard of care required from a school will depend on the sort of excursion and activity, and the risks associated with it. The age and experience of the children is also highly relevant.

Chittock v Woodbridge School [2002]

As to how the courts approach the question of supervision on school trips, useful guidance can be obtained from the judgment of Auld LJ in *Chittock*. This case concerned supervision by a school on a skiing trip abroad. The claimant was a minor, aged 17 at the time of the accident. The school trip was for younger children but the claimant's parents had agreed special terms with the school concerning his presence and supervision on the holiday. It was agreed that the claimant and his friends of similar age were allowed to ski unsupervised but they had to remain on piste. Prior to the accident, the claimant and one of his friends had been seen on two occasions skiing off piste. The claimant was given a strong warning but allowed to continue to ski unsupervised. Towards the end of the holiday he had an accident on piste, on a red run, rendering him tetraplegic. The claimant succeeded at first instance on the basis that his teacher should have prevented him from skiing unsupervised after the second occasion when he was seen skiing off piste. Had this been done, he would not have been skiing on the day in question, albeit on piste as agreed, and would not have been injured.

On appeal the Court of Appeal turned its mind to the question of supervision, finding that the duty owed by the teachers was to show the same care as would have been exercised by a reasonably careful parent credited with experience of skiing and of running school ski trips. The Court also had to take into account the claimant's level of skiing competence

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and experience, the nature of the ski resort and the teachers' responsibilities for the group as a whole. Furthermore, the duty could, in appropriate circumstances, include a duty to take positive steps to protect the children from doing themselves harm.

It was not a duty, however, to ensure the claimant's safety from skiing mishaps such as those that might result from their own misjudgement or inadvertence when skiing unsupervised on piste. Rather, it was a duty to take such steps as were reasonable to see that the child skied safely and otherwise behaved in a responsible manner. Where there are a number of options for the teacher as to the manner in which they might discharge that duty, they are not negligent if they choose one that, exercising the *Bolam* test (named after the famous case of *Bolam v Friern Hospital Management Committee* [1957]), would be within a reasonable range of options for a reasonable teacher exercising that duty of care in the circumstances.

The duty of care of organisers of school skiing trips should be considered in the context of any available appropriate guidance for such an activity and the standard of care should reflect the particular circumstances in which the claimant went on the trip.

The aspect of *Chittock* that is often useful to those defending claims is the recognition that schools are not under a duty to ensure children's safety from mishaps caused by their own misjudgement, inadvertence or misbehaviour, which would require constant surveillance. Rather, there is a duty to take steps to see that children behave safely and in a responsible manner. In assessing whether the latter duty has been breached, the courts will take into account the age of the child, their behavioural history (whether they have previously been trustworthy), the activity being undertaken, the instructions given to them about safety and behaviour, any relevant guidelines and what repercussions were in place for bad behaviour.

Government guidance

With regard to relevant guidelines, there is a considerable amount of guidance from the government about the standard of care required from schools and teachers on school trips. The current generic guidance is contained in 'Health and safety of pupils on educational visits – a good practice guide'. This was published in 1998 and has since been supplemented by 'Standards for LEAs in overseeing educational visits', 'Standards for adventure', 'A handbook for group leaders' (all 2002) and by 'Group safety at water margins' (2003). In addition, courts will consider any guidelines specific to the particular activity being undertaken.

The general guidelines include suggestions of the appropriate level of supervision, depending on the age of the children. A crucial part of the process is risk assessment, which should be in writing. Where schools visit the same place regularly there need not be a risk assessment every time, but a generic risk assessment should be made at regular intervals. Earlier this year the government announced that new revised guidance would be published this summer but this has not yet materialised. The relevant guidance is a very good place to start when bringing or defending a claim involving a school trip. Failure to follow the applicable guidance may make it difficult for the school to argue that it took reasonable care.

Schools are not under a duty to ensure children's safety from mishaps caused by their own misjudgement.

Third-party involvement

On many school excursions, the school organises the trip but delegates the immediate supervision to another party, particularly when the trip includes a specialist activity, such as canoeing or sailing. This is perfectly proper – indeed, a teacher would be criticised if they undertook supervision without the proper qualifications. The school's duty in these cases is to take reasonable efforts to see the premises the children are taken to are safe and that the organisation has competent staff. Providing the school has taken these steps, it will not be liable if the third-party supervisors are negligent.

Those were the facts in *Brown v Nelson* [1971]. The claimant was injured by faulty equipment on a school trip conducted by an outward bound company. The claimant succeeded against the company but lost against the school – it had discharged its duty by making reasonable enquiries about the company before the trip.

Another case concerns a trip to Whipsnade Zoo (*Murphy v Zoological Society of London* [1962]). The children (aged ten) were allowed to explore the zoo in small unsupervised groups. The claimant managed to climb into the lion enclosure. While he was in there, one of his 'friends' provoked the lion who proceeded to maul the claimant. The court found there was no liability – it was not considered negligent to allow the ten-year-old children to explore the zoo in unsupervised groups. A reasonably prudent parent might have done likewise. Surprisingly, the zoo was also exonerated. It should be noted that this case is from the 1960s and it is certainly possible it would be decided differently today – standards move on and the law should reflect contemporary values as to the required level of supervision. It is notable that the cases from 50 years ago or more generally accept a lower level of supervision than would be expected today. That said, these contain many useful *dicta* for defendants about the value of fostering independence and the need to balance this against too strict a level of supervision (see *Jeffrey v LCC* [1954] and *Camkin v Bishop & anor* [1941]).

Accidents happen

In the past few years there have been a number of news stories about teachers refusing to go on school trips because they are so concerned about litigation should there be an accident. Given this background, it is easy to lose sight of the possible defences available to a claim of this kind. The school is not expected to foresee every act of stupidity that might take place, to supervise everyone all the time, or to guarantee accidents do not happen.

Accidents on school premises

Similarly, within school premises, schools are not generally required to provide levels of staffing such that no child can ever misbehave or no accident could take place without it being witnessed. Judges are usually prepared to accept that it is not possible for all children to be watched at all times in a busy school. Furthermore, following the Compensation Act 2006, judges are also increasingly prepared to consider the effect of placing excessively

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high standards on schools that would prevent desirable activities from taking place and that would prevent children from learning personal responsibility in a reasonably safe and controlled environment.

That is not to say that the standard of care that must be exercised by those *in loco parentis* is not high. Schools must provide a reasonable level of supervision in the particular circumstances. This varies depending on whether the school day has started, whether the child is in a lesson (and the content of that lesson) and the age of the child. For example, the standard of supervision and behaviour required is likely to be higher if a child is engaged in a potentially hazardous activity (for example using dangerous materials in a chemistry or cooking lesson, or taking part in potentially dangerous sporting activities such as gymnastics or contact sports). On the other hand, the level of supervision required is likely to be lower during playtime than lesson time.

It is impossible to consider these issues comprehensively in this short article, however we will touch briefly on some recent examples from personal experience in the county courts.

In *C v London Borough of Hackney* [2008] a child brought a claim following an accident in a playground when he was five years old. The accident was not witnessed and no one knew what had happened. The child was simply found in the playground during playtime with a minor head injury. C challenged both the design of playground equipment from which it was thought he might have fallen and also the level of supervision. He alleged that it followed from the fact that no adult had witnessed the accident that supervision was inadequate. His claim was dismissed. The playground equipment was held to be reasonably safe. The judge considered the care that had gone into the design of the equipment and also the desirability of its presence, transforming an inner-city playground. Furthermore, the supervision claim also failed. The judge considered the careful rules in place for the use of the equipment, the school's system of supervision during lunchtime that was carefully thought out, child-adult ratios and the discipline system in force to make sure children followed the rules.

W v Somerset County Council [2008] concerned an accident during a physical education lesson. C was 11 years old and due to take part in a hockey lesson. Instead of walking to the equipment shed as the class had been (and were always) instructed, C, who said she had not heard the instruction, followed other girls unsupervised directly to the pitch. She sat on a fence, lost her balance and fell, impaling herself on a boot scraper. She alleged that the scraper was dangerous and that there had been a lack of supervision, arguing that the teacher should have searched for the renegade girls rather than completing the task of handing out hockey sticks. Her claim was dismissed. It was held that the scraper was a standard piece of reasonably safe equipment that, save for the very unusual and unforeseeable circumstances of the accident, posed a low level of risk. With regard to supervision, the judge considered the teacher-student ratio, school rules concerning sitting on fences and following instructions, the discipline system and history in the school, the nature of the area the girls had walked off to and the instructions that had been given. He recognised that the teacher was in an impossible situation when she realised that part of the class was missing. It was reasonable for her to finish the task of handing out hockey sticks before searching for the missing girls and her supervision was reasonable.

The courts must balance the high standard of care owed to children against the need for common sense.

C v Kirklees Rebound Trampoline Club [2008]

In *Kirklees* the accident did not involve the claimant's school, but it is of relevance nonetheless. A child was injured carrying out an unrecognised manoeuvre during a trampolining class when the coach's back was turned. She knew that she was doing something that was forbidden and that she would get in trouble for. She alleged lack of supervision in that:

- she was left too long without coaching, causing her to become bored and misbehave; and
- the coach turned her back affording her the opportunity to misbehave.

Her claim was dismissed. Her evidence on the facts was not accepted but the judge discussed supervision generally. He recognised that coaches must have discretion in how they run their classes and that in the circumstances, given the general levels of supervision, the experience of the claimant, the governing body guidelines (which had been adhered to and bettered by the defendant) and the discipline system in force, it was not negligent for a coach not to be watching all the children all of the time.

Conclusion

It is clear from the above that the courts must balance the high standard of care owed to children against the need for common sense. They must recognise the realities of caring for a large number of children, the importance of fostering personal responsibility and independence, the social desirability of a number of the activities in question and the context of the accident. In other words, the courts must recognise the systems, supervisory and disciplinary structures in place, and the school's method of enforcing them. Good cases will succeed against schools, but it should be remembered that reasonable supervision does not necessarily require Big Brother to be watching. ■

Bolam v Friern Hospital Management Committee
[1957] 1 WLR 583

Brown v Nelson
[1971] 69 LGR 20

C v Kirklees Rebound Trampoline Club
(Unreported, 28 April 2008)

C v London Borough of Hackney
(Unreported, 1 February 2008)

Camkin v Bishop & anor
[1941] 2 All ER 713

Chittock v Woodbridge School
[2002] ELR 735

Jeffrey v LCC
[1954] 52 LGR 521

Murphy v Zoological Society of London
[1962] CLY 68

W v Somerset County Council
(Unreported, 22 February 2008)