

SAFETY, HEALTH and WELLBEING (SHaW) RESPONSIBILITIES WITHIN EDUCATIONAL ESTABLISHMENTS

Updated links and detail – November 2022

This document is an updated version of the letters sent over a period of time since 2017. The intention is to explain some key information on health and safety, and to clarify where the responsibilities lie, as this continues to be raised by a number of schools and as more schools convert to academies, their roles need to be made clear.

The responsibility for health, safety and welfare in schools is obviously a matter of considerable importance. In Suffolk, thousands of employees and tens of thousands of pupils, parents, volunteers are affected by the arrangements made in schools and by the local authority. It is vital that the local authority and school managers and governing bodies understand their relative responsibilities and what the law expects.

There have been several changes in national and local policy; the changes are important and affect what schools need to do to comply with the law. The County Council needs to ensure it meets its own statutory duties and, in the process, to remove any uncertainty about where the responsibility for health, safety and welfare management lies.

National Guidance on Health and Safety in Education

In 2010 the Department for Education (DfE) revoked **statutory** guidance produced in 2001 entitled "Health and Safety: Responsibilities and Powers" and replaced it with a shorter **advisory** document. The revised guidance broadly aligned with the Health and Safety Executive's (HSE) published views. The new, non-statutory advice focused on a narrower range of topics and referred to the HSE for additional detail. The current advice, which has been updated several times since 2010, and latterly in April of 2022, can be found here: <https://www.gov.uk/government/publications/health-and-safety-advice-for-schools/responsibilities-and-duties-for-schools>

In 2006, the HSE also revoked its own advice dating from 2000 and replaced it with a series of explanatory notes on its web site. The HSE uses a strict interpretation of the law and the information is available on the Education section of its website, here: <http://www.hse.gov.uk/services/education/faqs.htm#a1>

The HSE states that the legal responsibility, and thus accountability for health and safety lies with the employer. Who the employer is depends on the type of school. In England, the following applies:

School type	Employer
Community schools	The local authority (LA)
Community special schools	
Voluntary controlled schools	
Maintained nursery schools	
Maintained pupil referral units	
Foundation schools	The governing body
Foundation special schools	
Voluntary aided schools	
Academies and free schools	The academy trust

Therefore, Suffolk County Council (SCC) is not responsible for health and safety in foundation schools, foundation special schools, voluntary aided schools, academies and free schools.

Although overall accountability for health and safety lies with the school employer, **other school managers and employers** involved in the school have responsibilities for health and safety. For example, staff employed by a separate organisation contracted to provide specific services, such as cleaning, catering, etc. and their employers, have some responsibility. Please ask your Safety, Health and Wellbeing Advisor if you need clarification on these matters.

It is the **employer that is responsible for making sure that risks, particularly the risks to staff and pupils**, are managed **so far as is reasonably practicable**. The employer may delegate health and safety functions and tasks to members of staff in the school. However overall legal accountability for the health and safety of employees and others cannot be delegated and remains the responsibility of the employer.

Governing Bodies

In **LA 'controlled' schools**, where Suffolk County Council is the employer, the governing body's role is to ensure clarity of vision, ethos, and strategic direction. The governors may have some control of the premises both during and outside the school day, and oversee a delegated budget for some maintenance activities. **However, the Governors / Governing Body is not the employer**. Their responsibility derives from the Health and Safety at Work etc. Act 1974, but not from sections 2 or 3 which specifically relate to the employer's duties.

In **academies, free schools, foundation schools and voluntary aided schools, the local authority is not the employer.** Governing Bodies and the associated trust that run the school have a **role identical to that set out for the employer** and **must:**

- ✓ Take reasonable steps to make sure that the school is following the employer's policy and procedures.
- ✓ Ensure staff receive adequate training to enable them to carry out their responsibilities.
- ✓ Promote a sensible approach to health and safety, making use of competent health and safety advice when required.
- ✓ Work in close partnership with the headteacher and senior management team to support sensible health and safety management and to challenge as appropriate.

Headteachers

Headteachers and the school management team / manager have considerable autonomy in the day-to-day running of their schools. It is important that headteachers exercise this autonomy in line with their employer's policies, procedures, and standards. They must:

- ✓ Ensure that the school is following the employer's health and safety policy and has effective arrangements for managing the risks at the school.
- ✓ Maintain effective communications with employers, governors, and the school workforce, and give clear information to pupils and visitors, including contractors, regarding the significant risks on site.
- ✓ Manage the programme of training for staff so that they have the appropriate competencies to deal with risks in their areas of responsibility.
- ✓ Consult and work with recognised trade union safety representatives/employee representatives and safety committees.
- ✓ Make sure that staff understand their responsibilities and know how to access
- ✓ support and advice to help them manage risks responsibly.

Monitoring and Compliance in Schools where SCC is the employer

It is the employer's responsibility to make sure its policies are being followed and this duty cannot be delegated. A robust system must be in place to ensure that people are not exposed to risks that could cause them harm. This risk controlling system can draw on information collected from several sources, but the HSE is clear that a **system should be in place**. The HSE has withdrawn detailed guidance on the subject but has replaced it with a series of guides available here: <http://www.hse.gov.uk/pubns/books/l21.htm> and a very useful webpage entitled 'Managing for Health and Safety' can be found here: <http://www.hse.gov.uk/managing/index.htm> .

SCC cannot fulfil its statutory duty unless it monitors how its schools are complying with its policy. For advice on a school health and safety policy and the associated guidance on systematic management, see the guidance documents on Suffolk Learning <https://suffolklearning.com/safety-health-wellbeing/school-hs-policy-and-9-term-plan/> which is otherwise known as 'School Policy and 9 Term Plan'.

The approach to monitoring the management of health and safety in schools is constantly being reviewed to ensure that required standards are met, and all establishments where SCC is the employer are adhering to legal requirements and best practice. Where new systems are introduced, these will impose no costs on schools either in the development or full implementation stages.

Monitoring and Compliance in Schools where SCC is not the Employer

To comply with the employer's duties in those schools where the LA is NOT the employer, governing bodies, trusts and other responsible persons are advised to look carefully at how they can be assured that their health and safety duties are met. The above guidance from the HSE will assist, and all due advice from their Competent Person. Information on this assistance can be found here: <http://www.hse.gov.uk/involvement/competentperson.htm> All academies and non-maintained schools are welcome to use the Suffolk Learning guidance and advice as above.

Where Suffolk County Council has no responsibility as employer, it has no power to act and no duty to advise on health and safety matters. The employers in those schools **must** have their own policies and arrangements. Foundation schools and voluntary aided schools are therefore particularly affected by the authority's recognition of the statutory duty. There are exceptional circumstances where information may be sought or advice given however, namely when required to do so by Government, or when major incidents occur. For instance, in light of the Grenfell tragedy, the LA collated information from **all** establishments regarding their fire precautions so that this can be analysed and further guidance given.

In schools where the LA is not the employer, one immediate effect of these 'employer' arrangements was that these schools should no longer submit incident report forms to SCC. These schools are advised to set up their own arrangements. The governing bodies in those schools will need to carry out their own investigations and analysis of incident information.

Similarly, these schools will not be subject to the LA's risk management system as described above, but the school's employer is advised to set up a system that enables them to meet their statutory duties.

Other LA/ School Interactions

Of course, there are numerous ties between the County Council and voluntary aided and foundation schools, both statutory and elective. The formal recognition of the distinction between schools where the LA is the employer and schools where it isn't, will not impact unduly on those other interactions. The mutually advantageous arrangements that exist for building maintenance, financial management and so on are unaffected.

The LA will also enhance and formalise the system by which schools are informed about new guidance. It will also routinely circulate information about existing guidance so that headteachers are fully aware of what is available. Documents on health and safety are placed on Suffolk Learning and this will continue, alongside being promoted in Suffolk Headlines.

If you have any concerns or queries about how this might impact on your school, please don't hesitate to ask.

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