



## **Duty of Care in UK Schools - COVID19 Coronavirus**

**10<sup>th</sup> March 2020**

*In this brief note, we look at the key elements to the duty of care that the managers of a school have in relation to contagious illnesses. Please note that while this may provide some general points to think about, please stay tuned to current national guidance and take our advice in particular cases as needed.*

Following the latest emergency Cobra meeting on 9<sup>th</sup> March 2020, government ministers have confirmed that the UK is remaining in the 'containment phase' of its response to the coronavirus outbreak. Social distancing measures, such as the closure of schools, will not be introduced yet, with the advice remaining that schools are to stay open.

Official government guidance to schools as a result has not altered. The guidance reads that special measures such as school closures are not necessary if a pupil, student or member of staff is suspected to have contracted COVID-19 and while awaiting test results. If a case is confirmed, self-isolation is advised, followed by an assessment of each childcare or education setting by the Health Protection Team. In most cases, the closure of a school will be unnecessary, but this decision will be based on various factors such as establishment size and pupil mixing.

Nevertheless, approximately 14 schools across the UK have taken the decision themselves to close since February, after fears that pupils and staff members may have been exposed to coronavirus after travelling abroad to affected areas during the half-term break. One academy chain chief, Hugh Hegarty, head of the Nicholas Postgate Catholic Academy trust, said he made the decision to close one of his schools after 36 pupils and eight staff members returned from a skiing trip to Italy over half term. Hegarty cited the fact that schools owe to their pupils and staff a 'duty of care' as a central reason behind his decision.

A 'duty of care' means a legal obligation to ensure the safety and well-being of others. If a claimant is to succeed in proving a negligence claim, they must prove a duty of care was owed by the defendant. Some duties are established, such as the teacher pupil relationship, and employer and employee relationship. With regard to coronavirus, headteachers are having to make difficult decisions in order to balance this legal duty of care to their pupils and staff. The question then arises: is keeping schools open when there is a risk of coronavirus breaching this duty of care?

The legal test when considering whether a duty has been breached is 'what would the reasonable person have done, or not done, in the circumstances of this particular incident'. In considering this question, various factors are taken into account. For example, the state of knowledge, seriousness of likely injury, and the cost and difficulty of the defendant taking precautionary measures.

(a) *state of knowledge* - the developing knowledge of the virus itself and government guidance given at the time of deciding whether to close a school are relevant.

(b) *seriousness of likely injury* – head teachers would have to assess on a case by case basis. For example, if pupils have returned from an affected area, or if there has been a confirmed case in the educational setting. A proportionate risk assessment would also have to be taken in identifying where an affected individual has been, who they had contact with and areas they may have used. A further concern to be had is if some pupils have more vulnerabilities than others.

(c) *cost and difficulty of taking precautionary measures* -- is perhaps most relevant, as closing a school could very well count as a precautionary measure. There are considerable costs and difficulties associated with closing a school. For example, there will be sick leave, pay and status issues in relation to staff, school fee issues in relation to parents (in the case of independent schools), possible delays to teaching the curriculum and taking examinations, as well as wider ranging economic and social consequences. Therefore, head teachers and school leaders have the responsibility of making a risk assessment of the likelihood of injury and balancing the cost of protecting against such injury. These are just a few of the considerations and issues that arise when considering closure of schools.

In order to balance this duty of care, it is important to stay abreast of developments and government guidance for schools in relation to coronavirus. You can find all the latest information here: <https://www.gov.uk/government/publications/guidance-to-educational-settings-about-covid-19> and here: <https://www.nhs.uk/conditions/coronavirus-covid-19/>

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