

Liability issues in relation to Sport Makers

CSPs should ensure they read the disclaimer situated at the end of this note.

Concerns have been raised by CSPs in relation to the liability of CSPs, Sport Makers and Hosting Organisations for injury that is sustained by Sport Makers or other volunteers. The two most likely ways that such liability may arise is under the law of negligence or under health and safety legislation.

This memo is intended to provide a broad overview of CSPs, Sport Makers and Hosting Organisations' potential liability and general recommendations on how the risk of such liability may be minimised. It is important to bear in mind that, although the risk of liability can be managed by adopting appropriate procedures, it cannot be completely avoided.

1. Negligence

A person or organisation will be negligent if they:

1. owe a duty of care to a person; and
2. fail to exercise an appropriate level of care in relation to that person.

The duty of care is a common law duty to take reasonable care to avoid causing harm to others. Whether or not a duty of care exists depends on the relationship between the parties. There are certain relationships that automatically give rise to a duty of care, such as the duty owed by an occupier of a place to people entering the place. A duty of care may also exist where there is a sufficiently close relationship between the parties.

Once it is established that a duty of care exists, the next issue to consider is the standard of care that the duty requires. Generally, that is assessed by reference to what an ordinary and reasonable person in the place of the person who owes the duty would do in response to the risk of injury.

1.1 Negligence in sport

The general position in regards to sporting activities is that a person engaged in playing a lawful sporting game accepts the inherent risks of being a player in that game. The participant has no legal remedy if they sustain an injury during the game, unless the injury is caused by some unfair act or foul play amounting to negligence. This principle applies not only to organised sport, but also to informal and unorganised games.

That being said, a person who engages in a sporting activity is entitled to expect that the activity will be run properly and in accordance with the relevant rules of play, and that any equipment or facilities used are safe.

Sport Makers and Hosting Organisations who organise sporting activities will owe a duty of care to participants to ensure the activity is properly organised and that any relevant rules are enforced appropriately to avoid injury. By taking on responsibility for organising the activity, the Sport Maker or Hosting Organisation also takes on the duty to guard against foreseeable risks of injury arising from that activity.

1.2 CSPs

It is possible that CSPs may owe a duty of care to volunteers because CSPs take on the role of directing volunteers to sporting opportunities. That may be a sufficiently close relationship so as to require CSPs to exercise due care and attention when promoting opportunities to volunteers.

The risk of liability for CSPs is fairly low because their involvement is minimal and they have no actual role in arranging or planning the volunteering activity. If a duty does exist, it is probably limited to taking reasonable care when providing information about volunteering opportunities to Sport Makers. That is, CSPs should ensure that they only promote suitable volunteering opportunities with organisations that are known to them.

If CSPs do not make 'representations' about the safety or suitability of volunteering opportunities, then they are unlikely to incur liability. On the other hand, if a CSP makes a representation about the suitability or benefits of an opportunity or a particular Hosting Organisation, then they would have to have reasonable grounds for doing so and may be liable if that representation is inaccurate. That would mean that CSPs would have to undertake sufficient investigations into opportunities and Hosting Organisations to ensure that any statements they make are accurate.

It is unlikely that a CSP would be liable for an injury that a Sport Maker sustained during a volunteering opportunity, unless the activity or Hosting Organisations was so obviously unsafe or disreputable that it was not reasonable for the CSP to refer the Sport Maker to it.

To minimise any risk of liability, it is important that CSPs make their role very clear to Sport Makers and advise them to make their own enquiries as to the suitability of volunteering opportunities.

1.3 Hosting Organisations

Hosting Organisations will owe a duty of care to Sport Makers and other volunteers to guard against risks arising during the volunteering activity. If they fail to discharge that duty, they could be liable if a Sport Maker is injured.

If a Hosting Organisation occupies or has control of the property or facility where the Sport Maker undertakes their volunteering it will need to ensure that the facility or property is in a safe condition, so as to avoid any foreseeable risks of injury. For example:

- If a field is in poor condition and it is likely that playing on it would mean a risk of injury for players in excess of the inherent risks of the game, an organisation may be negligent if it failed to take adequate precautions to protect players from injury, such as improving the condition of the field or warning players of the conditions.
- Another common example of an occupier's liability is where a person injures themselves on stairs or uneven surfaces. An organisation may be negligent if it fails to take adequate precautions against the risk of injury, such as erecting warning signs.

Hosting Organisations also owe a duty of care to participants to ensure that the volunteering or sporting activity is properly organised and any risks associated with it are adequately managed.

Hosting Organisations should already be familiar with their potential liability and should hold appropriate public liability insurance. They will need to ensure that the insurance also explicitly covers volunteers.

1.4 Sport Makers

As highlighted above, Sport Makers are likely to owe a duty of care to volunteers if they organise a sporting activity. A Sport Maker will not be liable for injuries sustained as part of the sporting activity if the injury occurs as a result of the inherent risks of the game. However, a Sport Maker may be liable if it fails to provide safe facilities and equipment, fails to enforce the rules of the sport or fails to properly conduct the match.

1.5 Liability for acts of Sport Makers

In addition to liability for injury sustained by a Sport Maker, a Hosting Organisation may also be liable for acts of the Sport Maker that cause injury to others. It is important that Hosting Organisations ensure that their insurance adequately cover this risk.

2. Health & safety legislation

Health and safety legislation is in place to protect workers and employees, but it mostly only applies to paid workers. However, that does not mean that Sport Makers and other volunteers can be exposed to serious risks because, as I mentioned earlier, Hosting Organisations have a duty of care towards volunteers (among others).

Section 3 of the Health and Safety at Work etc Act 1974 also places a statutory duty on employers (ie an organisation that employs at least one paid member of staff) to:

- ensure, as far as reasonably practical, that persons not in their employment, who may be affected by their undertaking, are not exposed to risks to their health and safety; and
- give information as might as might affect their health or safety.

This duty extends to volunteers but only applies to Hosting Organisations or CSPs that employ at least one paid staff member and does not apply to volunteer-only organisations.

The Management of Health and Safety at Work Regulations 1999 place a duty on employers to carry out risk assessments, looking at potential risks to their employees and volunteers. If they have five or more employees, these assessments must be in writing. Volunteer-only organisations do not have a statutory duty to carry out risk assessments, but doing so would assist in discharging their common law duty of care to volunteers.

The Health and Safety at Work etc Act 1974 requires organisations with five or more employees to have a written health and safety policy.

It is a criminal offence to breach health and safety law.

3. Managing the risk of liability

3.1 General

CSPs, Sport Makers and Hosting Organisations should be aware of potential risks, and take steps to reduce them where they are unacceptable.

CSPs and Hosting Organisations must take reasonable steps to ensure that the likelihood and potential seriousness of injury to Sport Makers is reduced. Depending on circumstances, this might include giving volunteers adequate information, training, the use of safety clothing or equipment, closer supervision etc.

3.2 Young and vulnerable volunteers

People under the age of 18 are legally classed as vulnerable and CSPs and Hosting Organisations should take this into account when involving them as volunteers. Further, section 3 (5) of the Children Act 1989 requires an individual to do what is reasonable for the purposes of safeguarding or promoting a child's welfare while the child is in his or her care.

There is an enhanced duty of care towards young volunteers and vulnerable adults who are volunteers. A risk assessment needs to be made to decide whether placing a young person or a vulnerable adult in a volunteer role would put them, or the people with whom they were working, at risk.

CSPs and Hosting Organisations should bear in mind the following basic principles:

- Young people or vulnerable adults should not be left unattended
- It is safer if young volunteers and vulnerable adults are supervised by two or more adults
- Any potentially dangerous activity should have constant supervision.
- Obtain parental/guardian consent for volunteers under 16.
- Strongly encourage volunteers between 16-18 years to discuss their activities with their parents or guardians.
- Ensure insurance policies cover volunteers of the age you intend to involve.

3.3 Working with vulnerable clients

Most organisations working with vulnerable people are not legally obliged to carry out Criminal Record Checks on staff or volunteers but they do have an enhanced duty of care towards them, which may well require checks should be carried out. A risk assessment must be made in each situation to determine if carrying out a check would be a reasonable step to take to help protect clients.

Organisations with vulnerable clients should have a clear child/vulnerable adult protection policy in place, which should also deal with volunteers.

3.3 Disclaimers/waivers

The Unfair Contract Terms Act 1977 prohibits CSPs and Sport Makers from excluding or restricting their liability for death or personal injury resulting from negligence by contract or notice. As such, CSPs and Sport Makers cannot ask volunteers to sign 'disclaimers' or 'waivers' that have the effect of limiting their liability.

3.5 Best practice

To minimise the risk of liability it would be best practice to adopt the following principles:

- CSPs should ensure that they have some background information about Hosting Organisations before making any representations about the suitability of the volunteering opportunity. They should also perform screening of Sport Makers to ensure that only suitable opportunities are sign-posted.
- CSPs should also make it clear to Sport Makers that they have not performed extensive research on the opportunities and are merely providing contact details so that Sport Makers can explore the opportunity further. If CSPs are clear about their role and what Sport Makers should expect, then that will go far to minimise the risk of liability.
- Hosting Organisations should ensure that Sport Makers are fully informed about the inherent risks of the sporting activity and the rules of the game.
- Sport Makers who organised sporting activities should carefully consider the risks involved and provide as much information as possible to participants.
- Hosting Organisations and Sport Makers who organise their own sporting activities should ensure that equipment and facilities are safe and maintained appropriately and that the rules of the particular sporting match are enforced appropriately.
- Hosting Organisations should hold appropriate insurance that explicitly covers volunteers.

Disclaimer:

This note is intended to be for information purposes only and no reliance should be placed on its content without taking separate independent legal advice. In no respect shall Sport England incur any liability for any damages, including but not limited to, direct, indirect, special or consequential damages arising out of, resulting from, or any way connected to the contents of this note, whether or not based upon contract, tort, or otherwise; whether or not injury was sustained by persons or property or otherwise; and whether or not loss was sustained from, or arose out of, the results of, the note provided by Sport England.