

## **STATUTORY HEALTH & SAFETY OBLIGATIONS OF EMPLOYING ENTITIES AND VOLUNTARY MEMBER CLUBS**

### **Employing Entities**

Entities which employ staff (referred to as Employing Entities) are under a general responsibility to ensure safety, because of statutory Health & Safety legislation for their employees and any 3<sup>rd</sup> Party, such as customers, visitors (authorised or not) who would be affected by their undertaking/business (Sections 2 & 3 Health & Safety at Work etc Act – “**HASWA**”). This would include any volunteers. They must also provide any relevant information on health & safety. Voluntary Member Clubs will not normally be caught on the basis they do not have any employees.

HASWA states that every employer has to:

“... conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their Health & Safety”.

So far as “risk” is concerned, The Management of Health and Safety at Work Regulations 1999 specifically state that employers must do risk assessments that look at potential and actual risks to their employees and 3<sup>rd</sup> Parties who may be affected by their activities (as mentioned this would include members, any volunteers and visitors (whether authorised or not)). If they have five or more employees, these assessments must be written.

Risk assessments form the basis, in the UK, of Health & Safety legislation and enforcement. Quite simply, a risk assessment involves looking at hazards and risk. “Hazard” means anything that can cause harm. “Risk” is a combination of the likelihood of that hazard happening and the potential seriousness if it did.

The aim of the risk assessment is to be able to show that potential problems or risk are identified and that something has been done to either eliminate or lower that risk.

If an Employing Entity has more than five employees it must have a written Health & Safety Policy. This Policy shows that Health & Safety is important to the organisation, explains how things are done and who is responsible for what. This, importantly, would include confirming the arrangements in place ie the systems and procedures that should be followed to ensure safety. These do not all need

to be described in detail in the actual Policy but they should be mentioned and explained elsewhere using cross-referencing. This might well include, depending on the nature of the business, for example, procedures for first aid, safety training, fire precautions and procedures, reporting and investigation of accidents, management of risks, maintenance of equipment and buildings and emergency and evacuation procedures

Breach of HASWA represents a criminal offence which could result in prosecution and/or the imposition of significant fines against the Employing Entity, its officers and senior managers as well as imprisonment for officers and senior managers.

### **Voluntary Member Clubs**

The legal obligations of Voluntary Member Clubs with no employees towards their members and guest visitors with regard to Health & Safety are less clear than they are for Employing Entities to their members and customers.

Nevertheless, Voluntary Member Clubs do have serious legal obligations towards their members, guests and visitors (whether or not authorised). The Health & Safety Executive (“**HSE**”) hold the view, as expressed on their website, that it is good practice for Voluntary Member Clubs to treat its members and by extension their visitors (whether authorised or not) with the same consideration as that applicable to Employing Entities when it comes to ensuring health and safety. The HSE has been established under HASWA to enforce health and safety legislation but on its website, it goes on to make important recommendations for voluntary entities as well.

### **Duty of Care**

In English Law, an individual member or visitor (whether authorised or not) may be owed an actionable duty of care which arises outside formal statute by the Voluntary Member Club to ensure that they do not suffer any unreasonable harm or loss as a result of the latter’s activity. This can extend to a trespasser on the club’s premises so minimising risk and signage as to risks can be particularly important in this respect.

If such a duty is found to be breached, whilst not a criminal offence as under HASWA, a legal liability to unlimited damages under civil law may be imposed to compensate the victim for any loss they incur (a risk in respect of which a Voluntary Members Club should take out insurance). It should be understood that the sums involved could be considerable including in the event of a claimant needing lifetime care or a family deprived of the earnings of the main wage earner. The claims are potentially in excess of the insurance cover available. In the event of a fatality those in a Voluntary Members

Club could still face prosecution outside HASWA for criminal involuntary manslaughter as a result of asserted gross negligence. In those circumstances the police will likely seek the expert input of HSE even if a formal HASWA prosecution is not in point.

Generally, a duty of care arises where one individual or group undertakes or organises an activity which could reasonably harm another, either physically, mentally or economically.

## HASWA

As explained above, HASWA and its associated Regulations are the primary piece of legislation covering health and safety in the UK which is based on risk assessments being undertaken for the activity concerned.

Where a Voluntary Member Club has at least one employee who works under a contract of employment, it is considered to be an employer for the purposes of HASWA with all the duties and responsibilities to its employee(s) and members, and 3<sup>rd</sup> Parties in respect of health and safety as described above in relation to Employing Entities. Please see those obligations (including the exposure under criminal law) in the first section above relating to Employing Entities.

Conversely, if a Voluntary Member Club does not employ anyone, then the requirements laid down in HASWA and its associated regulations do not apply though the Duty of Care, explained above, does (as does the occupiers' liability referred to below).

If a Voluntary Member Club owns, controls or is responsible for premises, as it almost certainly will, it has an additional duty to make sure that the building is safe to use and complies with appropriate health and safety requirements (signs, etc) and] fire safety legislation. . Again, insurance is imperative to cover this risk in so far as possible.

Importantly, the HSE takes the view, again expressed on its website,, that Voluntary Member Clubs without employees should, as far as possible, commit to meeting the same health & safety obligations and requirements for its members and any visitors as are demanded by statute law when an organisation has paid employees.

So, if a Voluntary Member Club has no employees it is not obliged to have a written health and safety Policy, but it is strongly recommended] by the HSE, on its website, to do so. Developing a health and safety policy helps to clarify procedures and responsibilities.

Similarly, a Voluntary Member Club with no employees is not statutorily bound to conduct risk assessments but should consider doing them anyway if they wish to meet their duties of care (both

general and as the occupier of premises. The HSE, not surprisingly in such a situation, and whilst they do not have jurisdiction for bringing a prosecution, endorse the use of risk assessments to Voluntary Member Clubs without employees as being an excellent way to avoid potential problems becoming real ones (including in terms of damages claims). The provision of first aid support is viewed in the same way.

## **Conclusion**

There is, in criminal law, an important distinction between Employing Entities and Voluntary Member Clubs without employees in respect of being legally required to meet health and safety standards in running that club. However, by working towards the same standards and requirements laid down in HASWA so far as it can, the Voluntary Member Club will demonstrate to its members, visitors and 3<sup>rd</sup> Parties, as well as the outside world, that it values its members and their contribution and cares about their health and safety, and wellbeing and just as importantly that of any third parties whether invited onto their facility or not. Aiming to have a risk free environment, so far as is reasonably possible, for its members and third parties is an excellent objective endorsed by HSE and will be the best way of minimising risk. In practise, and outside criminal prosecution, the level of financial exposure in damages (and hence need for insurance) for a Voluntary Member Club stands to be at exactly the same level as for Employing Entities.

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