



## **University of Brighton**

### **Legal requirements and placements**

#### **1. Introduction**

The purpose of this paper is to outline some of the legal implications for the University of Brighton arising out of placement activity.

Much information included within this paper is adapted from guidance published by the Active Risk Management in Higher Education (ARMED) project<sup>1</sup> (the ARMED project is supported by HEFCE and aims to provide simple guidance to reduce legal risk in higher education institutions) and guidance published by the University of Northumbria<sup>2</sup>.

#### **2. Contract**

The legal relationship between a student and the University is founded primarily upon a contract. The contract is usually deemed to include information about the course available to this student (eg in the prospectus). Such course information may, effectively, give a contractual promise that a certain placement will be provided as part of the course. If the University fails to deliver satisfactory placements it could be potentially open to a breach of contract action. Exposure is very likely if the course is advertised as leading to a professional qualification, a pre-requisite of which is passing practice placement assessments.

#### **3. Health and safety**

Placement activity should take into account The Health and Safety at Work Etc Act 1974 and the Health and Safety (Training for Employment) Regulations 1990. The recently approved University of Brighton Health and Safety Policy for Work Placements<sup>3</sup> is consistent with this legislation in order to ensure, as far as reasonably practicable, the health, safety and welfare of its students whilst they are undertaking placements.

#### **4. Equal opportunities**

Discrimination legislation, covering sex, race, disability, sexual orientation and religion or belief, obliges a University to take care to ensure that any students sent out on placement are not exposed to discrimination and/or harassment. The University cannot be expected to anticipate harassment or discrimination in unforeseen circumstances. However, it will have a statutory liability to respond efficiently and properly to any complaint made by a student that he/she is suffering harassment or discrimination on the placement. The University should also take care not to place students repeatedly in a situation in which it is known that harassment is more likely to occur.

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<sup>1</sup> For further details of the ARMED project, please see <http://armed.ilrt.bris.ac.uk/>

<sup>2</sup> For further details please see [http://online.northumbria.ac.uk/LTA/Documents/Teaching\\_and\\_Learning/Placements/RBott%20STUDENT%20PLACEMENTS%2021-11-02.doc](http://online.northumbria.ac.uk/LTA/Documents/Teaching_and_Learning/Placements/RBott%20STUDENT%20PLACEMENTS%2021-11-02.doc)

<sup>3</sup> The Health and Safety Policy for Work Placements is available on staffcentral - <http://staffcentral.brighton.ac.uk/xpedio/groups/Public/documents/staffcentral/doc004676.pdf>

The recently approved University of Brighton Policy on Disabled Students and Placements<sup>4</sup> and Policy on Harassment and Placement Students<sup>5</sup> takes into account this legislation, which is complemented by the University's Equal Opportunities Policy, Disability Statement and Harassment Policy.<sup>6</sup>

## 5. Insurance

The University of Brighton's Insurance Officer can provide further details of the insurance arrangements relating to student placements. In general terms, the University's insurance policy covers all staff and students who are undertaking University 'business' in the UK.

If the student is on a paid placement in the UK s/he would be covered by the placement provider's Employer's Liability Insurance, which is required of all employers.

If a student is on an unpaid placement in the UK, they would still normally be covered by the placement provider's Employer's Liability Insurance, as this normally covers those on either work experience or placements. However, if there were ever any difficulties associated with a claim made against the Employer's Liability Insurance, it would be possible to make a claim against the University's own insurance policy.

If the placement is abroad (whether paid or unpaid), the student would need to register for the University's Business Travel insurance by completing an 'Insurance Notification of Student(s) Making a Visit Abroad' form. Students will be issued with an emergency card upon request.

Placement Co-ordinators should contact the University's Insurance Office if a student is undertaking a military placement.

## 6. Confidentiality

Confidentiality issues may arise for the University in situations where, for example, the University is aware of information about a particular student which might be relevant to risk on the placement, for example, a criminal record, "hidden disability" etc. This is an extremely complex area, and situations would need to be considered on a case-by-case basis, with variables including the precise circumstances of the placement and the way in which the confidential information has been received.

Confidentiality and disclosure issues are particularly relevant for students with disabilities (please refer to the University of Brighton Policy on Disabled Students and Placements). The use and transfer of information about disabled students is restricted by the Data Protection Act 1998 (please refer to paragraph 8). The Disability Discrimination Act (DDA) Part IV Code of Practice advises that Universities should seek students' permission to pass on information necessary for making reasonable adjustments, should tell students what use will be made of information they disclose, and ensure that procedures are in place to keep personal information confidential. If a disabled student requests confidentiality under the DDA Part IV, then the Code advises that even for the purposes of making reasonable adjustments, the information should not be passed on. This might mean a lesser adjustment, or no adjustment, being made. The DDA Part IV does not, however, override Health and Safety legislation, or remove the duty which the University has to protect students, employees and others. There may thus be exceptional circumstances in which the University comes under a duty to

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<sup>4</sup> The Policy on Disabled Students and Placements is available on staffcentral - <http://staffcentral.brighton.ac.uk/xpedio/groups/Public/documents/staffcentral/doc004677.pdf>

<sup>5</sup> The Policy on Harassment and Placement Students is available on staffcentral - <http://staffcentral.brighton.ac.uk/xpedio/groups/Public/documents/staffcentral/doc004678.pdf>

<sup>6</sup> These policies are available on staffcentral - [http://staffcentral.brighton.ac.uk/quality/policy\\_strat.shtm](http://staffcentral.brighton.ac.uk/quality/policy_strat.shtm)

disclose information to third parties such as placement providers, even against the student's expressed desire for confidentiality.

On a separate issue, a student may be exposed to and pick up confidential information about the placement provider, its customers and/or products during the course of the placement. The provider may seek to protect itself against unauthorised use or disclosure of such information by requiring the student to sign a confidentiality undertaking. It is likely that any breach of an implied or express confidentiality undertaking would lead to personal liability for the student rather than any liability for the University. However, such a situation would not reflect well on the University and may prevent the provider from offering further placements to students.

Students undertaking placements should be made aware that making unauthorised access to computer records is a criminal offence under the Computer Misuse Act 1990.

Finally, students undertaking placement in certain sectors (for example, Social Work or Nursing) are likely to be bound by Professional Codes of Conduct such as NHS Confidentiality Guidelines in order to protect patient confidentiality.

## **7. Criminal Records Bureau**

Some students will be required to have a cleared Criminal Records Bureau (CRB) Standard or Enhanced Disclosure prior to undertaking certain placements, for example those which involve working with children or vulnerable adults.

The University, in agreement with placement providers and Professional and Statutory Bodies, undertakes CRB checks as part of the admissions processes for teaching training, nursing and medicine courses. In relation to other courses, it is the placement provider's responsibility to identify whether a CRB check is required.

## **8. Data Protection**

Placements will inevitably involve a disclosure of a student's personal data, in order to facilitate and administer that placement. Such disclosure may be necessary so as to enable both the University and the placement provider to comply with its legal obligations. For example, the University may pass on details of a student's disability to ensure that his or her special needs are met during the period of the placement (this may only be done with the explicit consent of the student). On occasion, the information disclosed may be "sensitive personal data" as defined by the Data Protection Act (DPA) 1998.

Before making any disclosure of a student's personal data, the University should ensure that the DPA requirements are satisfied. In practice, this means informing the student of the fact that the disclosure will take place and seeking explicit consent to that disclosure (particularly in relation to sensitive personal data relating to matters such as health, racial/ethnic origin or criminal records). If the University transfers data outside the European Economic Area in connection with an overseas placement, it should also be aware that the student's consent will generally be required before disclosure.

The University should obtain a comprehensive and explicit consent from the student at the time of enrolment, authorising the disclosure of his personal data in connection with placements. In the absence of such an explicit consent, the consent of the student to disclosure should be sought. In practice, that consent is likely to be forthcoming, given that the disclosure will be in the student's interest. Clearly any student refusing would not be able to go on a placement.

Whilst the student is on placement, the placement provider's own data protection policies are effective.

The University's Data Protection Officer can provide further information regarding the act and the University's practices in this respect.

## **9. Intellectual Property**

It is possible that intellectual property issues could arise in relation to a student on placement. If the student is working, for example, in a design company s/he could be involved in the creation of valuable intellectual property rights – eg patents, trade marks, registered designs, copyright. Consequently, the placement provider may impose as a condition of taking the student on placement, a written undertaking from the student (and possibly also the University) that s/he waives any claim to intellectual property rights created during the course of the placement.

The ownership of intellectual property should be dealt with on a case by case basis: whilst in some cases it will be appropriate to assign rights to the placement provider, in others it will be the University/student who should own the intellectual property. The University's Business Services Office can provide further information and advice regarding intellectual property.

## **10. Liability**

Risks associated with a placement give rise to the following potential liability to the University:

- (i) Civil liability under duty of care (as a result of proximity of relationship i.e. learning contract) for the injury or ill-health arising out of the placement;
- (ii) Civil liability under duty of care for the injury or loss to the student arising outside of the placement from a foreseeable act e.g. personal attack;
- (iii) Civil liability for loss or injury arising out of the negligent actions of the student whilst on placement;
- (iv) Limited statutory liability for the injury of the student arising out of the undertaking of the placement in the UK and
- (v) Statutory and civil liability arising out of the risk to the institution's employee's health, safety and welfare during placement visits.

The following liabilities apply to the placement provider:

- (i) Statutory and civil liability arising out of the risk to the employee's/student health, safety and welfare during the placement.

The following liabilities apply to the student whilst on placement:

- (i) Statutory and civil liability arising out of their association as an employee.