

ELL(2) 15-04 (p.2) Annex A

APPENDIX A

SCHOOL TRANSPORT AND GOVERNORS OBLIGATIONS

A. THE LEGAL POSITION. Governors Wales is advised that:

1. Section 55 of the Education Act 1944 (as amended) governs school transport arrangements.
2. Local Education Authorities are required to prepare a Transport Policy for each academic year setting out its arrangements for the provision of transportation to facilitate the attendance of pupils at schools. The obligation is therefore that of the LEA rather than the individual school and its Governors. The Courts have held that any such transport provided must be "non-stressful" such that the child should reach school without undue stress, strain or difficulty; the arrangements must also be such that a child could travel in reasonable safety and comfort.
3. School Governors are also obliged to take all measures within their power to ensure not only that the school premises are safe, but that the LEA's Health & Safety Policies (which could also including Transport Policies) are being adhered to.
4. However, the school also have obligations under the Health & Safety at Work Act to protect the health and safety of staff and pupils such as to ensure that the health and safety of people on school premises is "reasonably assured". The definition of school premises can be extended to anyone "having control over any fixed or moveable structure including any vessel, vehicle or aircraft". It is therefore possible that transport hired by a school from time to time may be covered under the extended definition of premises if the school or its employees acting in the course of their employment have effective control over who enter or exit the "premises" and when.
5. It is for the school, and hence the school's Governors to determine the adequacy of the level of supervision of its pupils on school premises in order to comply with its health and safety obligations. If these arrangements are deemed inadequate, action may be taken against the school's Governing Body either by the LEA, the HSE or by individual pupils should they suffer any personal injury as a consequence of any deemed lack of supervision.
6. Nevertheless, the Governors must bear in mind that their primary duty of care arises

when a child is in the school's custody. Since the LEA has the primary responsibility in relation to the provision of transport to and from school, then providing the school takes all reasonable steps to ensure the terms of such a policy is being adhered to, this should meet the school's duty of care in these instances. The level of care expected of a School and LEA in these instances is the same level as would be expected of a reasonably prudent parent applying his or her mind to the risks involved in student life.

B. EXAMPLES OF CASELAW WHICH HAS DEVELOPED IN THE AREA OF LEGAL LIABILITY WITH REGARD TO SCHOOL TRANSPORT

Shrimpton v Hertfordshire County Council [1911] 104LT145, HR

An Education Authority provided a vehicle to convey certain children to and from their schools. A child who lived nearer to the school, but was not one of those for whom the vehicle was provided, was conveyed in it with the consent of the Education Authority and while getting out of it fell and was injured, in consequence of there being no second person in addition to the driver to help the children to get in and out of the vehicle.

It was held in this case that there was evidence of negligence on the part of the Education Authority and they were liable for the injury to the child. A person who provides a service for the use of another is bound to provide a service which is reasonably safe for the purpose for which it is intended, even though the person using it does so only by the permission or consent of the person providing it and has no legal claim to such use.

Ellis v Sayes Confectioners Limited [1963] 107SOL JO252, CA

In this case, a deaf and dumb child aged 8 years old travelled home from a special school in a school bus provided by the LEA. The children on the bus were in the care and in charge of an employee of the Authority. The child was seen off the bus by the employee who gave him certain instructions. He was put on the pavement where he stood for a moment and then went across the road. As he emerged he was knocked down by a van coming at a substantial speed and received injuries.

In this case it was held that the LEA employee had a duty of care such as to act as a reasonable parent would have acted. Whilst the accident was mainly caused by the excessive speed of the van, the employee was deemed 20% responsible for the accident in not ascertaining the presence of the van or giving more definite instructions as to look out to the child.

Jacques v Oxfordshire County Council [1967] 66LGR440

A 14-year-old pupil was travelling in a school bus provided by the LEA when his eye was

injured by a lead pellet. There was no adult supervisor on the bus, but a senior boy and a senior girl had been appointed prefects to be in charge. Occasionally things were thrown about the bus or paper flicked and such conduct was generally stopped by the prefects and on the whole the boys on the bus were controlled very well. There was no evidence that metal pellets had ever been used. There was insufficient evidence to prove any particular pupil had fired the pellet, which hit the boy in the eye.

In this case it was held that the duty of the Education Authority was to see that the bus was reasonably safe and that the children travelling in it including the provision of supervision if necessary. The standard of care was that of a reasonable prudent parent applying his mind to school life where there was a greater risk of skylarking. As there was no evidence that the group of pupils on the bus were particularly boisterous or undisciplined the Education Authority had not failed in their duty on leaving this supervision to prefects.

C. CONCLUSION

Governors Wales is advised that the above-mentioned cases demonstrate that there is therefore a balance to be drawn between the standard of care reasonably expected, and the particular risks involved. Whilst the primary responsibility is that of the LEA, the school has a duty to uphold the LEA's Health & Safety Policy in order to do its utmost to ensure that these policies are adhered to.

Whilst there is some question over whether the School's duty extends beyond the school premises (and indeed other caselaw suggests the duty only arises when the child is in the school's custody), it would be good practice for the school to attempt to assist the LEA insofar as is possible in meeting its obligations, e.g. by liaising with LEAs to check the supervisory arrangements in place on school buses, and possibly requesting senior pupils to monitor behaviour on buses.

In view of the fact that South Wales Police has indicated that it is re-opening the inquiry into the death of a schoolchild in the Vale of Glamorgan who was killed when the bus he was travelling on crashed into a tree on his way home from school, Governors would be advised to watch for developments in this area.