

## The Law and the Host

### 1 Introduction

You, the organisation, have a legal duty of care to the students and the homestay host has certain legal rights and responsibilities in relation to that care. As part of your duty of care you must do your best to ensure that you place students in accommodation which is safe, with suitable hosts. As part of this responsibility you are required to conduct a formal written risk assessment on each home and host before arranging for a student to be accommodated there. You should also include a risk assessment of the locality and, especially for younger students, assess the risks of their journey between the organisation and the home. You must make hosts aware of their legal responsibilities and check, as far as you can, that they are acting within the law. You should also make them aware of their legal rights. The following information is given as general guidance only. Professional advice should be sought on specific legal matters.

### 2 Discrimination and the placement of students

If homestay providers are sharing facilities with students they may refuse to host a student of a particular gender, religious group, from a particular ethnic group or of a particular nationality, although they should not publicise such discrimination. Organisations may make it clear to hosts who express such preferences that this may limit the number of possible placements.

Organisations equally may match students to hosts on the basis of gender, sexuality, ethnicity, religion or nationality, provided they are doing so because of students' needs, expectations and requests. Again, they must not publicise such discrimination and they should not discriminate in taking people onto their books as potential homestay hosts, provided they can meet the required criteria.

### 3 Charges for finding accommodation

A charge to the student may be made for booking a student with a host, even if the student fails to arrive or is not satisfied and moves elsewhere.

However, if the student wants a furnished room or flat without any food supplied, it is legal to make a charge only if the student accepts the accommodation. If the student does not arrive or rejects the accommodation, the school may not charge any fee. Furthermore, the school may be held liable for payment of the rent, unless it was made clear at the outset to the agency that it would not accept responsibility.

If a charge is made by the organisation for finding accommodation, this information with details of the charge must be given clearly in the organisation's publicity. Organisations should note that accommodation fees come within VAT regulations if there is a profit element.

#### 4 Contracts between Organisations and Accommodation Providers

When an organisation books student accommodation with a host, even verbally on the telephone, then a legally binding contract is being entered into. So, it is advisable to have a written contract which clearly sets out the conditions agreed between (and signed by) the organisation and the host. This contract can be renewed on an annual basis so that conditions can be up-dated. As the contract is between the organisation and the host the organisation should be responsible for taking the payment from the student and paying the host, rather than the student paying the host directly.

Unless the contract specifies conditions under which the organisation limits its responsibility for compensation, if a student fails to arrive, or leaves early, or is removed from the accommodation suddenly, the accommodation provider is entitled to compensation; i.e. the payment expected for the full period less expenditure on food, heating etc. which the student did not consume. Therefore, the contract should specify any compensation, or lack of compensation, which would be offered by the organisation if the booked accommodation is not used. For example, organisations often pay part of the payment if the accommodation is cancelled within a certain period. This all needs to be specified in the contract.

An alternative to financial compensation would be to offer another student. The host cannot reasonably refuse this offer and, if they do so, they cannot expect financial compensation instead.

It is important that contracts give clear explanations of what the organisation will expect the accommodation provider to provide. For example:

- specific bedrooms (as agreed at the time of the most recent inspection visit)
- list of furniture and fittings required for the student's room
- heating
- laundry and bath/shower arrangements
- meals (number and content)
- that English be the language of the home
- the degree of contact with the host(s)
- the rules and standard of care relating to students under the age of 18 if applicable (see also the section on under-18s, below)
- whether students of the same language group can be accommodated at the same time
- maximum number of students per room and per home
- weekly charge, and how payments are to be made (e.g. weekly or monthly, and in advance or arrears)
- standard of cleaning services
- services such as Wi-Fi
- any extra charges

If the provision is quite clearly different from that agreed, then the contract is broken and the student can leave or be removed without compensation to the host.

## 5 Size of Rooms

There are set standards including the size of bedrooms for a house in multiple occupation (see also below). These standards do not apply to homes letting out one or two rooms, but you may look at the recommendations as a guide: 70 sq. ft. for one adult, 110 sq. ft. for two adults, children of 10 and over counting as adults.

See [www.communities.gov.uk/housing/](http://www.communities.gov.uk/housing/) .

## 6 Fire Precautions, Health & Safety

### Risk assessments

Hosts are obliged to make sure that the premises are safe: that they have assessed any risks and taken measures to minimise them. If hosts do not do this they may be considered liable in case of accident (and the organisation may be considered liable for recommending the premises without making sufficient checks).

### Fire

See [www.communities.gov.uk/fire/firesafety/firesafetylaw/aboutguides/](http://www.communities.gov.uk/fire/firesafety/firesafetylaw/aboutguides/)

In particular search for 'Do you have paying guests?'

These guidelines are to help 'small businesses' meet the Regulatory Reform (Fire Safety) Order 2005. If hosts receive money for providing accommodation they have '*some level of control in premises and so must take reasonable steps to reduce the risk from fire and make sure people can safely escape if there is a fire*'.

Measures that the organisation can insist on and check as part of the contract with accommodation providers, as appropriate, include:

- ◆ Smoke alarms
- ◆ Carbon monoxide alarms
- ◆ Fire extinguisher/fire blanket
- ◆ Fire doors
- ◆ Fire escapes

You are advised to consult your own local Fire Authority as to their requirements/ recommendations. The local fire service is often very helpful in providing advice that you can pass on to hosts.

## Gas

All gas appliances should only be fitted and checked by a professional on the Gas Safe Register [www.gassaferegister.co.uk/](http://www.gassaferegister.co.uk/) . Organisations should ask to see an annual Gas Safety Certificate.

No appliance should be used if it is known or suspected of being unsafe. The room where the gas appliance is located must have adequate ventilation - air inlets should not be blocked to prevent draughts, and flues and chimneys should not be obstructed.

## **7 Houses of Multiple Occupation**

You should check that any accommodation you recommend or arrange is licensed as an HMO if it needs to be, because there are statutory health and safety requirements (e.g. about fire escapes, fire doors). Following changes to the guidance on HMOs issued in October 2018, any property with three or more occupants forming more than one household may be considered an HMO. Any property with five or more occupants forming more than one household may be considered a large HMO. This can be interpreted as four or more persons in addition to the resident landlord and members of his/her household. See <https://www.gov.uk/private-renting/houses-in-multiple-occupation/>.

Councils are interpreting the guidance in their own way, so we recommend that you check the requirements with your local council.

From October 2018 there are minimum size requirements for bedrooms in HMOs: no smaller than 6.51 square metres for one adult; no smaller than 10.22 square metres for two adults.

## **8 Insurance**

Hosts should be advised to inform their insurance company that they are letting rooms so that they are covered for any damage or liability in case of accident. The insurance company may insist that certain measures be taken (and may charge more). If an accident occurs to the student in the host's home, and it is considered to be the result of negligence on the part of the host, then a claim may be made against the host. It is therefore important that the host has the appropriate insurance cover and has carried out and acted upon risk assessments (e.g. in case of fire).

Neither hosts nor the organisation are responsible for the safety of students' property while in the home and students ought to have their own insurance cover. However, hosts should be encouraged to take out a standard householder's policy, which can cover the students' belongings in case of fire or theft. It is a measure of protection for both student and hosts if there is a lockable drawer or cupboard in the student's room.

If, as part of the paid contract, the host provides transport for students they should make their car insurance company aware.

## **9 Damage**

Organisations are not legally liable for damage caused by students. The student would normally be legally liable for this and hosts can attempt to recover costs for accidental damage caused by students, but not wear and tear. The charge should not be the full replacement cost, but the current (second-hand) value of the item, so that the host does not benefit as a result. However, it may be difficult to claim against the student and he/she may return home before settlement can be agreed. It is therefore important that hosts make certain that the correct type of insurance cover is taken out.

Where students are expected to stay for some time, a small returnable deposit can be asked for.

Wilful damage should be reported to the police so that an incident number is available to present to the insurance company.

## 10 Tax

Local inspectors from the HM Revenue and Customs have right of access to any records of payments to hosts, as part of their investigation into benefits fraud. Hosts should therefore be made aware that records of payments to them have to be made available to inspectors if schools are required to reveal them.

### Income Tax

Organisations should make their hosts aware of the following:

*The Rent a Room Scheme lets you earn up to a threshold of £7,500 per year tax-free from letting out furnished accommodation in your home. This is halved if you share the income with your partner or someone else.*

*You can let out as much of your home as you want.*

*The tax exemption is automatic if you earn less than the threshold. This means you don't need to do anything.*

*You must complete a [tax return](#) if you earn more than the threshold. From 6 April 2016, this is £7,500. For the 2015 to 2016 tax year, the threshold was £4,250.*

*You can then opt into the scheme and claim your tax-free allowance. You do this on your tax return.*

*You can choose not to opt into the scheme and instead record your income and expenses on the property pages of your tax return.*

Hosts in receipt of benefits must declare income from renting and may find that as a consequence their benefits are reduced.

Further information on renting a room is obtainable from the Inland Revenue leaflet *Rent a Room*, and it is recommended that organisations make hosts aware of this. (See

[www.direct.gov.uk](http://www.direct.gov.uk) - put Rent a Room Scheme into the search box)

### Capital Gains Tax

When a house is sold hosts are not liable for Capital Gains Tax so long as meals/services have been provided and the student shares rooms/ facilities with the host.

### **11 Tenure**

Hosts are not risking the student's having security of tenure provided that food/services are being supplied. Bed-sit accommodation or furnished flats may be classed as holiday lets so long as the accommodation is let for only eight months of the year and normally, under these circumstances, security of tenure would not apply. If the organisation is arranging independent, self-catering accommodation for long-stay students (particularly in a self-contained unit) for more than eight months it is preferable for a short-term tenancy agreement to be made directly between the host and the student.

### **12 Mail & Students' Property**

Hosts may not hold or destroy students' mail. It should be forwarded or returned to the Post Office marked 'Gone Away'. The host may return mail to the Post Office even if the student has left a forwarding address, though they may forward any mail to the student (perhaps via the organisation).

If property is left behind it may be held by the host or preferably by the organisation. A letter or email should be written to the student, or the student's parents, asking for instructions as to the disposal of the goods or payment in advance for the cost of postage or carriage. A large /valuable article such as a car is better handled by the Police. A charge may be made for luggage left for any lengthy period. A host may hold property belonging to a student against a disputed debt.

### **13 Drugs**

If illegal drugs are kept or used by students in the host's house, the host is not committing an offence even if he/she is aware of this. But the host should tackle the student and contact the organisation for advice.

### **14 Care of under 18s/ Safeguarding**

The Accreditation UK scheme states that the prospective host (main carer) of students under the age of 18 (even if enrolled on an 'adult' course) must have a suitable check (usually DBS) although this is not yet a legal requirement. It is good practice for other adults in the homestay to have DBS checks also, and in some situations they must be checked (see section on Fostering).

### Disclosure and Barring

The official DBS website is very helpful. [www.gov.uk/government/organisations/disclosure-and-barring-service](http://www.gov.uk/government/organisations/disclosure-and-barring-service).

- As part of their duty of care, organisations have the legal right to insist that all adults in the home provide evidence of DBS checks.

For the latest information about the requirements of the Accreditation UK Scheme please see <https://www.britishcouncil.org/education/accreditation/information-centres/care-children>.

### Fostering (e.g. homestay) and childcare

- Local authorities place additional private fostering requirements on homestay providers accommodating under 16s, or students with disabilities under the age of 18, for 27 nights or more. The host and any member of their household over 16 will have to have enhanced DBS checks.
- The organisation needs to notify the local authority that a private fostering arrangement (booking) has been made.
- An officer from the local authority will normally visit the host within 7 working days.
- Within 42 working days, the local authority must make a decision about the suitability of the proposed arrangement.

The private fostering officer has a duty to support the child and the hosts ensuring the child's welfare; this should include visiting the child in the home. If a student is booked with the organisation for 27 nights or more and placed in two or more homestays during this period, even though the hosts may each accommodate the student for fewer than 27 nights, the local authority should be notified.

### Rules and Guidelines

Hosts should receive clear guidelines about their responsibilities in relation to students aged under 18. However, they do not have *parental responsibility* for the child (except in the case of Private Fostering). Unless the organisation is providing tuition-only, it has a duty of care to these students and has overall responsibility for deciding the arrangements for their care (as described to, and agreed by their parents at the time of booking) and for ensuring that hosts know about and are conforming to these arrangements.

For example, the minimum supervision required by the Accreditation UK scheme is that '*a responsible adult will always be present overnight and normally present when younger students are at home.*' Your organisation can make whatever supervision requirements beyond that minimum that it feels are right for the age of the students and location of the organisation / homestay. That might, for example, require hosts to collect their student(s) after an evening event. Whatever standards are agreed, they **must be confirmed** in writing. These arrangements should be made clear to hosts and cannot be over-ridden by accommodation providers. See the section on Contracts, above.

## **15 Data Protection**

Organisations should be aware that any information held on a database (paper or electronic) about hosts is subject to the Data Protection Act. This entitles hosts to demand access to any information referring to them and to know what use will be made of this information. Let your homestay hosts know on their contract that this information will be made available to students, agents and inspectors, and as required by HM Revenue and Customs.

See: [www.ico.gov.uk](http://www.ico.gov.uk)