NOTES ON THE GENERAL LEGAL POSITION REGARDING PLACEMENTS.

These notes outline some of the main legal points to arise and will provide a useful background. However, they are not a substitute for carrying out a specific risk assessment in relation to the particular circumstances of any placement. It is advisable to liaise closely with the Health and Safety Department in this respect. There can be no ‘one-size fits all’ and whilst documentation can be important, no written agreement can ever amount to a ‘magic bullet’ to absolve any duty of care/liability risk.

Introduction
Placements are wonderful opportunities for students to experience a non-academic environment and gain experience that is not purely academic. However, by definition, the environment is not under the University’s control, giving rise to additional risk and the question of to what extent the University could be responsible if something goes wrong. These aspects must be minimised as far as reasonably possible. Although, the University may have limited control in practice, students will often assume that the University vouches for safety etc.

Arrangements for placements can vary from the University just suggesting that a student find some summer work experience, leaving arrangements to the student (with little responsibility then attaching to the University), to the elective which is not compulsory and the placement which is required to pass the course (where there is responsibility).

What could go wrong?
Whilst it is difficult to foresee all contingencies, the basic legal duty of care is likely to cover those that are reasonably foreseeable. These could include that: the environment/experience was not as promised; the placement was not provided in time; the University mismanaged arrangements or caused confusion; the student is discriminated against on placement or suffers other adverse treatment; or the student is injured on placement. (This is in addition to failure to provide a promised placement, which can be breach of contract.) Attempts should be made to avoid problems, for example, be clear about who is to arrange accommodation, whether student, University or placement provider.

Insurance
Appropriate insurance arrangements for the University, placement provider and student are vital. Jackie Glanville is the best person to contact at the University on this. Students should also be made aware that they may need to take out additional insurance for any extra activities they intend to do, such as specific sports, diving, bunjee-jumping etc, whilst on placement.

Guidance
Look for sources of help as regards safeguarding and preventing problems. The QAA Code of Practice: Placement Learning is relevant. In particular, it says that institutions should have in place policies and procedures to ensure that learning outcomes are addressed and placement providers are aware of the obligations and duties (which is where a placement agreement, memorandum of understanding or protocol can help – see below), plus that students are provided with ‘appropriate and timely information, support and guidance’. This should be before and during a placement. Students should be warned of any potential problematic areas, and also be asked about their experience upon their return (providing an opportunity to learn and improve on this in future).


Legal position
This tends to be complex, but usually there is no liability for failing to control the private lives of students (though fitness to practice implications could arise with such as alcohol or drug abuse). However, there is a duty of care in relation to the organising of the placement. As regards overseas placements, UK CISA Guidance comments that, “The extent of the duty of care for student activity abroad will vary according to the extent to which (a university) undertakes actively to provide placement, as opposed to sanctioning those arranged by students. The greater the degree of institutional involvement in the placement, the greater its duty of care".
In one case, a student on placement was assaulted in Russia one evening. The university admitted a duty of care covering sending her abroad but it was not found responsible for the event, which was outside the placement, especially when it warned against wandering the streets at night.

**Health and Safety legislation** is also relevant. Section 3 of the Health and Safety at Work Act (breach of which is a criminal offence which can be prosecuted by the Dept of Health) deals with the duty to non-employees such as students and imposes a duty to “ensure so far as is reasonably practicable that persons …who may be affected are not thereby exposed to risks to their health or safety”. Therefore if a student is injured on a placement, the question arises as to whether the University has placed them in a dangerous environment. Making responsible risk assessments and acting on them in advance is therefore very relevant.

**Placement agreements**

These are usually between two institutions. They are advisable wherever possible, particularly if a long-term or overseas placement is involved. They can for example set out what is expected, Data Protection assurances, indemnities, anti-discrimination and anti-corruption provisions where appropriate and include such as jurisdiction clauses, so that UK law will apply (important for insurance, as cover only usually extends to claims brought under English law in English Courts) plus also exclude the rights of any third parties, and declare there is no partnership or agency.

There is usually some form of documentation to cover UK placements. Certain overseas institutions may be reluctant to enter any written agreement. Universities should nevertheless try to obtain these, or at the very least a memorandum of understanding or agreed protocol. These can, amongst other things, help stress to the other institution what is expected and make them more aware of looking out for the student’s welfare. Often, such agreements are signed by Heads of Departments, who need to be comfortable with the relevant terms and arrangements and assured that they are acting with the authority of the University.

**Provision of information etc**

Preparation is paramount. As mentioned above, the QAA Code recommends ‘appropriate and timely information, support and guidance’. Part of this can be managing students’ expectations. In a case taken to the OIA, a student complained about the standard of French accommodation and that her tutor smoked. The OIA said this was part and parcel of the experience abroad. Briefing students on expected behaviour, particularly where fitness to practice issues can arise, is important. Regard should be had to current information given by the Foreign Office, and on medical precautions by the Department of Health.

With disabled students, there is an obligation to negotiate a placement application to promote adjustments and prevent discrimination, taking account particular needs. For example, a blind student may need somewhere for a guide dog, but alternatives could be discussed, such as use of a cane instead whilst on placement. The DDA Code of Practice mentioned earlier is also relevant. This includes reference to checking out wheelchair access. The University could possibly be vicariously liable under section 57 DDA, unless it can show that it took steps to prevent any unlawful act/discrimination.

**Unsuccessful placements**

Complaints/problems can arise when a student does not complete a placement successfully. Complaints arising from placements can be difficult to investigate, because the University cannot insist that a placement provider helps with this or implements any redress, such as an apology. A student’s failure to complete may also raise fitness to practice issues, which again are difficult to investigate, for example, if placement staff refuse to be witnesses. An agreed provision with the placement provider covering conflict resolution/grievances can help. There is also a possibility that the University could be liable to a placement provider for the wrong-doing of a student, because to some extent the University has disciplinary control over them. There are no sure-fire ways to avoid these risks completely, but risk assessment, information and managing expectations can help.

**Conclusion**

Risk assessments, checklists, briefings etc (which should be reviewed and updated regularly) should be undertaken, with reference to the University’s Health and Safety Dept where necessary, and acted upon as best possible. Relevant information should be given to students prior to departure on placement and appropriate insurance is vital.

(Helen Shay, Legal Administrator, University of York, Sept 09, revised Feb 11)