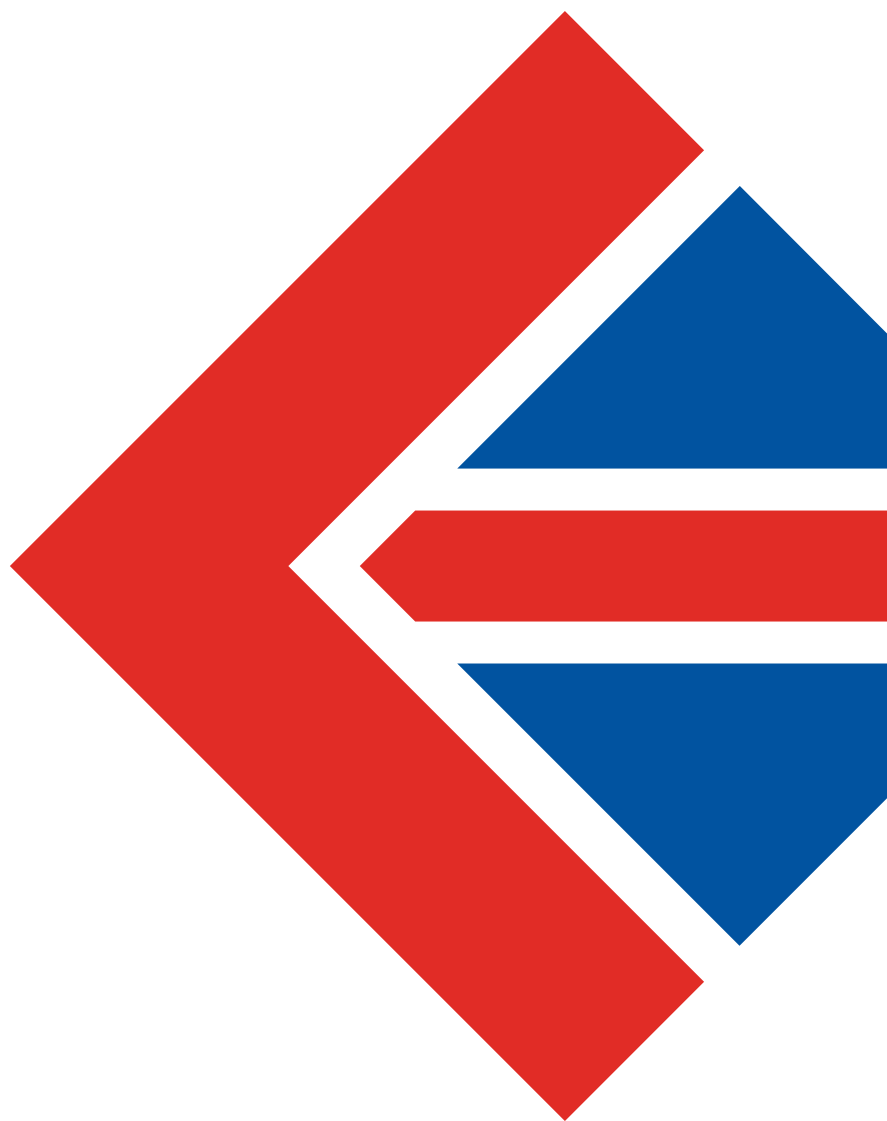


THE LAW AND THE HOST

English UK Guidance on the laws relevant to hosts
October 2014



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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. So, 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 (see also the section on under-18s, below) if applicable
- 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/

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/

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/ . 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). This will not usually apply in homestays or even self-catering private homes where the students share facilities, but some 'private homes' with a large number of paying guests may be required to register with the local authority as an HMO.

Mandatory licensing of a house as being in multiple occupancy will only apply if the property is three or more storeys and occupied by four or more persons in addition to the resident landlord and members of his/her household. See www.communities.gov.uk/housing/ (and put 'multiple occupancy' in the search box). We would advise you to contact your local council for more details about local requirements.

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.

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

Rental room legislation applies to people letting furnished accommodation in their own home. Income from letting to students over the threshold of £4,250 is liable to taxation and must be declared. Hosts in receipt of benefits must declare income from renting and may find that as a consequence their benefits are reduced.

If they receive income which does not exceed £4,250 p.a. (true of October 2014) they are exempt from tax on that money. Those who receive gross annual rents in excess of £4250 can choose between:

- paying tax on the amount by which their gross rents exceed £4250 without any separate tax relief for allowable expenses; or,
- calculating their profit from letting (gross rents less actual expenses) and paying tax on that profit in the normal way.

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 - 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.

Some key facts surrounding DBS checks are:

- Although it is not a legal requirement, organisations have the legal right to insist that hosts provide evidence of DBS checks.
- There are some online companies who will do quick DBS checks at little extra cost. This can be helpful to organisation, especially those employing a lot of new hosts.
- The DBS certificate is sent to the applicant (i.e. the host), not to the potential employer (the organisation), and the applicant needs to show it (and the unique number) to the organisation.
- There is an Update service. An applicant can, when getting their DBS check, pay an additional fee (currently £13 (October 2014)), which has to be paid annually to keep it current. For this, the applicant is issued with an ID number which they give to a prospective new employer (the organisation), who can then check their DBS certificate online; thus removing the need for a new DBS check (and the cost of that) for every new host.

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 must 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.

Rules and Guidelines

Hosts should receive clear guidelines about their responsibilities in relation to under-18 students. However, they are not *in loco parentis* (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



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