

ALLIANZ P.L.C.

# Schools Journal

[www.allianz.ie/schools](http://www.allianz.ie/schools)  
Issue 01/2018

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We review some school accidents which have recently been finalised in the courts

**Allianz** 

# Editorial

## Dear Friends,

Welcome to the Summer edition of our Schools Journal.

It is when a claim is brought against a school that the value of an insurance policy becomes evident. In this issue of our Schools Journal we outline the process involved in dealing with an employment practices liability claim. The case outlined involves an employment dispute. We outline the process from the circumstances of the dispute, the reporting process, the investigation,



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Chief Customer Officer

the role of the Rights Commissioner and the final outcome. Remember, that whatever happens in the way a claim unfolds, Allianz is on your side and there to support you. This is particularly important if litigation is involved as this can be a very confrontational and testing process.

We also feature a number of articles on Risk Management covering such topics as, manual handling, the importance of insuring that appropriate permissions are sought, best practice followed and all relevant requirements are adhered to if you have a Pre-School located on your grounds.

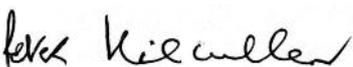
Other articles featured include details of services, resources and support for new principals, changes under new General Data Protection Regulation (GDPR) and the importance of ensuring that your sums insured are adequate.

The Allianz Pupil Personal Accident Insurance Policy provides a benefit in the event of an insured accident irrespective of who is to blame. In this issue we provide answers to the most frequently asked questions we receive in relation to why such insurance is necessary and why such insurance should be placed with Allianz. We are also delighted to offer schools the chance of winning some fantastic prizes if you arrange your Pupil Personal Accident Insurance cover online at [www.allianz.ie/schools](http://www.allianz.ie/schools).

Our Legal Review article includes 4 cases which have recently been finalised in the Courts.

I hope you find this edition of our Schools Journal of interest. If there is any additional information we can provide in relation to any articles published, please do not hesitate to contact us.

Our email address is [education@allianz.ie](mailto:education@allianz.ie). Please quote your policy number in the subject title of the email. You can also contact our Schools Support Team at 01 613 3966, your local Allianz Representative or your Insurance Intermediary.



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Chief Customer Officer

Calls may be recorded.



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This publication is for general information and guidance purposes only and should not be regarded as a substitute for professional advice. Such advice should always be taken before acting on any of the matters discussed.

# Manual Handling

Manual handling is defined as anything which involves the application of bodily force to an object. This includes lifting, carrying, putting down, pushing, pulling, moving and supporting. It is covered by the following legislation: Factories Act 1955 – Manual Handling Regulations 1972, Safety, Health and Welfare at Work Act 2005 and General Application Regulations 2007 – Chapter 4 of Part 2: Manual Handling of Loads.



Injuries due to manual handling account for 30% of all accidents reported to the Health and Safety Authority. Injuries or accidents occur every year because weights are either too heavy for the individual or he/she incorrectly lifts weights which are within their capacity.

The following are some of the key system failures identified by the Courts when making rulings on compensation claims:-

- No risk assessment of work activity
  - Lack of safe system of work
  - Mechanical aids were not provided or maintained
  - No training or inadequate training was provided
  - No evidence of work supervision
- To avoid manual handling accidents, employees should be reminded to:
- (a) plan the work in advance
  - (b) obtain assistance if an object is too heavy or see if it can be made lighter
  - (c) remove obstructions before lifting and clear a space where the load is to be set down
  - (d) make sure the path is clear and lookout for obstructions, spills, steps, etc.
  - (e) think about the best way to lift the load
  - (f) don't carry a load that obstructs your view
  - (g) keep loads close to body when lifting
  - (h) bend their knees to a crouching position with their back straight but not necessarily vertical
  - (i) avoid twisting their upper body
  - (j) use a firm grip with the palms of their hands and the roots of their fingers - using the finger tips means more effort and more chance of dropping the object
  - (k) keep their arms close to their body so that their body takes the weight rather than their fingers, wrists and arms
  - (l) use gloves when handling sharp or slippery objects
  - (m) use mechanical aids e.g. wheelbarrow if they are available and suitable

Manual handling injuries are not limited to those sustained by lifting or carrying heavy loads. A person can be injured when handling objects in a variety of ways including pulling, pushing, holding or restraining. The object or load can be anything from a large light load to a heavy small load. Staff should be trained in correct lifting procedures so as to avoid the risk of injury.

Further information on manual handling is contained in the Allianz "Risk Management Guide to Insurance, Safety and Security in the School" booklet or the Health & Safety Authority website: [www.hsa.ie](http://www.hsa.ie)

# New Principal Support

As a new principal, it is important to know how to access the supports and services that are available to you. Allianz have an unrivalled school insurance service and support structure in place, throughout the country. Our Underwriting, Claims and Sales personnel have extensive knowledge of the education system, relevant legislation and most importantly, a compassionate understanding of the difficulties schools may face. Below we outline the Services and Resources available.



## SERVICES

### Local Service in Your Area

Our local Allianz Schools Representatives are located throughout the country to provide a personal local service for schools. They are available to call to your school and provide insurance related guidance and services free of charge (details of your Local Schools Representative and the Services they provide can be found at [www.allianz.ie/schools](http://www.allianz.ie/schools)). A visit to your school can be arranged by contacting our School Support Team, through the arrange a call facility on our website or by contacting your local Schools Representative directly.

### Claims Management Service

Customers can avail of a Claims Manager who takes ownership of your claim and can advise schools throughout the claims process. We understand that making a claim can be a stressful event and you can expect to be treated with sensitivity and respect.

### Risk Management

Allianz are proactive in identifying risks in the schools environment and providing solutions to reduce or eliminate the identified risks. This is achieved by analysing claims trends, identifying emerging risks and through our surveyors who carry out risk surveys on individual schools.

### School Support Team

Our School Support Team provide assistance and support to schools on a range of insurance related topics and process insurance documentation requests to ensure efficient turnaround for schools.

If you are insured through an insurance intermediary, please contact them for any assistance.

## RESOURCES

### Guide to Safety and Security in the School

This provides resources and guidance to school principals, Health & Safety committees

## RESOURCES

and/or Officers, Boards of Management, Trustees & Patrons in the day to day operation of school activities. Our guide is updated periodically to take account of changes in employment legislation, health & safety and environmental factors which impact upon a school.

### School Journals

Our bi-annual journal contains articles on insurance, risk management, health & safety, claims and changes in legislation. Our legal review section contains details of school claims that have been finalised in the courts and provide some practical guidance based on their outcomes. All past issues can be viewed and downloaded from our website [www.allianz.ie/schools](http://www.allianz.ie/schools)

### Website [www.allianz.ie/schools](http://www.allianz.ie/schools)

Our website contains relevant schools related insurance information and resources. We constantly update our website with the most relevant/seasonal guidance depending on the time of year and trends we feel schools should be alerted to. We aim to present this information in a clear and transparent manner to assist Boards of Management, teachers and principals.

### Principals Information Pack

This information pack includes details of the various services provided by Allianz including contact details of your local Allianz Representative. In addition it includes a copy of our Frequently Asked Questions booklet which outlines common situations and scenarios which may present in a school.

### Risk Management Publications

In addition to the bi-annual school journal we issue newsletters on trending topics such as protection of property during extreme weather conditions, employment issues and other relevant topics to assist you to manage risks in your school.

We wish you well in your new role as Principal and please feel free to contact our School Support Team at 01 613 3966, your local Allianz representative or your Insurance Intermediary at any stage.

You can also email your query to [education@allianz.ie](mailto:education@allianz.ie) Please ensure you include your policy number in the subject matter of your email.



# Allianz Cumann na mBunscol

Allianz have been very proud partners and sponsors of Cumann na mBunscol for over 20 years. Through this time we have seen a development of the organisation that has ensured it has remained not only relevant to the school and their pupils throughout Ireland but forms an integral part of their yearly activities. Allianz are delighted to continue to grow this partnership into 2018 as we truly believe Cumann na mBunscol create a fantastic platform for children and their future development through well organised and inclusive games and activities.

The Allianz Cumann na Mbunscol finals have become such a joyous event for schools and their pupils to get the chance to participate in. These finals will inevitably create memories and stories that will last long into the future. To help share these fantastic



occasions we plan to feature the finals prominently in our future school publications. In addition to the finals, we will look to feature some regional events. If your school wish to be included in this, please send us a photograph of your school team, participating in a Cumann na mBunscol event and we will look to feature it in the near future.

Pictures can be emailed to [schools@allianz.ie](mailto:schools@allianz.ie) with the subject – Allianz Cumann na Mbunscol

We wish your school all the best for 2018 and look forward to seeing your schools in action.

# The importance of ensuring that your sums insured are adequate

The sum insured is the value placed on buildings and contents in a school to cover the reinstatement cost of the buildings and contents and also represent the maximum amount that can be recovered under the property section of your Allianz Custodian School Protection policy in the event of a claim. This means that in the event of a total or serious loss, if the cost of a claim exceeds the sum insured then the Board of Management will be responsible for any shortfall. An inadequate sum insured can mean a payment of less than the actual cost of repairs or a payment less than the amount the policyholder is required to expend which could leave the school exposed to an uninsured financial loss.



To ensure that the sums insured are adequate in the event of a loss, the school should insure the full cost of rebuilding the school property in the event of its loss and the full replacement cost of contents. Therefore, the Board of Management is responsible for deciding appropriate sums insured and these sums insured should be reviewed on a regular basis. It is recommended that the Board of Management obtain a professional valuation from a quantity surveyor, architect or similarly qualified person in relation to the full cost of reinstatement.

## The professional valuation should include provision for the following:

- Cost of materials necessary to rebuild
- Cost of clearing the site including demolition and debris removal
- Cost of site works and drainage
- Fees of architects, surveyor's and other professional advisors
- Cost of complying with current building regulations/requirements
- An inflation provision based upon an estimated period between destruction and reconstruction and all figures should be inclusive of VAT

There can be other abnormal costs such as poor ground conditions, special foundations, sewerage treatment pumping plant, storm water storage and release. There could also be special security with the physical measures including special glazing, fencing, grilles, shutters etc. There could also be special security including CCTV and Access Control is now a common feature in many schools. Regional factors, site location and access can also impact on the costs.

Therefore, you can see from the above that establishing the correct sums insured is not an

easy task and it is recommended that you seek professional advice to ensure appropriate provision is made for everything there.

External works, yards, play areas, car parks, boundary walls, gates, railings etc. need to be included in the calculation of sums insured. These items fall within the scope of cover.

### How often is a valuation required?

It is not necessary to arrange a professional reinstatement valuation every year because the quantity surveyor, architect or engineer will be able to advise on the percentage by which you should increase the sums insured in subsequent years. However, we do recommend that full valuations be carried out every seven years. Allianz school policies are subject to indexation in accordance with the "House Building Cost Index" issued by the Department of Environment.

### Contents sum insured for schools

The sum insured on contents should be reflective of the cost of replacing all of the contents in the building. The term contents includes furniture, audio or visual equipment, furnishings, curtains, blinds, computer equipment, games equipment, office equipment, interactive whiteboards, books, stationary etc. The definition of contents will

also include personal effects including bicycles and clothes of pupils, employees and visitors.

Allianz has a Contents Checklist available to assist you in compiling a detailed inventory of all of your contents in the school. As a rule of thumb the recommended contents figure should be at least between 10% & 15% of the building sum insured depending on the nature of contents in the school.

### School Extensions - Keep your Insurer advised

One of the benefits of an Allianz Custodian School Protection policy is the **Additions** extension. This benefit provides property cover for newly erected buildings, alterations or improvements to Buildings or Contents not otherwise insured for up to €1,000,000, **provided that the Insured shall (a) notify the Company as soon as practicably possible following such additions and (b) pay the additional premium required by the Company.**

Whilst this benefit is intended to protect your schools Board of Management, it is advisable to notify Allianz or your Insurance Intermediary of any buildings works (including summer works) in order for us to update our records and provide any

assistance that may be required. You risk being underinsured in the event of a claim where your policy cover has not been sufficiently updated. Other items will also need to be given consideration including any additional contents.

If you are engaged in a new building project, it is an opportune time to request a professional reinstatement valuation of the completed building. We recommend that this is agreed and included at the beginning of the contract so that any cost can be absorbed in the contract price. If the school is building an extension, you should also request a professional reinstatement valuation of the entire building including the new extension/refurbishment work. If this is not practical for smaller extensions, if you are insured directly with Allianz please contact your local Allianz representative directly who can visit your school and provide guidance in relation to the revised sums insured that may be necessary following completion of any extension/refurbishment work. If you are insured through an Insurance Intermediary please contact them directly.

### Allianz Local Service

Allianz representatives can provide you with some indicative guidelines in relation to the average costs of building a modern school. However, any such guidance is purely an indication of the likely reinstatement cost in the event of a total or serious loss and should not be looked on as a professional valuation.

If any portion of your school property is a protected/listed building you may be obliged by your Local Authority to reinstate the property in exactly the same manner and using the same materials as the existing buildings and in such circumstances the need for a professional reinstatement valuation cannot be overstated.

If you have any queries regarding any aspect of this article please do not hesitate to contact our School Support Team at 01 613 3966, your local Allianz Representative or your Insurance Intermediary.



# Pre-Schools Located on Primary School Grounds

There has been a marked increase in pre-schools located on primary school grounds over the last number of years. This is understandable given the possible synergies and obvious flow from pre-school to primary school education.

While this arrangement can make sense for schools it is very important that the appropriate permissions are sought, best practice is followed and all relevant requirements are adhered to. The childcare sector is heavily regulated and it is essential that these regulations are complied with.

There are two main scenarios here:

1. The school allow a Third Party group to use part of their property or grounds to facilitate a pre-school – In this case it is very important that the school;
  - check to ensure the pre-school have an adequate insurance policy in place which covers their activities
  - receive written confirmation that the pre-school have a child safeguarding policy in place (do not request a copy of the document)
  - a lease or licence should be put in place
  - Obtain permission from the Patron / property owner
  
2. The BoM of the primary school run a pre-school – In this case the BoM need to ensure the following:
  - All relevant Childcare regulations are followed
  - A separate company is set up for the pre-school featuring separate accounts and insurance arrangement.
  - Permission has been granted by the Department of Education and the Patron / property owner

As per the recent guidelines issued by the Department of Education (Guidelines on the use of School Buildings outside of School hours) it is vital that the appropriate permissions are sought from the property owner in both scenarios.

## Survey

If you have a pre-school on your school grounds, it is necessary to inform your insurance company. Therefore, we will be asking schools who have

pre-schools on their grounds to complete a short survey. We will send this out to you shortly and we would really appreciate your participation. The survey is also available to download from our website [www.allianz.ie/schools](http://www.allianz.ie/schools).

The need for School Boards of Management to obtain appropriate permission, is documented further in the Department of Educations recent document "Guidelines on the use of School Buildings outside of School hours".



# Changes under new General Data Protection Regulation (GDPR)



As you are probably aware, the new General Data Protection Regulation (GDPR) was published in the Official Journal of the European Union on 4 May 2016, and will apply from 25 May 2018. As the implications of the new GDPR are extensive, all schools dealing with personal data, need to plan for the new requirements.

The new rules aim to protect individuals, by setting out clear rights and requirements, balanced with the need for data processing in business, services and society.

**To assist in this you should make an inventory of all personal data you hold and examine it under the following headings:**

- Why are you holding it?
- How did you obtain it?
- Why was it originally gathered?
- How long will you retain it?
- How secure is it, both in terms of encryption and accessibility?
- Do you ever share it with third parties and on what basis might you do so?

The inventory will enable your school to amend incorrect data.

You should review your procedures to ensure they cover all the rights individuals have, including how you would delete personal data or provide data electronically and in a commonly used format.

Rights for individuals under the GDPR include:

- subject access
- to have inaccuracies corrected
- to have information erased

- to restrict the processing of their information, including automated decision-making
- data portability

You should review and update your procedures and plan how you will handle requests within the new timescales. (There should be no undue delay in processing an Access Request and, at the latest, they must be concluded within one month).

GDPR introduces special protections for children's data which you need to ensure you are aware of and compliant with.

GDPR requirements are extensive but there are many excellent resources available to your school. These resources include clear steps that your school should take and action plans to assist your Board of Management ensure correct checks and procedures are put in place.

The first step in ensuring your school is ready to be compliant with GDPR in May will be to ensure you are aware of the important changes and to put adequate procedures in place. Your Board of Management needs to review the changes and plan accordingly. Any changes to procedures should be communicated to all relevant staff that are dealing with requests or involved in the handling or processing of personal data.

- [dataprotectionschools.ie](http://dataprotectionschools.ie)
- [gdprandyou.ie](http://gdprandyou.ie)
- Most Management bodies also have advice for their members on their website and these will focus on specific advice for Primary / Secondary schools as appropriate.

## **Allianz Custodian School Protection Policy**

Your Allianz Custodian School Protection Policy provides protection to BoM's, Trustees and Patron for any actual or alleged breach of duty arising from any negligent act error or omission e.g. issues arising from your administration of policies and procedures in relation to data protection. Cover is subject to policy terms Definitions Exclusions Conditions and any Endorsements of the Policy.

## **Data Access Requests**

Data Access requests should be referred to Allianz to ensure your BoM receives the correct advice prior to fulfilling such requests.



# Allianz Pupil Personal Accident Insurance 2018

We are delighted to confirm that premiums for the coming year (commencing 1st September 2018) will be unchanged. The Allianz Pupil Personal Accident Policy continues to be excellent value for money with premiums from €4.00 for School Activities / €6.40 for 24 hour cover per pupil for primary schools & €7.20 for school activities / €9.60 for 24 hour cover per pupil for Secondary Schools.

Each year we receive a large number of queries on different aspects of the scheme so we have outlined the most commonly asked questions, and their answers within this article. This information will also assist school principals / secretaries looking at the Allianz Pupil Personal Accident scheme for the first time.

## What is Pupil Personal Accident Insurance?

The principal aim of Personal Accident Insurance is to cover medical and / or dental costs as a result of accidental bodily injury i.e. an accident. The Allianz Pupil Personal Accident Insurance scheme provides this cover for primary and second level pupils through their school. Simply put, if a pupil on the scheme incurs medical and / or dental costs following an accident, these costs can be claimed under the Allianz Pupil Personal Accident Insurance Policy on a no blame basis.

## What are the benefits to my school?

1. Reduces the possibility of public liability claims being taken against the school as the parents / guardians of an injured child can reclaim their medical and / or dental expenses (not recoverable from another source) following an accident to their child.

2. Provides a no blame facility for parents to recoup medical costs following an accident during a school activity. This in turn reduces the likelihood of animosity between the parent / guardian and the school following an accident involving their child.
3. 20% saving on the overall premium for arranging cover online at [www.allianz.ie/schools](http://www.allianz.ie/schools).
4. Provides peace of mind for schools.

## What are the benefits to the parents / guardians of our pupils?

1. 24 hour cover option provides cover 365 days a year, 24 hours a day.
2. No Excess so all insured expenses, not recoverable from another source, can be recovered.
3. Allianz continue to pay insured expenses until the need for care has ceased. This is a very important feature for dental claims as the costs can continue for a number of years.

4. Affordable premiums for parents.
5. Medical & dental expenses benefits are separate, meaning parents can claim up to the limit of each benefit (up to €100,000 - €50,000 limit on medical & €50,000 limit on dental expenses)

## How does the scheme work and what options are there?

**Cover types – There are two cover types, School Activities only and 24 hour cover:**

**School Activities Only –** Cover is restricted to School Activities only (including direct travel to and from such activity)

**24 hour cover –** Provides cover to pupils 24 hours a day, 365 days a year.

### Cover Options for Schools

**Specified Pupils** - Most schools give parents an option to include their child in the scheme. In this case, the Option B application form is issued to parents and they choose the cover for their child (24 hour or School Activities Only) and pay the school the relevant premium. Most schools use this option, as it is a good way to collect the premium. It may mean that some children will not participate in the scheme.

**All Pupils** - The other option available to schools is to take out the cover for all children in the school. This is a cheaper option (€1 cheaper / child prior to the online saving) and individual application forms do not have to be completed by parents. The cover (School Activities Only or 24 hour) must be the same for all pupils in the school.

### How do I arrange Cover?

Cover is arranged through our website [www.allianz.ie/schools](http://www.allianz.ie/schools). The process is very straightforward and there is no need for passwords. Simply select Pupil Personal Accident, Click BUY and follow the onscreen instructions.

### Is it cheaper to arrange online?

Yes, there is a 20% premium saving if you arrange the cover online.

### Does our school need this cover if we have arranged Public Liability Insurance?

Public Liability Insurance covers the legal liability of the school and the Board of Management. In order to make a claim and recover medical expenses, the parent / guardian would need to take legal action against the school and in doing so prove the school were in some way negligent to be successful in their claim. Under a Personal Accident Insurance Policy medical and / or dental expenses (subject to policy limits) not recoverable from any other source will be covered following an accident.

### What does not recoverable from another source mean?

If the injured pupil can avail of a private health insurance (PHI) payment, they must do so. If

their PHI does not cover the medical or dental expenses or does not cover all of the expenses, they can make a claim under the School Pupil Personal Accident Policy. This measure helps keep the premiums affordable.

### Are physiotherapy expenses covered?

Yes, provided the injury results from accidental bodily injury (an accident) and they have been referred by a medical practitioner (typically a GP).

### Why are the premiums for Primary and Secondary schools different?

The premiums for Primary and Secondary schools were the same until September 2017. However the claims experience for Secondary schools is significantly higher than Primary schools (based on an analysis of 5 year claims experience in April 2017).

## Competition

We are running a number of competitions this year as follows:

### Early Bird Competition for Primary & Secondary Schools

Schools who arrange their cover online at [www.allianz.ie/schools](http://www.allianz.ie/schools) before 30th June 2018 will be entered into a draw for a 64GB iPad. We have one each for Primary schools and Secondary schools.

### Win a €1,500 O'Neill's Sports Voucher for your school

Win a €1,500 O'Neill's sports voucher for your school. We have a sports voucher to be won for Primary schools and one for Secondary schools. To be in with a chance to win simply arrange your cover online at [www.allianz.ie/schools](http://www.allianz.ie/schools) by the 31st October 2018.

Competition terms and conditions apply and can be found at [www.allianz.ie/schools](http://www.allianz.ie/schools)

## Last Years Winners were as follows:

### Sports Kit Competition

Secondary School Sports Kit Winner – St Brendan's College, Co Kerry  
Primary School Sports Kit Winner – Strandhill National School, Co Sligo

### Early Bird Competition

Secondary School iPad Winner – Cross & Passion Secondary School, Maryfield, Dublin  
Primary School iPad Winner – St Dymphna's Ns, Tydavnet, Co Monaghan



# The Life Cycle of an Employment Practices Liability Claim

In this article we discuss the life cycle of an Employment Practices Liability claim which we dealt with under an Allianz Custodian School Protection Policy involving an employment dispute. We outline the process from the circumstances of the dispute, the reporting process, the investigation, the role of the Rights Commissioner, the final outcome and lessons learned.

## Circumstances of the Dispute

The school had decided to reduce the number of cleaners employed from three to two. The cleaner who was made redundant appealed the decision to the Board of Management on the basis he was unfairly selected. The redundant cleaner filed a claim for unfair dismissal under the Unfair Dismissals Acts. The school approached a solicitor to advise them. This case would be in line to be listed for hearing before a Rights Commissioner in the Labour Relations Commission (now part of the Workplace Relations Commission). It could take some time to be listed.

## Reporting the Issue

The Board of Management consulted their solicitor who advised them to notify Allianz, their Insurer which they did. Solicitor's fees incurred prior to a claim would be paid by the school. As the matter was in line to be listed as a claim

before the Rights Commissioner in the Labour Relations Commission, Allianz would provide cover for fees from this point, subject to the policy limit of indemnity and excess of €300.

## Investigation

In this case the solicitor whom the school consulted was appointed as legal adviser by Allianz. The solicitor had obtained details of the process which led to the cleaner being made redundant. If the solicitor was not involved, Allianz would appoint a claims investigator to meet the Principal and key people on the Board of Management who were involved in the decision to establish the background and circumstances.

## Rights Commissioner

A hearing before the Rights Commissioner went ahead approximately eight months after

the original unfair dismissal claim was filed. The solicitor appointed by Allianz to represent the school was in attendance. The claimant is often represented by a union official but in this case was represented by a solicitor.

The Rights Commissioner focused on the criteria for appointment which was important in determining who was to be made redundant. The school's solicitor maintained the school was objective and the three workers were assessed by the same criteria. However, the Rights Commissioner was of the opinion that the criteria were general and left a lot of scope for subjective interpretation. The hearing ended with the Rights Commissioner requesting additional information from each party.

An opportunity was provided to the parties to explore the possibility of an agreed settlement. With the assistance of the Rights

Commissioner the school reached a point where they were willing to make a settlement. The solicitor for the claimant was unwilling to engage in negotiations.

As settlement could not be agreed, it returned to the Rights Commissioner to make a determination. The school's solicitor felt at this point the Rights Commissioner would make some award if only to penalise the school for not using "last in first out".

### Rights Commissioner – Final Decision

The final decision of the Rights Commissioner was issued about eleven months after the original hearing. As expected, he found against the Board of Management. The reason given was that, on the basis that all three employees were carrying out the same duties and all three had clean records "it would not be unusual for seniority to be a major factor in deciding who will be made redundant".

However, the Rights Commissioner did recognise that the Board of Management was entitled to use other criteria to assess who should be made redundant. Where the Board of Management went wrong was in the

absence of transparency in the process and the subjectivity of some of the criteria used to select the person who was to be made redundant. The Rights Commissioner made a monetary award by way of compensation.

### Options

The Board of Management had the right to appeal the decision but decided not to do so in this case. The claimant could also appeal the decision but, again, did not do so. There is a time limit of 42 days to make an appeal.

### What the Policy Covers

The legal costs of the solicitor appointed to advise the school were covered under the Allianz Custodian School Protection Policy. Also covered was the award made by the Rights Commissioner. However, if any penalties, fines or punitive damages (damages exceeding simple compensation and awarded to punish the defendants) had been made against the school these would not be covered under the Policy and would have to be paid by the school from their own resources. It is important to note however, that you must refer to your policy document wording and schedule for precise details of your cover and all terms, conditions, limitations, exclusions and

endorsements applicable to it. A copy of this is available upon request from Allianz or your Insurance Intermediary.

### Lessons Learned

It is essential that schools follow correct procedures when dealing with employment matters. Issues such as procedures when taking on a member of staff, redundancy, contracts, absence and dismissal must be properly addressed. Principals and Board of Management members are not expected to be experts in the area of employment law and procedures. They should lean on the expertise of their own representative bodies, as well as State sponsored bodies such as the Workplace Relations Commission and even legal advice where appropriate.

As this article shows, it only takes a small breakdown in procedure to leave a school with a claim resulting in a significant payment for the settlement and legal costs being made against their insurance policy.

If you have any queries regarding any aspect of this article please do not hesitate to contact our School Support Team at 01 613 3966, your local Allianz Representative or your Insurance Intermediary.



# Legal Review

We continue our review of some **school accidents** which have been finalised in the Courts over the last few months.



## Case 1 – Injury to pupil using outdoor school playground equipment

This first case involves a slip and fall in the school playground from a climbing frame. A claim was submitted through the Circuit Court alleging the play area was not supervised at the time and the climbing frame was unsafe and dangerous. In addition it was claimed that the injured pupil was attending an afterschool indoor homework club and that she should not have been permitted to go into the yard or to use the climbing frame. A full defence was delivered in the matter and it was specifically pleaded that the injured pupil was permitted to go

into the play area where the climbing area was located when she had her homework completed or where she had no homework on the day in question. It was further pleaded that the injured pupil's mother was fully aware of this fact and in fact the injured pupil's mother frequently collected her from the play area on a Friday evening. Further pleadings confirmed that the climbing frame in question was a state of the art structure which was manufactured and installed by a reputable company and which was certified as designed and installed in compliance with appropriate standards. The case proceeded to trial in the Circuit Court and evidence was

given to confirm the above and that supervision was in place on the day. The Judge dismissed the claim and in his Judgement stated that it is not the case that someone is to blame for every accident. He has sympathy for the injured pupil who was genuinely injured but he also had sympathy for the school who were doing their best and he was not satisfied that the school had breached the standard of care required.

## Case 2 – Injury to pupil during class in the science laboratory

This next case involved an injury sustained by

a pupil who had an accident in the science laboratory at school. At the time of the accident the injured pupil was conducting a science experiment in the company of one class mate in accordance with normal and typical practice. The injured pupil was using a piece of glassware equipment known as a pipette. The pipette is used to hold a specific and measured volume of liquid that is then released in a slow and controlled manner by the user. The pipette is filled by placing the pointed end into the required liquid and sucking the liquid into the pipette from the opposite end. This is done by the use of a simple vacuum pumping device at the end of the pipette to create suction. The injured pupil was applying one of these devices at the time of the accident. As he was fixing the pipette pump to the end of the pipette, the pipette shaft broke and part of the pipette was driven into his left hand resulting in a laceration to an area at the base of his left index finger. The injured pupil was fully trained in the use of the equipment and had carried out similar experiments prior to this accident happening. Liability was denied and the case proceeded to a full hearing in the Circuit Court. The injured pupil gave evidence and said he did not recall getting any instructions from the teacher and said that the teacher sat at the top of the class and was not walking around and was mostly behind her computer screen during the experiments. The teacher gave full evidence of the training that the injured pupil had received including confirmation that the whole class received an 80 minute induction at the beginning of term outlining the dangers in the lab in handling delicate glass/hazardous chemicals, etc. The Judge summed up that he felt the teacher was utterly compelling in her evidence, she was professional and he accepted she did give a full 80 minute induction at the beginning of the school year. He felt she could not have done anything more and that it was reasonable that a 16 year old could take instructions. He went on to state that it would be ridiculous to expect teachers to be at the end of all benches in the science laboratory. "They don't have eyes in the back of their heads" and in his view, the teacher did not breach her duty of care and that she was

supervising with utter professionalism. He regretted the injury sustained by the pupil but was of the view that no negligence applied to the school and he dismissed the claim.

### Case 3 – Injury to pupil in school yard

This next case arises out of an incident in a school yard when a 12 year old pupil was hit below the eye by the swing of a plastic cricket bat. The allegations against the school were one of failure to provide adequate protective equipment, inadequate supervision and failure to provide appropriate head gear. The school had organised an improvised cricket game as part of active week. The children had played this game before and the teachers confirmed that all pupils knew their roles and exactly where to stand etc. There were 23 pupils and 4 adult supervisors. The injured pupil moved into an unsafe zone and was struck by the plastic cricket bat. As stated, the bat was made of plastic and there was no requirement to wear protective head gear in the view of the supervising teachers. This is a simple game played in every school across the country and a full defence was presented on the basis of view that there was no negligence on the part of the school and the case proceeded to trial. The case ran in full with evidence provided by teachers, SNA's and a sports consultant. Evidence confirmed that the school ran an excellent sports programme, was well supervised and staffed and that no negligence could accordingly attach to the school. The Judge dismissed the claim and awarded costs to the school.

### Case 4 – Slip and fall injury sustained by a parent collecting her son from school

This last case involves a slip and fall wherein a parent was collecting her son from school and was traversing the corridor from her son's classroom to the front door when she alleges she was caused to slip and fall when her left leg skidded to the right and she fell forward. The injured parent alleged that her slip and fall was due to the condition of the floor and that the school had allowed a liquid to be present on the floor on the occasion in question. There were two witnesses to the parent's accident and it was captured on a CCTV camera. One of the teachers was also

walking up the corridor from her classroom and witnessed the fall. The teacher confirmed that she checked the floor to see if it was wet or if there was anything else that could have caused someone to fall and was in a position to confirm that the floor was dry and free from any debris. The second witness was sitting at the entrance hall waiting for her daughter to come out of the classroom and she witnessed the fall. She confirmed that the parent who sustained the injury was walking briskly towards the main door accompanied by a child and appeared to be wearing quite high heeled shoes. She also confirmed that the floor was not wet as she would have informed the Caretaker or the Principal if it had been. Reference was made to a curving black stain on the floor surface at the location where she fell and this was put forward as the reason for her slip. Engineering reports confirmed that the floor presented a low risk of slip when clean and dry. The case was allowed to proceed to trial in the knowledge that liability would be decided on the basis of what evidence would be accepted by the Court in relation to the state of the floor. The school were entitled to rely on their two witnesses. The case was taken in the High Court and significant claims were made for loss of earnings together with general damages and costs. On the morning of the trial an application was made by the injured parent's legal team for an adjournment as their client was unwell. This was considered to be a very late notification of this and in the absence of a medical certificate was not satisfactory. The Judge confirmed that she wanted to see the injured parent in Court the following morning. The injured parent did present the following morning and was cross examined by the school's Senior Counsel in relation to all aspects of her case and also relating to injuries sustained in a previous accident and her claim for loss of earnings, etc. The Court broke for lunch and the school's legal team were approached and informed that the injured parent would withdraw her claim on the basis that she was not pursued for costs. This was a very good outcome from the point of view of the school and it was agreed to allow the injured parent walk away in the matter.



# Allianz Pupil Personal Accident

Protection for the pupils of your school

## Why should I choose Allianz for my school?

- ✓ Medical & dental expense benefits of up to €50,000 for each
- ✓ No time limit for medical & dental expense claims (once notified within 730 days of the insured accident)
- ✓ No Excess, so all insured medical & dental expenses not recoverable from another source, can be claimed.

Cover you can rely on from the Insurer you know and trust.

## Testimonials

*We have had the Allianz Pupil Personal Accident Insurance in our school for several years now. The 24 hour cover is particularly good value with so many of our students involved in sport. The parents that have had cause to use it were very happy with the process and thankful to have had the cover in place. We would highly recommend it.*

Bunscoil Phádraig Naofa, Tuam, April 2018

*Allianz Pupil Personal Accident Insurance provides our B.O.M with invaluable peace of mind. The cover protects our school from potential liability claims and parents from unforeseen medical expenses following an accident. The cover provided is excellent value for money.*

St Andrew's National School, Co Meath, April 2018

**Allianz** 

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Allianz p.l.c. is regulated by the Central Bank of Ireland. Standard acceptance criteria and terms & conditions apply. Calls may be recorded. Information correct at 1<sup>st</sup> March 2018.