



National
Guidance
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Contracts and Waivers

Contracts

Organising a visit may involve entering into one or more contracts. A contract might be an agreement, booking, ticket purchase or other arrangement with, for example:

- A travel provider, for a taxi, bus, coach, train or flight;
- A tour operator;
- A hostel, residential centre, hotel or other accommodation provider;
- An activity, equipment or facility provider;
- A venue or visitor attraction;
- Parents, to pay a fee or make a voluntary contribution for their children to participate in a visit;
- Another establishment with which you are planning a joint visit or exchange;
- An individual supporting the visit, such as a supply teacher, specialist tutor or activity instructor.

You create a contract when you make an agreement with another person or organisation in which you or they promise to provide something in return for payment or other consideration. A contract does not have to be in writing: for example, an exchange of emails, the purchase of a ticket, a telephone or internet booking, or a verbal agreement are all ways in which you can enter into a contract.

You must ensure that you have authority from your employer before you enter into any contract on their behalf. If you do enter into a contract without such authority, you may risk disciplinary action or be personally liable for any costs involved.

All contractual agreements should be between the establishment organising the visit and the provider. You should not allow providers to agree contracts or waivers directly with participants or parents.

Details given in advertisements, brochures, websites etc. do not necessarily form part of a contract. You should check what is actually included in any contract that you agree.

Terms and Conditions

When considering whether to agree a contract, you should make sure that you fully understand any relevant terms and conditions. You should pay attention to any cancellation terms, acknowledgment of risk or waivers – see below. You can often find these on a provider's website while you are in the process of selecting a provider.

Where a provider's terms and conditions are not clear, or are not written in plain language, it may be better to look for a different provider. If there is anything you do not understand you should take advice or ask the provider for written clarification. If you are not happy with any of the terms and conditions, you should discuss these with the provider – they may be willing to negotiate changes with you.

Data Protection

Under the Data Protection Act 2018 and the General Data Protection Regulations 2016 (GDPR), providers must have either a contractual agreement or specific consent to use participants' personal data.

In many cases, it is important that a provider is given certain personal data about participants. For example, it may be vital for the health and safety of a participant that an activity provider knows about their medical and behavioural history and any dietary, care or other needs. The contract (or an attached privacy and/or data protection policy) must stipulate that personal data is handled in compliance with the GDPR and should include an outline of how such data is shared, used, stored, secured and eventually deleted or returned to the establishment.

Personal data includes photographs in which an individual is identifiable. Sometimes providers will state that their use of images of participants is a condition of participation. Before agreeing to such a condition you should ensure that participants, or the parents of participants under the age of 18, have given their consent, and that there are no safeguarding concerns about giving the provider such consent.

See documents 4.4j "Participant Information and Data Protection", 4.3d "Parental Consent" and 4.3e "Safeguarding".

Cancellation

You should be clear about what will happen in the event of cancellation or curtailment by you, by the other party, or by any of the participants. If your ability to pay for a visit depends upon payments from parents or participants, it is advisable to ensure that the payment and cancellation terms that you have agreed with them match your commitment to any providers. You should also check that you have suitable insurance to cover cancellation or curtailment in the event of factors such as sickness or adverse weather, and inform participants or parents of any details of the insurance cover that is relevant to them.

Acknowledgement of Risk

Some activities involve a significant level of risk, even if they are well managed. For example, energetic fast-moving activities such as skateboarding, trampolining, mountain biking and skiing have a significant risk of minor physical injury and a small risk of more serious injury. It is good practice for providers of such activities, or of associated facilities, to inform you about these risks, and for you to inform participants and their parents so that their consent is fully informed.

If you are not happy that the risks are acceptable, and that they are worth taking in order to achieve the benefits of the activity, then you should not do that activity.

Some providers may simply inform you about the risks, perhaps in a 'Statement of Inherent Risks'. Others may ask you to acknowledge that you have read and understood this information, perhaps by including it in the terms and conditions of a contract or asking you to sign a separate document. While this is not necessary, there is no harm in signing such a document if it is simply a statement that you have received and understood the information.

Waivers

A waiver, sometimes known as a disclaimer or release agreement, is a contract to give up certain rights. It might form part of the terms and conditions of a wider contract such as a booking agreement, or it might be a separate document.

For example, in the UK and many other countries a provider has a legal duty of care towards participants: if the provider is negligent in this duty and thus causes loss or injury, then the participant has a right to sue them for damages. A provider might ask participants to sign a waiver promising not to sue.

As with any other form of contract, you should not agree to a waiver unless you have your employer's authority to do so. **Employers considering whether to agree a waiver may wish to consult their insurers or take legal advice.**

The Unfair Contract Terms Act 1977 makes it illegal to attempt to limit liability for death or personal injury resulting from negligence. Contracts or waivers that attempt to do this are therefore not enforceable in the UK. The law also requires that any attempt to limit liability for other loss or damage (such as to personal belongings) due to negligence must be reasonable.

UK providers therefore should not use waivers to attempt to limit their liability for death or personal injury resulting from negligence. If a provider presents you with such a waiver, you should refuse to agree it, and you should not allow the provider to ask participants or parents to agree it either. You might also re-consider whether it is wise to use that provider.

Occasionally the term 'waiver' is incorrectly used to describe a document which is in fact something else that you are quite reasonably being asked to agree. For example, a provider might include one or more of the following among their terms and conditions. Before agreeing to these, you should read them carefully to ensure that you understand them, and that you are not waiving any rights.

- An acknowledgment of risk or statement of inherent risks (see above);
- A description of the limits of what is provided;
- A statement that the provider does not take responsibility for the loss or damage of participants' personal belongings (however, if such loss or damage were due to the provider's negligence, the limits of their responsibility must be legally 'reasonable');
- A statement that the provider of an unsupervised facility is not responsible for death or personal injury due to misuse of the facility (however, a UK provider must not claim that it is not responsible for the results of its own negligence);
- Rules or guidelines to which you are asked to agree as a condition of participation, e.g. for your own and others' safety;
- A description by an activity provider of the arrangements for the handover of responsibility for supervision of children at the beginning and end of the activity, and of the role of your staff during the activity (you should ensure that these requirements are reasonable);
- A declaration of fitness to participate in an activity, or a declaration of any medical conditions that might affect safe participation;
- Consent to take part in the activity – see document 4.3d Parental Consent.

If a provider requires agreement to any waiver, risk acknowledgment or other terms or conditions, they should make this clear at the time of making the original booking contract. It is bad practice for a provider to present such a document out of the blue at a later stage, for example when arriving at a venue or activity site. Doing so could be regarded as an attempt to change the terms and conditions of the contract and you would therefore be within your rights to refuse to sign. If the provider then refused to allow you to take part in the activity or use the facility, they would be failing to honour the original contract.

Of course, even though you might be in the right, this could place you in a difficult situation, particularly if you are outside the UK or if it means disappointing the participants or disrupting your plans. You may be able to deal with the situation by crossing out any unacceptable wording in the document before you sign it, or making your objections clear to the provider in another way. If in doubt, you should ideally consult a senior manager at your establishment or employer, but this may not be possible in the time available. It is better to avoid this situation by taking care to ascertain at the time of booking whether you have been presented with all the terms and conditions.

In some countries, such as the USA and Canada, the use of waivers is more common than in the UK. If you are making an advance booking with an overseas provider you should ask if you will be required to sign a waiver when you arrive and, if so, you should ask for a copy to read before booking. If you use a UK provider or tour operator, you should check that they will deal with any waiver issues with their overseas sub-contractors, so that you can refer any concerns to them.

