

Outdoor Playgrounds and COVID-19

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The owners/occupiers of outdoor playgrounds could potentially face a liability in respect of COVID-19 claims if they were found to be in breach of their duties under s.2 Occupiers' Liability Act 1957. Simply stated the Act requires occupiers to take reasonable steps to ensure that visitors to the premises are reasonably safe. It is worth noting that liability for personal injury, which would include COVID-19, cannot be excluded or limited.

The reopening of a particular playground would be subject to any local lockdown from time to time in force. If the decision is made to reopen a playground clear records of the decision making process should be retained together with records regarding what control measures were put in place and what signs were displayed. Ideally photographs of the signs in place should be taken in advance of the playground reopening.

If a playground has been out of use for a period of time and includes equipment, such as swings or slides, then these should be inspected prior to reopening to ensure that they have not been damaged during lockdown and that they remain safe to use. Records of the inspection, including photographs, should be retained.

Prior to opening the playground a suitable risk assessment ought to be completed and it may be desirable to communicate this risk assessment to users of the playground if they are a known defined group i.e. residents of a particular development.

The risk assessment ought to consider

- The risk to the public taking into account that children will be less risk averse than adults
- Employees who may be required to access the park for cleaning or maintenance or ground keeping (this may require a separate and specific risk assessment given the additional duties owed by an employer to an employee)

Failure to complete a risk assessment and implement the necessary control measures could lead to enforcement action being taken by the HSE or the local authority in addition to a potential civil action.

Control Measures

Social distancing remains a key measure in controlling the risk of infection from COVID-19 and HM Gov't advice remains that a 2 metre distance should be maintained. Where a 2 metre distance is not possible the Gov't advice is that 1 metre distance should be maintained with appropriate other control measures i.e. face coverings.

Other control measures could include:

- Limiting the number of users of the facilities at any one time.
- If practicable, a booking system can be implemented.
- The use of 1 piece of equipment should be limited to 1 household unit at a time
- Children should be accompanied by 1 adult family member
- Setting a time limit on the use of the playground
- If a queuing system is to be implemented it should be done in such a way which does not impede road traffic or pedestrians and 2 metre social distance markers would be advisable.

The costs and resources required to design and implement systems for controlling the number of users and/or providing a booking system may limit the practicable application of these proposed control measures. Whether such measures are reasonable practicable would have to be considered on a case by case basis. The decision making process should include consideration of whether any of the other control measures, whether in isolation or combination, are sufficient to ensure that the playground is safe for users.

Cleaning

The Government advises the regular cleaning of high traffic areas such as

- Climbing frames and monkey bars
- Enclosed spaces
- Crawl tunnels

- Gates and entrances to the playground
- Seating and tables
- Bins

There will be a cost associated with the cleaning of these areas. No guidance is provided as to what is meant by “regular cleaning” and whether this means several times a day, one a day or weekly etc. It may therefore be more prudent, given the additional risks associated with employees accessing the playground, to exclude such high traffic facilities from operation. This could be done by enclosing the facilities or marking them with tape and signs as being out of action.

In addition users of the playground should be encouraged to clean the facilities themselves before and after use. Facilities ought to be made available for the safe disposal of cleaning items if used and specific consideration of the risk to employees tasked with clearing such waste ought to be completed. Users should be encouraged to take any litter with them for disposal to limit the amount of waste which may accrue.

Users should be reminded to clean their hands with their own sanitiser before and after using the playground and to wash their hands when they get home.

Signage

If a playground is reopened then signs should be placed at all entrances detailing the control measures to be observed including

1. Maintaining social distancing
2. Limiting the number of people who can use the equipment at any one time
3. Detailing any equipment which is not to be used
4. Advising on the use of hand sanitiser before and after use of the playground
5. The cleaning by the user of any equipment before and after use
6. The safe disposal of waste in bins provided or that the waste should be take home to be disposed of
7. Any with symptoms of COVID-19 or living with someone with symptoms should not use the playground
8. Advice on the washing of hands when returning home

The signs could be distributed to the users of the playground as a flyer.

Summary

There are risks associated with the reopening of playgrounds which may be mitigated by appropriate control measures. If the decision is taken to reopen a playground special consideration must be given to whether all of the facilities should be available; the number of people who can use the playground; and the risks to any staff employed in servicing the area.

Once the risk assessment has been completed it is likely that the provision of information to users of the area, either via direct communication with a known group of users and/or by signage in the playground with the necessary guidance would be sufficient to discharge the duty of care owed by the owner/occupier of the playground. In any event the a court would have to consider the acknowledged public benefit of outdoor play areas versus the risks posed by COVID-19.

Authors



Thomas Jordan

Bristol

+44 (0)117 918 2122

tjordan@dacbeachcroft.com