

2025.03.18

4.11 Deputy D.J. Warr of of St. Helier South H.M. Attorney General regarding legal liability where a student is exposed to harmful content on another student’s phone whilst on a school site (OQ.67/2025):

Will H.M. Attorney General advise where any legal liability lies where a student is exposed to harmful content or addictive algorithms on another student’s phone while on a school site?

Mr. M.H. Temple K.C., H.M. Attorney General:

Whether there is any legal liability and where it lies will depend on the facts of a particular case, so the answer I give is subject to that important caveat. Article 35 of the Education (Jersey) Law imposes statutory duties on headteachers in relation to the management of behaviour and discipline which could arguably apply to the use of mobile phones in schools. Secondly, there is also likely to be a customary or common law duty of care on the part of the Minister for Children and Families at schools which may give rise to a claim in negligence for an alleged breach. C.Y.P.E.S. has prepared an online safety policy dated August 2021, which I understand is subject to review, and the policy has specific provision concerning phones, and I quote: “Mobile devices accessing the internet via the 3G or 4G networks are not subject to the same filtering and monitoring that school systems are. This means that these devices could potentially give access to unsuitable content while on school grounds and under school supervision not only to the owner of the device but also to their peers. You will need to educate your learners of the potential impact to well-being of this. If your school allows children to bring mobile devices to school, you must have an in-school policy in place governing their safe and responsible use. There should also be a signed agreement with students and parents as to how the device should and should not be used.” If schools actively observe this policy, in my view it should be difficult to bring a successful claim for breach of statutory duty or negligence on the part of the school.

4.11.1 Deputy D.J. Warr:

I thank the Attorney General for the answer. Can the Attorney General confirm that a school’s duty of care extends beyond the classroom, for example school toilets, changing rooms, playing fields, school trips, including trips and overnight stays?

The Attorney General:

In general terms, yes, although I repeat that it will always be subject to the particular facts of the case.

4.11.2 Deputy P.F.C. Ozouf of St. Saviour:

Would the Attorney General agree that given schools act *in loco parentis*, there is at least the moral, if not a legal duty of care, to protect students from exposure to materials on school grounds and the current policies that he has explained may not be sufficient in the light of those risks? He is the Attorney General to the Governor and the States Assembly so I wonder if he could give some guidance for the underlying reason why the Deputy has brought this question, which is an important one.

The Attorney General:

I am not aware of any underlying reasons for why the Deputy has brought this question, but the question is about legal liability, and my answer was given in terms of legal liabilities.

[11:15]

I have already confirmed that in general terms there is a duty towards school children, and it is both a statutory duty and a customary or common law duty of care.

4.11.3 Deputy P.F.C. Ozouf:

Is he entirely satisfied because he says it is up to the schools to do it and he says he is not aware of the underlying reason. Therefore, perhaps his Chambers have not been asked of the widespread concern that many parents have about the use of harmful content on ... I have asked the question about whether

a trial ban for smartphones in the classroom would be helpful to teachers because it is a massive issue. He is saying that the question is pretty wide. It says whether any legal liability lies where a student is exposed. The question is quite clear that there is an underlying issue here. He has set out the guidance; is he completely satisfied that the guidance, while being lawful, perhaps, but is it being properly updated and kept in force because there is a lot of concern? Is he not aware?

The Deputy Bailiff:

Are you asking the Attorney to express an opinion on the current policy?

Deputy P.F.C. Ozouf:

Has he expressed an opinion, Sir?

The Deputy Bailiff:

You are asking him to and that is contrary to Standing Orders.

Deputy P.F.C. Ozouf:

Has he not given an opinion on the policy that he set out?

The Deputy Bailiff:

He is not supposed to under Standing Orders.

Deputy P.F.C. Ozouf:

I will have to ask the Minister then.

The Deputy Bailiff:

You are asking him to express an opinion on a policy, I think, are you not?

4.11.4 Deputy I. Gardiner of St. Helier North:

Thank you for the Attorney General to confirm that there is a statutory duty of care for exposure. If I understood correctly, there is a duty of care to exposure children to harmful content on the school premises. Has the Attorney General advised the Government on the current situation and if the guidance meeting can protect the Government from the claims on exposure to the harmful content?

The Attorney General:

As the Deputy will know, any advice that I give to the Government is confidential. I am giving the advice to the Assembly. It would be exactly the same advice that I give to the Government, so I cannot really go beyond that.

Deputy I. Gardiner:

I did not ask what the advice was. Has the Attorney General had any communication with the Government regarding the current guidelines and if they align with the law and statutory obligations?

The Deputy Bailiff:

He cannot answer that. There is a longstanding convention that the Attorney cannot be asked about advice he has given to Government. It applies to all Members. Any advice the Attorney gives to anyone in the Chamber is confidential.

4.11.5 Deputy K.M. Wilson of St. Clement:

Could the Attorney General just explain whether there is any variability in terms of responsibility for duty of care across each of the different schools and whether or not he can advise as to whether there are different degrees of harm that would be integral to that duty of care as well?

The Attorney General:

As I did preface my first answer to the question, questions of legal liability do always depend on specific facts. There may well be specific facts in particular cases as to why, say, primary liability may be on

one party, such as the Minister, or possibly a secondary liability on a headteacher for a statutory duty. These are very fact-sensitive questions and it is rather difficult to answer them in a vacuum beyond a general statement that well, yes, there may be varying degrees of liability, but in terms of the policy I have set it out and I am not sure that I can go much beyond that. Sorry, if I have not satisfied the Deputy.

4.11.6 Deputy K.M. Wilson:

It is very interesting that it is such a controversial subject, is it not? I just wonder if the Attorney General could give any steer as to how we might understand this in legal terms so that we can form really good policy on this.

The Attorney General:

I think the best approach for the Minister and schools is to conduct risk assessments, as fact-based as possible, in relation to practical instances that schools come across day to day and, having done those risk assessments, then to put in place policies and procedures which best mitigate those particular risks, to actively monitor those policies and procedures to ensure that they are observed. I think that is the best advice I can give in the circumstances.

4.11.7 Deputy T.A. Coles of St. Helier South:

The question originally stated about being on the school grounds and school sites. Is that also determined by a time factor of their duty of care as in a pre-determined factor of a school day?

The Attorney General:

For my part, I would be reluctant to phrase it in terms of a particular time factor; I think again it depends on the particular facts. An older child perhaps may have less time in school, so it would be wrong to put a blanket time period which covers all age ranges as regards any particular duty of care. I think the assessment will depend on particular facts and a policy has to take account of that degree of flexibility and not try to impose a one-size-fits-all approach to what may be a multitude of different factual situations.

4.11.8 Deputy D.J. Warr:

I thank the Attorney General for the answers he has given because it is an extremely complicated area. Does the duty of care really depend on what we call “reasonable use”? If we talk about reasonable use, is reasonable use about the use of smartphones being required in schools? Are they required when a brick phone is sufficient? We have all of these different ways in which we can avoid these areas. Should schools not be looking at that and thinking about that ... sorry, my screen has just gone dead on me here. I have lost my connection on this one. To go back to this point of liability, and we talk about uneven liability here, I think as described in your answer to one of the questions by an earlier Deputy, who ultimately is responsible? Is it the governors, is it the Minister, is it the teachers? Where does this corporate responsibility lie?

The Attorney General:

Well, the Minister has responsibility as corporate sole, ultimate responsibility, and can be sued or sue in that capacity. There may also be a statutory duty on headteachers under the Education Law in the way that I previously outlined. Those are the primary source of responsibilities and it is up to school governors to try and assist with managing that legal risk as best they can. In terms of reasonable use, it will be up to schools to assess whether there are reasonable uses for mobile phones by pupils in the particular circumstances that the schools face and come to a decision themselves as to whether there are reasonable uses or whether to take a different approach. It is not for me to frame policy for schools and the Minister in this area, but I hope the answers that I have given are of assistance to the Assembly in considering what I accept is a difficult and important issue.

