

*Interventions***Harmless Fun Can Kill Someone**

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Introduction

‘Where there’s blame, there’s a claim’¹ is a quotation taken from a television commercial, which at the time of writing, is broadcast on Channel Five. It is the final written and verbal punch line promoting a personal injury claims service. The advertisement goes out frequently, particularly during the daytime and I have seen it displayed during evening schedules. Another firm² also vying for the personal injury claims market attracts the viewers’ attention by showing a young boy in a public playground. In the background are slides and a climbing frame, the implication is that the boy has damaged his eyesight whilst playing and requires glasses because of his injury. (The use of the playground as a site for advertising this type of product is interesting; it obviously suggests that it has been identified as an area of potential complaint and compensation). Comforted by a reassuring voice-over, viewers are informed that this particular firm, on behalf of the boy’s mother, successfully claimed damages for her son’s injury. The advertisement concludes with the suggestion that the mother received a large payment as recompense for a presumed negligence. Similar commercials publicising different personal injuries claims services are broadcast on other terrestrial television channels.³

This sort of television commercial is now becoming familiar because of important changes within the British legal system. These changes indicate the gradual lessening of the traditional restrictions on the right of lawyers to advertise for clients. This is because since 1984, the Law Society has relaxed ‘the rules on advertising’, allowing lawyers to recruit clients which ‘has directly encouraged claims making’.⁴ This culture of blame and compensation influences every aspect of daily life – one of which is that of primary school playground at playtime.

During my research, I uncovered a definite disquiet regarding issues surrounding playground supervision and the children’s choice of playtime

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entertainment.⁵ It appeared that a broad spectrum of concerns fuelled teachers' anxiety about their pupils' recreation activities. Uppermost, in the minds of those responsible for the supervision of playtime, is the impact that particular bureaucratic and legislative processes have on breaktime events and vice versa. On several occasions throughout my research, I discovered that the demands of certain prescriptive agencies combined with parental intervention quite often contributed towards teachers' fears about legal repercussions within the primary school playground setting. Consequently, in an effort to obviate these concerns teaching and ancillary staff govern and restrict the children's choice of entertainment during recreation time.⁶

The Sample and the Setting

Throughout the years of 1998–2001 I carried out a qualitative, ethnographic study of three primary schools governed by three different local authorities located in three different counties in the North of England and the Midlands. The schools were respectively located in urban, suburban and rural settings. These three schools comprised of firstly, a small (90 pupils on the roll) rural village junior and infant school set in a middle-class rural catchment area. Secondly, a large suburban junior school (192 pupils on the roll) serving families from both a large private affluent housing estate and local authority housing. Finally, a large urban junior and infant school (209 pupils on roll) set in a working-class catchment area. One could argue that three schools in adjoining counties are a limited setting of action from which to draw conclusions. However, these three settings are not markedly dissimilar from other relevant educational settings, particularly bearing in mind the present and previous governments' current drive for all schools to become standardised, uniform and homogeneous. Additionally it is not unreasonable to assume that there is a unified policy of practice about playtimes within all local authority schools. This then would suggest that the conclusions drawn might reflect a general trend across a broader spectrum of schools not covered in this research.

Health and Safety

The Health and Safety regulations and its administration dominated the minds and practices of the heads of the schools visited. The Health and Safety at Work Act 1974, s.3 requires employers to ensure so far as is reasonably practicable, the health and safety of persons not in their employment. The Director of Health and Safety Executive Peter Graham notes that 'pupils at school are protected by this duty'.⁷ Similarly, Bindley points out that 'anyone responsible for, or supervising, those who have not reached the age of 18 would be expected to apply all the requirements of

health and safety when those under-18s are performing their tasks, this includes laboratory activities, *games, play* and any activity which requires children to move things'.⁸ It is salutary then, to notice how much responsibility rests with the head teacher for ensuring a safe working environment. However, although 'an individual employee can be prosecuted under the Act, in practice, the prime responsibility would normally rest with the Authority'.⁹ Certainly when I discussed aspects of health and safety with head teachers it seemed to release a huge feeling of resentful comment varying from the casual to the vehement.

Health and safety, obviously, yes is crucial. I mean I regularly do health and safety checks in the playground. Two years ago on my arrival here I spent each breaktime quickly running out to make sure that no roof tiles were falling off – part of the roof was being done. I was also very conscious that the boiler house steps were not locked; now they have chains on them. The benches in the playground were just placed and could easily topple over and now, you notice, they are secured with chains to stop them falling over. So we're conscious of those things.... We are under review for a new playground surface but in the interim period, I've asked for areas to be patched-up to make it a safer environment for the children. So all the time, yes, I am very conscious of that need.¹⁰

Undoubtedly, school sites require a risk assessment evaluation and this is one of the Health and Safety Act, 1974 'duties of care' requirements detailed in Regulation 3 of the management regulations. Moreover 'it is still the head's responsibility to decide for instance whether the degree of danger is such that a piece of equipment should cease to be used with or without the advice of the Local Education Authority (LEA) advisor, the Factory Inspector, the Health and Safety Officer or the appropriate member of teaching staff. This of course leads to an onerous responsibility for the safety of each individual pupil of the school being laid at that particular Head's door'.¹¹ 'In this context, teachers and others holding positions of responsibility will need to consider the effects of their actions on others at work, as well as the dangers to which the children might be subject'.¹² These concerns and responsibilities, placed with in a playground context, culminate in teachers responding to an 'if in doubt, ban it' approach. Therefore, games considered as potentially hazardous such as 'conkers', 'bulldogs'¹³ and 'skipping' are forbidden. However, Peter Graham's response to this debate is that taking an 'over zealous approach to ensure the safety of children at school' is 'impractical' because if one were 'to expect schools to be risk free ... where would children learn the skills necessary to face the hazards and risk they will encounter through life?'¹⁴

Fear of Litigation

My research whilst revealing a heightened staff awareness for health and safety issues, also uncovered a notable positioning of staff and their institution in relation to any injury sustained by a child. Therefore, the umbrella of protection constructed was not only intended to safeguard the children, but also to shield the staff and the school from accusations of negligence. Some of the head teachers and staff interviewed, illustrated possible scenarios that might instigate accusations of negligent responses, for instance children's allergic reactions to plasters; 'we are not even allowed to put a plaster on a child now in case of an allergic reaction'. Another school mentioned the plaster ban when a child was hurt in the playground. The teacher sent the child away to get a wet paper towel, she turned to me and said 'wet paper towels are the answer to everything now we are no longer allowed to put on a plaster'. It seems that certain amount of irrationality accompanies legitimate fears. I even heard one member of staff talk about banning conkers because she linked conkers with nuts, which might then expose children to nut allergies. Further discussion with head teachers revealed their concern with the implications of negligent action. It seemed that the importation of the 'blame and compensation' culture from the United States of America was prominent in a few head teachers' thoughts.¹⁵ This litigious culture so frequent in America has kindled a similar growth of litigation in Britain.¹⁶ A recent Mori poll supports these assertions. It revealed that 57 per cent. of parents said that 'if their child suffered personal injury at school that they felt to be the fault of the school or school staff, then they would consider seeking compensation from the school' (with only 15 per cent. saying they would never consider doing this).¹⁷

Play as a Risky Activity

Furedi¹⁸ points out that the concept of 'unsupervised children's activity – which, arguably used to be called play' can today in a certain climate be; 'interpreted as, by definition a risk'. There is a climate of 'litigation-avoidance' and in terms of 'litigation avoidance' it has been vital to limit the amount of 'formalised liability'.¹⁹ Arguably, one of the main factors behind the drive for protecting pupils from injury, and one that led to the subsequent control of their playtime activities, was fear of litigation. If the supervision, care and attention of the children are judged as inappropriate for one reason or another, then there is a potential for litigious action. At one school, a teacher completing an obligatory First Aid course was instructed at the beginning of her course to 'remember parents might sue you'. Certainly, this consequence of playtime was quite often put forward by the

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staff of schools as the reason for the control of some playground activities. One headmaster said that they were 'under a lot of pressure from parents and were currently under investigation from the LEA because of a parental complaint about the way a child's playground injury had been dealt with'. He added that 'parents were very litigious'. Parents are exhibiting a greater awareness and use of their legal rights, and evidence suggests that more and more parents are exercising those rights within the educational arena.²⁰ Another head teacher interviewed referred directly to the type of advertisements illustrated at the opening of this piece; 'we have parents from a very impoverished area; they see these adverts and see them as a way of increasing their income. They can get legal aid and they have nothing to lose'. Therefore, a system of protection from litigation and accusation has to be instituted by the school staff. 'We could not do otherwise or you are leaving yourself open to litigation'. Questions about parental litigation brought forth other analogous responses from all the head teachers interviewed:

What happened in a toilet block at lunchtime was that a child was climbing up some sinks, slipped, fell, caught her hand on a screw, and ripped her hand and they (the parent) did try to sue us. It was thrown out because obviously, people took the view you can't supervise the children a hundred percent all the time. We had more than enough Midday Assistants, more than enough permitted for supervision, also because it was a year six girl it was down to the child to have some element of responsibility for herself. So it was thrown out but it wasn't very pleasant while it was going on. There were photographs taken by the LEA, pictures of the screw in the wall where it happened. The solicitor from the LEA who came round, when he found out, said straight away that he was fairly certain that this would not go any further, he had so much experience of these cases and the same family tried it on when she went to secondary school. They are obviously after some money (Head A).

I fear most accidents and injuries. The school, three years ago before I was Head, had some parents who attempted to sue the school for inadequate supervision because their child had been injured in the playground. They were able to apply for legal aid so it did not cost them anything and consequently the LEA became involved. The LEA asked the school in its defence, to produce evidence and members of staff were interviewed, the parents eventually dropped the case (Head B).

I feel that nowadays, we are more conscious of the fact that parents are more aware of their rights, and are far more prepared to go to

litigation if something happens at school which they don't like and they see the school as responsible for causing. I think that we are much more safety conscious now, that is a big factor in the play ethic you can't just let children play anything nowadays (Head A).

The nearest one to that, I would say, came from a parent who worked for the Health and Safety Executive. What it was, I had invited parents into school for a meeting and as far I was concerned, we had made it clear that the children were the parents' responsibility. This was an after-school meeting. Some parents allowed their children to play in the playground and this child bumped his head. A note came, via one of the governors; she (the parent) had passed it over to the parent-governor. I addressed it in this way. I said sorry but that I had made the provision for you (the parents) only, and added that the children had been handed back to the parent because the meeting was held after school time. Its like saying at six-o'clock tonight my son bumped his head and he was still near school and so it is school's fault and really, of course, it isn't. Although they implied it was because they (the child) wasn't under supervision. I was technically exonerated from that because we had made provision to talk with the parents. It was after school, we had handed the children back to the parents. That was the only incident, and nothing came of it (Head C).

Certainly, there are cases where parents have sued local authorities because of accidents in the playgrounds. In one such case *Ward v. Hertfordshire County Council* [1969] 2 All ER 807 an eight-year-old boy, 'left without supervision', raced across a playground, stumbled and injured himself quite severely on an unrendered flint stone wall. Initially this case was upheld and the plaintiff was awarded compensation, but later the Court of Appeal overturned the ruling *Ward v. Hertfordshire County Council* [1970] 1 All ER 535. The judge finding that 'the accident occurred in the ordinary course of play' deemed that 'it was irrelevant that there was no supervision in the playground'. 'It being impossible in any event so to supervise children that they never fell down and hurt themselves'. Another judge added that in his view 'it would be wrong to protect them against minor injuries by forbidding them the ordinary pleasures which school children so much enjoy'. Lowe²¹ summarises these findings as, 'risks to children during breaktimes have always been there, and short of clear and gross negligence that any ordinary person would regard as unacceptable, the courts have striven to uphold the rights of children to learn from play'.

Interestingly, on further exploration,²² it is rare to find any cases that have ruled that the school was in breach of its statutory duty of care or negligent as far as playtime supervision is concerned. Having said this

however, there does seem to be a broad consensus of opinion that in an education system increasingly run as a “‘managed market” – with inspection setting minimum standards, parental choice and legalistic home-school contracts between parents and teachers’ it would not be hard to ‘convince the law lords to impose a model of negligence and compensation not significantly different from that on business’.²³ Therefore, decisions, however peculiar and irrational, are made about playground practice, because the individual has to justify his/her actions and also anticipate and prevent any unforeseen consequences. These decisions quite often result in the arbitrary banning of many playground games.

If in Doubt, Ban It

‘Litigation avoidance can lead to a defensive posture’ where both the efficiency of the organisation and the interests of a group ‘become subject to irrational constraints’²⁴ and this can lead to a distortion of everyday life activities.²⁵ As Davies (2000) points out, it is not ‘surprising when faced with such levels of parental concern’ that some (teachers) take a defensive posture and ‘ban everything on sight’. Forbidden in all three schools visited was the game of British bulldogs. This is because it is seen as a violent game that leads to accidents and injuries. I always observed that before the game was forbidden, most of the participants of this game expected to crash into each other from time to time (that was half the fun) and seemed to accept it quite happily and in some anticipation. One head teacher’s reminiscences encapsulates the ambivalence of these views;

We played British bulldogs and we nearly killed each other but that was the object. Not really, I mean they sometimes play a variant of it but they know I don’t like it. Children get hurt. We used to get hurt when we were playing it, people used not to bother in those days. I think that we are much more safety conscious, that it is a big factor in the play ethic. You can’t let children just play anything nowadays.

In one school the children’s use of skipping ropes concerned the staff because the girls tied their legs together for three-legged races, fell over and hurt themselves, or wrapped the ropes around their necks whilst pretending the ropes were reins. In addition, the game of conkers had been banned because it was considered a dangerous game and the conkers deemed an offensive weapon. At this school, there had been parental complaints about the injuries caused to children whilst playing conkers. One child had sustained a black eye during a conker competition.

Discussion

Is it possible that teachers no longer see playtime as a benign process because it has a series of unfortunate consequences? Certainly, it remains to be seen if the demands of external prescriptive agencies and the culture of bureaucracy and litigious practices will eventually form a framework of control, in which the freedom of play and the search for fun has no part; where the child's choice of entertainment no longer prevails because the demands of legislation and litigation create a 'straight jacket of compulsion and direction'.²⁶ Certainly, the 'negotiation of routine incidents'²⁷ in the playground means that teachers often face a continual dilemma, one where children's choice of pastime and amusement must be regulated for both the teachers' and the pupils' protection. 'We could not do otherwise or you are leaving yourself open. You say you are *in loco-parentis* but really, you are not. You have to ask permission to do anything, everything'.

All these responses show how irrational adult-child playground encounters have become and are consistent with Sutton-Smith's view that after years of studying children's playtime, he would like to see 'kids have more smells, taste, splinters and accidents'.²⁸ Certainly, one fifty-three year old head echoed these sentiments with his own reminiscences about his school playtime experiences. 'One of my regrets in primary school was that I never did anything to myself that warranted having Dettol dust put on it. I wanted to have something like a bang on my knee where you had this powder on but it never happened'. It seems that the strategies that have been developed to protect the occupants of the primary school playground from a variety of risks has meant that the framework of control is a real constraint to children's playtime entertainment. Prescriptive agencies and parents all influence the tenor of playground activities and have the overall effect of changing the way children play.

NOTES

1. Personal injury advertisement observed on Channel Five, 16 March 2001.
2. Claims Direct.
3. Independent Television ITV1, Central region – 'Second Aid The Accident Group' observed 31 December 2001 Channel Four 'Claims Direct'.
4. F. Furedi, *Courting Mistrust: The Hidden Growth of a Culture of Litigation in Britain* (London: Centre for Policy Studies, 1999), 20.
5. S. Thomson 'Playground or Playpound? The contested terrain of the primary school playground' paper presented at the British Educational Research Association Conference (Cardiff University, 2000).
6. A more detailed discussion about these issues ensued after publication of the author's research in the *Times Educational Supplement*, 8 December 2001, 1, 27.

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7. P. Graham, 'Educating society to calculate hazards', *Times Educational Supplement*, 5 January 2001. Graham was commentating in response to an article written about the author's research findings.
8. D. Bindley, 'Could do better', *The Health and Safety Practitioner* 18/11 (2000), 27–8.
9. K. Ireland, *Teachers' Guide to The Health and Safety Act* (Kettering: Schoolmaster, 1979), 17–18.
10. All comments throughout this paper are taken from teachers and head teachers interviewed during the research.
11. D. Frith, *School Management in Practice* (London: Longman, 1985), 102
12. Bindley (note 8).
13. The game of bulldogs consists of two lines of children linking arms and standing at either end of the playground, then a handful of children in the middle charge across the playground towards the linked lines in an effort to break the link of children. Alternatively the two lines of children race towards each other in attempt to break each others links.
14. P. Graham, 'Educating Society to Calculate Hazards', *Times Educational Supplement*, 5 January 2001, 14.
15. The recent court action surrounding the six year-old boy who caught E.coli virus on a school trip and the subsequent award of 'several million' illustrates the validity of this concern felt by teachers and school authorities. *The Independent*, 18 January 2001, 9.
16. Furedi (note 4), 19–21, 26.
17. Mori Poll, 15 November 2000.
18. F. Furedi, *Culture of Fear* (London: Cassell, 1997), 116.
19. Furedi (note 4), 15.
20. The accusation of parental litigiousness by a school head is not unreasonable when one notes the number of cases where parents and pupils have successfully sued education authorities for damages for injuries sustained on school trips, incidents of bullying and failure to identify dyslexia.
21. C. Lowe, 'Legal Issues', *Times Educational Supplement*, 22 December 2000. This comment is taken from an article by Chris Lowe, 22 December 2000, written in response to an article about the author's research.
22. *Ward v. Herts. CC* [1969] 2 ALL ER 807; *Ward v Hertfordshire CC* [1970] 1 ALL ER 535; *Mays v. Essex CC* [1975] *The Times*, 11 October 1975; *Suckling v Essex CC* [1955] the craft knife.
23. C. Bunting and J. Marcus 'Braced for a lawsuit explosion', *Times Educational Supplement*, 16 February 2001, 18–19.
24. Furedi (note 4), 29.
25. Recently, I was talking to a landscape architect who, when requested to plant an English hedge around a school playground, was instructed not to include hawthorn because the thorns might scratch the children. Furthermore, some local councils are so worried that they might be sued by parents of children injured whilst collecting conkers that they have implemented a policy of 'tree management' to make horse chestnut trees less accessible to children, see Furedi (note 16), 31.
26. N. Hall, & L. Abbott (eds.) *Play in the Primary Curriculum* (London: Hodder and Stoughton, 1991), 36
27. F. Furedi, 'Watch out adults about', *The Independent*, 22 August 1999, 21.
28. B. Sutton-Smith, 'School Playground as festival', *Children's Environments Quarterly* 7/2 (1990), 3–7.