

Wales needs quality, sustainable and robustly managed childcare for school age children. As a sole trader or an unincorporated committee, you are responsible for the management of a business, but you do not have the protection from liability that a limited company or incorporated organisation has. If, after reviewing your governance, you decide that Incorporation is not right for your circumstances currently, you may have concerns about personal liability and debt should your business run into complications. Ensuring you are managing your business effectively and taking steps to mitigate risks as much as possible will help to protect your liability.

10 Ways You Can Help to Protect Yourself from Liability

1. **Insurance.** We know that insurance is a minefield, but ensuring you have the right insurance is an important step to helping to protect your liability. We have developed an Insurance Considerations booklet, including links to insurers that you may wish to consider, and some useful information that the team at Morton Michel has provided us with about things to consider when looking at insurance cover. These considerations include:
 - Public and products liability
 - Employers Liability
 - Legal expenses
 - Professional Indemnity
 - Contents Money and dishonesty
 - Loss of registration
 - Business interruption
 - Personal Accident
 - Cyber insurance

You should also make sure that you look at not just the monthly premium of your insurance but the amount you will be insured for. For example, if your annual turnover is £300,000 and you only insure for £150,000, you might only be able to claim £25,000 after a closure due to a flood that cost you £50,000. Look at the excess you would be expected to pay. Some insurers, particularly the lower cost insurance can have high excess and you need to make sure that should you need to make a claim you could afford the excess you would be expected to pay.

For further information you can access our insurance resource “Considerations for Insurance for Out of School Childcare Clubs” in the membership area of our website.

2. **Financial Systems.** Running a childcare business comes with a lot of paperwork and processes, but one area you should always be on top of is your financial systems. Having robust systems in place can greatly support you to protect your liability as you will always know what you have coming in and out, what you need to break even and know in a timely fashion when you need to put things in place to increase your place take up or income such as marketing, fund raising or accessing grants.

Working out your breakeven point means that you will always be aware of how many children you need each week to ensure you can cover all of your expenditure. Keeping and updating a cashbook every month allows you to see how much money you have taken each month and how much you have spent, therefore allowing you to know if you have a surplus or a deficit. Aiming to have a surplus to build your reserves can offer means of paying debts should you fall into financial difficulty; keeping the

cashbook each week will allow you to monitor this. Your Regional Childcare Business Development Officer can support you in how to do these things as well as completing a business health check with you.

3. **Licences.** You may not be aware that if you want to show films in your club or play music, even just the radio, then you need to purchase licences to do this. This is the case whether you are based in a school, nursery or community building, and whether you are a charitable or private provider. Playing downloaded content, even if you have purchased it, or playing a CD or DVD in your Setting violates copyright laws as it is classed as a public performance. If you do play music and watch movies without a licence you could be personally liable to pay a large fine. For further information on this please see our licencing flyer which you can find in the membership area of our website.

If you want to play music in your Setting you need to purchase a licence through PPL and PRS (one place) If you were to play movies you need to purchase a licence from MPLC. You should also consider that if anyone is watching or recording programmes as they are being played on television you will also need a business TV licence. This is the same cost as a domestic licence. Please see our "Does your Setting need Licences" Flyer for further information

4. **HMRC.** Another way to protect your liability is to ensure that you are doing everything you need to do to comply with HMRC and paying tax and NI, not just for you personally but for all of your staff. We would advise that you contact and visit [Business Wales](#) and [ACAS](#) websites to get the latest information on your responsibilities for HMRC. You can also find information on [GOV.UK](#)
5. **Pension.** Another area to ensure you get right to protect your liability is employee Pensions. If you fail to comply correctly, you could be liable for fines. You must enrol and make an employer's contribution for all staff who:
 - are aged between 22 and the State Pension age
 - earn at least £10,000 a year
 - normally work in the UK.

Whilst these requirements may not apply to all your staff, it is important to consider all staff members, particularly those working additional hours in holiday periods which may take their annual income above £10,000 or if they have a second job.

If your staff are eligible then you are responsible for paying at least 3% of your employee's 'qualifying earnings' into your staff's pension scheme. You must deduct contributions from your employees pay each month. You will need to pay these into your staff's pension scheme by the 22nd day (19th if you pay by cheque) of the next month. You must pay your contributions for each employee by the date you've agreed with your provider every time you run payroll. You must backdate any missed payments.

6. **Safer recruitment** Having appropriately qualified and experienced staff is very important for the successful running of your business. Not only does this ensure a quality provision to retain the numbers of children you have attending, but it is a requirement within the National Minimum Standards. To not meet those standards

could result in losing registration which would have a knock-on effect to sustainability and therefore liability. Ensuring that you have a safer recruitment policy and procedure for recruiting staff and adhering to this consistently for each candidate will strengthen your business. You should gain references for each of the staff appointed and ensure they are from a validated source. Character references can be obtained, however having at least one reference from the candidate's last employer will help you employ the correct candidate for the role. Check that the email is a business email from the referee and following the information up with any queries or clarifications needed will ensure you have validated the reference as a genuine employment referrer and not a relative or friend. Retain the communication from this process within the staff file for each member of staff.

7. **Supervisions.** As mentioned with safer recruitment, the need to have appropriate staff is an important step to protecting your liability. Retaining the quality staff you already have is essential to the smooth running of your club. Aside from being a requirement of the National Minimum Standards, supervisions can support in retaining your staff. Supervisions are a method of ensuring staff are able to meet their role requirements and to support them in doing so. It allows staff to feel valued and listened to and to ensure they have job satisfaction. It is also an opportunity to identify any training needs and to act accordingly. Those training needs could be around improvements in their delivery which will further support the quality of your provision, as well as maintaining the standards required for CIW, therefore helping to protect any risk to your liability.
8. **DBS Update service.** We know that to work with children you must have a DBS, and as with safer recruitment this is important to ensure you have suitable staff taking care of the children. Without following the appropriate steps to ensure that staff are sufficiently vetted you could put yourself in a position of liability. It is a good idea to sign up to the DBS update service. This makes it a lot easier to check your staffs DBS annually to ensure there are no changes you were not made aware of. The cost of the update service is £13 a year and you can request within staff's contract that they pay this cost themselves each year or you can decide to have the business cover the cost.
9. **Reviewing policies.** It is a condition of CIW that you review your policies annually but by doing so you also provide yourself with the assurance that everything is in place to protect you from liability, providing these policies and procedures are followed by all staff members. It is important when reviewing your policies and procedures that they are up to date with any changes to legislation whether that be childcare legislation, safeguarding, data protection or employee policies. Reviewing your risk assessments and health and safety practice to check there hasn't been any changes or to see if there are safer ways to do things can help to prevent anything that could cause you liability. Your Regional Childcare Business Development Officer can support you with your policies and members can access our Stepping Out resource which contains all policy templates you will need and is regularly updated with new content.
10. **Training.** Keeping you and your staff up to date with all relevant training can help you to provide a quality service, ensuring that you are following all legislation and following all of the standards required by CIW. By 2022, changes to the qualifications will be applicable and the Person in Charge (PIC) and the deputy must hold a level 3 in Playwork with 50% of non-supervisory staff holding a level 2 in Playwork and 50% of those holding a Level 3 in Playwork. If you have not met those requirements you could

lose your registration. It is a good idea to get all staff trained to level 3 in Playwork. This not only provides you with staff who are trained to deliver Playwork and all the benefits to the children that Playwork offers but it also means that if any of your staff go off sick or leave, your ratio of qualifications is still in place further protecting any liability.

Mae ar Gymru angen gofal plant o ansawdd, sy'n gynaliadwy ac wedi ei reoli'n gadarn i blant oed ysgol. Fel masnachwr unigol neu bwyllgor anghorfforedig, rydych yn gyfrifol am reoli busnes, ond nid oes gennych y diogelwch rhag atebolrwydd sydd gan gwmni cyfyngedig neu sefydliad corfforedig. Os penderfynwch, wedi adolygu eich llywodraethiad, nad yw Ymgorffori'n iawn ar gyfer eich amgylchiadau presennol, mae'n bosibl y bydd gennych bryderon ynghylch atebolrwydd personol a dyled petai eich busnes yn mynd i gymhlethdodau. Bydd sicrhau eich bod yn rheoli eich busnes yn effeithiol a cyn cymryd camau i leihau risgiau gymaint â phosibl yn gymorth i chi ddiogelu'ch atebolrwydd.

10 Ffordd y Gallwch Helpu i Ddiogelu'ch Hun rhag Atebolrwydd

1. **Yswiriant** Rydym yn gwybod bod yswiriant fel maes ffrwydrion, ond mae sicrhau bod bennych yr yswiriant cywir yn gam pwysig i ddiogelu eich atebolrwydd. Rydym wedi datblygu llyfryn ar Ystyriaethau Yswiriant, sy'n cynnwys dolenni at yswirwyr yr hoffech, efallai, eu hystyried, a rhywfaint o wybodaeth ddefnyddiol y mae'r tîm yn Morton Michel wedi darparu ar ein cyfer ynghylch y pethau i'w hystyried wrth edrych ar gyfar yswiriant. Mae'r ystyriaethau hyn yn cynnwys:
 - a. Atebolrwydd cyhoeddus a chynnyrch
 - b. Atebolrwydd y Cyflogwr
 - c. Treuliau cyfreithiol
 - d. Indemniad Proffesiynol
 - e. Cynnwys, Arian ac Anonestrwydd
 - f. Colli cofrestriad
 - g. Damwain Bersonol
 - h. Yswiriant seibr

Dylech hefyd wneud yn siŵr eich bod yn edrych nid yn unig ar bremiwm misol eich yswiriant ond y swm y byddwch wedi eich yswirio amdano. Er enghraifft, os yw eich trosiant blynyddol yn £300,000, a'ch bod dim ond yn yswirio am £150,000, mae'n bosibl mai dim ond am £25,000 y bydd modd i chi hawlio wedi cau o ganlyniad i lifogydd a gostiodd £50,000 i chi. Edrychwch ar y tâl dros ben y bydd disgwyl i chi ei dalu. Gall rhai yswirwyr, yn enwedig o blith yr yswiriant rhataf, fod â thâl dros ben uchel, ac mae angen i chi wneud yn siŵr y byddech yn gallu fforddio'r tâl dros ben y bydd disgwyl i chi ei dalu petai angen i chi wneud hawliad.

Am wybodaeth bellach gallwch gyrchu ein hadnodd ar yswiriant "Ystyriaethau Yswiriant i Glybiau Gofal Plant Allysgol yn ardal aelodau ein gwefan.

2. Bydd gweithio allan eich pwynt cydbwyso'n golygu y byddwch bob tro'n gwybod faint o blant y bydd arnoch eu hangen bob wythnos i wneud yn siŵr y gallwch gyfateb â phob gwariant. Bydd cadw a diweddarau llyfr cyfrifon bobl mis yn rhoi gwybod i chi faint o arian y byddwch wedi ei gymryd bob mis a faint y byddwch wedi ei wario, gan felly roi gwybod i chi p'un a oes gennych warged neu ddiffyg. Gall anelu at fod â gwarged er mwyn adeiladu eich cronfeydd wrth gefn gynnig ffordd o dalu dyledion petaech yn mynd i drafferthion ariannol; bydd cadw'r llyfr cyfrifon bod wythnos yn eich galluogi i fonitro hyn. Gall eich Swyddog Datblygu Busnesau Gofal Plant Rhanbarthol eich cefnogi o ran sut i wneud y pethau hyn, yn ogystal â chwblhau gwiriad iechyd busnes gyda chi.

3. **Trwyddedau** Efallai na fyddwch yn ymwybodol bod arnoch angen prynu trwyddedau os ydych am ddangos ffilmiau neu chwarae cerddoriaeth yn eich clwb. Mae hyn yn berthnasol p'un a ydych wedi'ch lleoli mewn ysgol, meithrinfa neu adeilad cymunedol, a ph'un a ydych yn ddarparwr elusennol neu breifat. Mae chwarae cynnwys a lawrlwythwyd, hyd yn oed os bu i chi ei brynu, neu chwarae CD neu DVD yn eich Lleoliad, yn groes i'r gyfraith ar hawlfraint ac fe'i dynodir yn berfformiad cyhoeddus. Os ydych yn chwarae cerddoriaeth ac yn gwyllo ffilmiau heb drwydded gallwch fod yn bersonol atebol am dalu dirwy fawr. Am wybodaeth bellach ar hyn, gwelwch ein taflen drwyddedu, y gallwch ddod o hyd iddi yn ardal aelodau ein gwefan.

Os ydych am chwarae cerddoriaeth yn eich Lleoliad mae angen i chi brynu trwydded drwy PPL a PRS (un lle). Pe baech yn chwarae ffilmiau bydd angen i chi brynu trwydded drwy MPLC. Dylech hefyd ystyried os yw unrhyw un yn gwyllo neu'n recordio rhaglenni wrth iddynt gael eu chwarae ar y teledu, bydd arnoch angen trwydded deledu busnes yn ogystal. Mae hyn yr un gost â thrwydded gartref. Gwelwch y daflen "Does your Setting need Licences?" am fwy o wybodaeth.

4. **CThEM.** Ffordd arall o ddiogelu eich atebolrwydd yw sicrhau eich bod yn gwneud popeth y mae angen i chi ei wneud i gydymffurfio â CThEM a thalu treth ac YG, nid yn unig i chi yn bersonol ond i bob aelod o'ch staff. Byddem yn eich cynghori i gysylltu ac ymweld â gwefannau [Business Wales <https://businesswales.gov.wales/>](https://businesswales.gov.wales/) ac [ACAS <https://www.acas.org.uk/>](https://www.acas.org.uk/) i gael y wybodaeth ddiweddaraf ar eich cyfrifoldebau ar gyfer CThEM. Cewch wybodaeth hefyd ar [GOV.UK <https://www.gov.uk/government/organisations/hm-revenue-customs>](https://www.gov.uk/government/organisations/hm-revenue-customs)

5. **Pensiwn.** Mae arall y dylech sicrhau eich bod yn ei chael yn iawn er mwyn diogelu'ch atebolrwydd yw pensiynau cyflogeion. Os methwch â chydymffurfio'n gywir, gallech fod yn atebol i gael eich dirwyo. Rhaid i chi ymrestru a gwneud eich cyfraniad cyflogwr dros holl aelodau o'r staff sydd:

- rhwng 22 blwydd oed ac oed Pensiwn y Wladwriaeth
- yn ennill o leiaf £10,000 y flwyddyn
- sy'n gweithio yn y DU fel arfer.

Er na fydda'r gofynion hyn yn gymwys i'ch holl staff, y mae'n bwysig ystyried pob aelod o'r staff, yn enwedig y rhai hynny sy'n gweithio oriau ychwanegol ar adegau gwyliau, a all yrru eu hincwm blyneddol dros £10,000, neu os oes ganddynt ail swydd.

Os yw'ch staff yn gymwys yna rydych chi'n gyfrifol am dalu o leiaf 3% o 'enillion cymhwys' eich cyflogai i mewn i gynllun pensiwn eich staff. Rhaid i chi dynnu cyfraniadau o dâl eich cyflogeion bob mis. Bydd angen i chi dalu'r rhain i mewn i gynllun pensiwn eich staff erbyn yr 22ain diwrnod (y 19eg os ydych yn talu drwy siec) o'r mis nesaf. Rhaid i chi dalu eich cyfraniadau dros bob cyflogai erbyn y dyddiad yr ydych wedi ei gytuno gyda'ch darparwr bob tro y byddwch yn rhedeg cyflogres. Rhaid i chi ôl-ddyddio unrhyw daliadau a gollir.

6. **Recriwtio mwy diogel** Mae bod â staff sydd wedi'u cymhwysu'n addas ac sy'n brofiadol yn bwysig i rediad llwyddiannus eich busnes. Mae hyn nid yn unig yn sicrhau darpariaeth o ansawdd i gadw'r nifer o blant sydd gennych yn mynychu, ond y mae

hefyd yn un o ofynion y Safonau Gofynnol Cenedlaethol. Gall peidio ag ateb y safonau hynny olygu colli cofrestriad, a fyddai ag effaith ddilynol ar gynaliadwyedd, ac felly atebolrwydd. Bydd gwneud yn sicr bod gennych bolisi a gweithdrefn recriwtio fwy diogel, a glynw at hyn yn gyson yn achos pob ymgeisydd, yn cryfhau eich busnes. Dylech gael geiradaon ar gyfer pob un o'r staff a benodir, a sicrhau eu bod o ffynhonnell and therefore liability. Ensuring that you have a safer recruitment policy and procedure ddilys. Gellir cael geiradaon cymeriad, ond byddai cael o leiaf un geirada gan gyflogwr diwethaf yr ymgeisydd yn gymorth i chi gyflogi'r ymgeisydd iawn i'r rôl. Gwirwch fod yr e-bost yn e-bost busnes gan y canolwr, a bydd dilyn y wybodaeth gan unrhyw gwestiynau neu geisiadau am eglurhad yn sicrhau eich bod wedi dilysu'r geirada yn un gan ganolwr cyflogaeth dilys, ac nid gan berthynas neu ffrind. Cadwch gofnod o'r cyfathrebu yn y broses hon yn ffeil staff pob aelod o'r staff.

- 7. Goruchwyliadau** Fel y soniwyd yng nghyd-destun recriwtio mwy diogel, mae'r angen am gael staff priodol yn gam pwysig tuag at ddiogelu eich atebolrwydd. Mae cadw'r staff o ansawdd sydd gennych eisoes yn hanfodol i rediad esmwyth eich clwb. Ar wahân i fod yn un o ofynion y Safonau Gofynnol Cenedlaethol, gall goruchwyliadau gefnogi cadw eich staff. Mae goruchwyliadau'n ddull o sicrhau bod staff yn gallu ateb gofynion eu rôl a'u cefnogi i wneud hynny. Mae'n gyfle i staff allu teimlo eu bod yn cael eu prisio ac yn cael gwrandawriad, ac i sicrhau eu bod yn cael boddhad o'u swyddi. Y mae hefyd yn gyfle i nodi unrhyw anghenion am hyfforddiant ac i ymddwyn yn unol â hynny. Gall yr anghenion hynny am hyfforddiant fod ynghylch gwelliannau yn eu cyflawni a fydd yn cefnogi ymhellach ansawdd eich darpariaeth, yn ogystal â chynnal y safonau sy'n ofynnol gan AGC, gan felly helpu i'ch amddiffyn rhag unrhyw risg i'ch atebolrwydd.
- 8. Gwasanaeth Diweddarau'r GDG** Gwyddom fod yn rhaid i chi fod â GDG i allu gweithio gyda phlant, a chyda recriwtio mwy diogel y maen bwysig sicrhau bod gennych staff addas yn gofalu am y plant. Heb ddilyn y camau priodol i sicrhau bod y staff wedi'u fetio'n ddigonol gallech roi eich hunan mewn sefyllfa o atebolrwydd. Mae'n syniad da cofrestru ar wasanaeth diweddarau'r GDG. Mae hyn yn ei gwneud yn llawer haws gwirio GDG eich staff yn flynyddol i sicrhau nad oes newidiadau nad oeddech chi'n ymwybodol ohonynt. Cost y gwasanaeth diweddarau yw £13 y flwyddyn, a gallwch wneud cais yng nghontract y staff eu bod yn talu'r gost yma eu hunain bob blwyddyn neu gallwch benderfynu bod y busnes yn talu'r gost.
- 9. Adolygu polisïau** Y mae'n un o amodau AGC eich bod yn adolygu eich polisïau'n flynyddol ond wrth wneud hynny gallech hefyd roi i'ch hunain y sicrwydd fod popeth yn ei le i'ch diogelu rhag atebolrwydd, cyhyd â bod y polisïau a'r gweithdrefnau hyn yn cael eu dilyn gan holl aelodau'r staff. Mae'n bwysig, wrth adolygu eich polisïau a'ch gweithdrefnau eu bod yn gyfamserol ag unrhyw newidiadau i ddeddfwriaeth, boed hynny'n ddeddfwriaeth gofal plant, diogelu, diogelu data neu bolisïau gweithwyr. Gall adolygu eich asesiadau risg a'ch arferion iechyd a diogelwch i wneud yn sicr na fu unrhyw newidiadau, neu i weld a oes ffyrdd mwy diogel o wneud pethau atal unrhyw beth a allai eich gwneud yn atebol drosto. Gall eich Swyddog Datblygu Busnesau Gofal Plant Rhanbarthol eich cefnogi gyda'ch polisïau a gall aelodau gyrchu ein hadnodd Camu Allan sy 'n cynnwys yr holl dempledi polisi y bydd eu hangen arnoch, ac sy'n cael eu diweddarau'n rheolaidd â chynnwys newydd.

10 Ffordd o'ch Helpu i Ddiogelu'ch Atebolrwydd

10. **Hyfforddiant** Gall cadw eich hunan a'ch staff yn gyfamserol o ran yr holl hyfforddiant perthnasol eich helpu i ddarparu gwasanaeth o ansawdd, gan wneud yn sicr eich bod yn dilyn yr holl ddeddfwriaeth a'r holl safonau sy'n ofynnol gan AGC. Erbyn 2022, bydd newidiadau i'r cymwysterau yn gymwys, a bydd rhaid i'r Person â Gofal (PIC) a'r dirprwy fod â Lefel 3 mewn Gwaith Chwarae, a 50% o'r staff nad ydynt yn goruchwylio â Lefel 2 mewn Gwaith Chwarae, a 50% o'r rhai hynny â Lefel 3 mewn Gwaith Chwarae. Os nad ydych wedi ateb y gofynion hynny gallech golli eich cofrestrriad. Mae'n syniad da cael yr holl staff wedi eu hyfforddi hyd at Lefel 3 mewn Gwaith Chwarae. Bydd hyn nid yn unig yn rhoi i chi staff sydd wedi eu hyfforddi i gyflenwi Gwaith Chwarae a'r holl fanteision i blant a gynigir gan Waith Chwarae, ond y mae hefyd yn golygu os bydd unrhyw rai o'ch staff yn absennol oherwydd salwch neu wyliau, bod eich cymhareb o ran cymwysterau yn dal yn ei lle, gan ddiogelu ymhellach unrhyw atebolrwydd.