

## DUTY OF CARE

### The responsibilities of a sports organisation

Duty of care means that a sports body needs to take such measures as are reasonable in the circumstances to ensure that individuals will be safe to participate in an activity to which they are invited to or which is permitted.

A Duty of Care may be imposed by common law or statute, by contract, or by acceptance by an individual.

There is no general duty of care upon members of public towards the public at large. If there is a formal relationship, for example between a club and a member, or a coach and an athlete, there is a duty of care.

When children/ young people are involved in organised sport activities and are to any extent under the care and/or control of one or more adults, the adult/s have a duty of care to take reasonable care to ensure their safety and welfare:

The duty occurs in two ways:        **A Legal Duty** of Care  
   **A Moral Duty** of Care

**The Legal Duty** of Care has a strict definition the most obvious example is in Health and Safety procedures where clear guidance is provided about what reasonable steps should be taken to minimise the hazards related to activities, substances or situations.

In many sports activities, given health and safety considerations, it is recognised that a sports organisation or individual (e.g., coach) owes a duty of care to its members. However, it is also understood and recognised that accidents can and do happen, and that it is not possible to predict every eventuality. Liability for the legal duty of care would only arise when an incident occurs and it can be demonstrated that the risk was foreseeable but no action had been taken to remedy it.

In any subsequent legal action, the courts would apply the following criteria to determining if an organisation or individual would be held responsible:

- Reasonable foreseeability of injury
- Proximity
- It is fair, just and reasonable to impose a duty of care?

The claimant would have to show:

- That they were owed a duty of care
- That the defendant breached his duty
- That the plaintiff suffered damage as a result of the breach

It is recognised that there is a higher duty of care owed to children and young people and this is something that those working with children and young people must reflect. An example of this is the Occupiers Liability Act 1957. This requires that an occupier must be prepared for children to be less careful than an adult would have been in a similar situation. This consideration should be even greater if a child is known to have learning

difficulties or is known to have a medical condition which may make them more vulnerable than the average child to foreseeable risk of harm.

The **Moral Duty of Care** is more correctly the responsibility for safety and welfare. Members of staff have a responsibility for those children and young people, and other staff, who are under their control.

To determine if a breach of "duty of care" has occurred then the ordinary civil law of negligence would be applied. The question is whether the accused in acting, or omitting to act, has failed to reach the standard of a reasonable person.

In specialist sports activities the qualified instructor has a duty of care for all those taking part irrespective of their age or position. The key point here is that the individual administering the activity, whatever their status, should be appropriately trained and authorised.

In addition, those in charge of children have an additional charge and that is to act "in loco parentis". This term is best explained as requiring the adult to act as "a reasonable parent". This is not necessarily the "actual" parent and what the child's parent may permit the sport may not.

Within any sports, during organised or funded activities the duty of care would start by ensuring the activity is authorised by the appropriate governing body and the relevant instructors are qualified for the task but additionally would go on to ensure that it is managed in a "safe" manner throughout.