

Duty of Care (England)

It is widely accepted that in relation to children and young people sports organisations have a duty of care. The purpose of this briefing paper is to clarify what that duty entails and to provide some guidance as to what steps can be taken in order to demonstrate that this duty is being met.

In essence, 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. In some cases the law imposes a duty of care. For example, the duty of care the police have when they arrest someone.

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

When children and young people are involved in organised sports activities and are to any extent under the care and/or control of one or more adults, the adult(s) have a duty 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 of this 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 the 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:

- Injury is reasonably foreseeable
- 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 this 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 Occupier's Liability Act 1957. This requires that an occupier must be prepared for children to be less careful than adults would be 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.



Children and Young People in a club or sports activity

Any person in charge of children and young people involved in a sports club or activity has a duty of care and should take all reasonable care for their safety. The duty when involved in a sports club is reasonably straightforward: it is comparable to the duty of a teacher in charge of a class of children of the same age.

There have been many cases concerning liability for accidents suffered by school pupils while at school that can be usefully applied to the sports setting. Out of these cases has evolved a general principle, which identifies the expected standard of care for teachers as that of a *reasonably prudent parent*, taking into account the fact that a teacher will have responsibility for a whole class of children.

This means that teachers are not required to achieve perfection with regard to their supervision of children, but that if they fall below the standards of a reasonably prudent parent and injury is suffered as a result, the teacher may be held to be negligent. Those responsible for the management or supervision of children and young people in a club setting should consider what steps they may need to take in order to demonstrate the *reasonable* standard of care. Examples of this could include:

- Keeping up to date registers of attendance
- Keeping up to date records of contact details
- Maintaining appropriate supervision ratios
- Maintaining up to date information on specific medical conditions – allergies, asthma, epilepsy
- Ensuring that first aid provision is available at the venue
- Ensuring those responsible for supervising the children and young people have been subject to appropriate recruitment and selection processes

The Management of Health and Safety Regulations 1999 require that employers must make risk assessments and safety controls to reduce the risks of their activities.

Those responsible for sports activities should consider themselves in a similar position to an employer and carry out a risk assessment for their activities. When carrying out risk assessments, it is vital to attend to the requirements relating to the duty of care and the other aspects of health and safety. Some sports have developed risk assessment templates and it is important, if these have been developed, to complete these. It is not necessary to complete an assessment on each individual activity or session if this occurs on a regular basis. An annual or seasonal assessment would be sufficient. If, however, potentially hazardous equipment is used as part of the activity then this equipment must be checked before the start of each and every session.

The **Moral Duty of Care** is more correctly a *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 the duty of care has occurred 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 to this 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”. You will note that this is not necessarily the actual parent and what the child’s parent may permit the sport may not. So that whilst a parent may say that their child can stay out until midnight, a reasonable parent might not.



Within sports organisation the duty of care would start by ensuring the activity is authorised by the sport and the relevant instructors are qualified for the task but then would go on to ensure that it is managed in a safe manner throughout.

Reasonable measures

This is best explained as what is considered to be reasonable. For sport the Child Protection in Sport Unit has established the Standards for Safeguarding and Protecting Children and Young People in Sport (2003) to identify what an organisation should reasonably undertake in relation to child protection.

The Standards require sports organisations (National Governing Bodies [NGBs] and County Sports Partnerships) to have in place:

- child protection policy (Standard 1)
- procedures and systems (Standard 2)
- prevention (Standard 3)
- codes of practice and behaviour (Standard 4)
- equity (Standard 5)
- communication (Standard 6)
- education and training (Standard 7)
- access to advice and support (Standard 8)
- implementation plan (Standard 9)

For affiliated clubs it is reasonable to expect that the NGB or other organisation's policy and procedures are incorporated into the club constitution and adhered to.

For more information on the Standards visit www.thecpsu.org.uk.

Other steps that would be considered reasonable measures would include adherence to guidance, advice or directions provided by a sports body or other relevant body. Many sports have developed guidance in relation to travel arrangements, recruitment and selection procedures, training and qualifications, for example. For more information on guidance please contact the relevant sport's governing body.

Sign up now to the CPSU E-Newsletter - We can email you the latest information about child protection in sport, simply email the CPSU at cpsu@nspcc.org.uk with "subscribe" in the subject line.

(Jan 2009)

