

Duty of Care

Sports organisations have a duty of care towards children and young people. This briefing paper aims to clarify what that duty means and to provide some guidance about what can be done to demonstrate that this duty is being met.

In order to fulfil its duty of care a sports body needs to take *reasonable* measures in the circumstances to ensure that individuals will be safe to participate in an activity they are providing or is under their auspices.

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.

A duty of care may be imposed by:

- common law or statute
- contract
- acceptance by an individual

In some cases the law imposes a duty of care. For example, the duty of care the police have towards a person that they arrest.

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

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. An example of this is in Health and Safety procedures. These provide clear guidance about what reasonable steps should be taken to reduce hazards related to activities, substances or situations.

Given the health and safety considerations, it is generally accepted that a sports organisation or individual (e.g. coach) owes a duty of care to its members. However, it is also recognised that accidents can and do happen, and that it is not possible to predict every situation.

Liability for failing to meet the legal duty of care would only arise if an incident occurs and it can be proved that the risk was foreseeable but no action had been taken to avoid it.

If legal action is taken, the following criteria would be used to decide if an organisation or individual should 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 they suffered damage as a result of the breach.

Children and young people are owed a higher duty of care and those working with children and young people must reflect this.



The responsible person must be prepared for children to be less careful than adults. This is even more significant if a child is known to have learning difficulties or a medical condition which may make them more vulnerable than other children.

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. The duty when children are 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 examples of cases around liability for accidents suffered by school pupils while at school. These can be usefully applied to a sports setting. As a result of these cases, the expected standard of care for teachers is generally identified as that of a *reasonably prudent parent*. It also takes into account the fact that a teacher will have responsibility for a whole class of children.

Another term that can be used for this level of responsibility is acting '*in loco parentis*'. This is not necessarily referring to the child's actual parent; what a parent may allow, the sport may choose not to. For example, a parent may say that their child can stay out until midnight but a reasonable parent, or the sport, may not.

If a teachers supervision falls below the standards of a reasonably prudent parent and a child is hurt as a result, the teacher may be held to be negligent. Those managing or supervising children and young people in a club setting should consider what steps they may need to take to demonstrate they are providing a *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 through appropriate recruitment and selection processes.

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

Those responsible for sports activities should think of themselves like an employer and carry out a risk assessment for their activities. This must include elements related to duty of care and health and safety. Some sports have developed risk assessment templates and it is important, 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 dangerous equipment is used as part of the activity then this equipment must be checked before the start of 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 the duty of care has been breached, the ordinary civil law of negligence would be applied. The question is whether the accused, 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 whatever their age or position. The key point here is that the individual delivering the activity, whatever their status, should be appropriately trained and authorised.

Within sports organisations the duty of care should begin by ensuring the activity is authorised by the sport and the relevant instructors are qualified for the task. The next step will be to manage the activity in a safe manner throughout. This is best explained as what is considered to be reasonable.



Reasonable measures

England

For sport in England 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 [CSPs]) to have in place:

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

For affiliated clubs it is reasonable to expect that they will adopt and follow the NGB's or another organisation's policy and procedures.

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

Wales

For sport in Wales the Child Protection in Sport Unit has established the Framework for Safeguarding and Protecting Children in and through Sport in Wales (2009).

- The framework consists of five standards that a sports organisation should demonstrate it undertakes at all levels of its sport: Standard 1 – policy
- Standard 2 – procedures
- Standard 3 – practices
- Standard 4 – education and training
- Standard 5 – implementing and monitoring.

The framework sets out a national benchmark of good practice to work towards. It raises awareness and helps organisations to identify what they need to do to protect children and to minimise avoidable risks. For more information on the Standards visit www.thecpsu.org.uk.

Northern Ireland

For voluntary organisations the Department of Health, Social Services and Public Safety (DHSSPS) has established the Standards set out in Getting It Right (2012) to identify what an organisation should reasonably undertake in relation to child protection.

The Standards require that voluntary organisations have the following procedures and guidelines in place for:

- Recruitment and selection
- Effective management of staff/volunteers
- Reporting concerns
- Code of behaviour
- Sharing information
- General safety and management of activities

For more information on the [Getting It Right Standards](#), contact the Child Protection in Sport Unit (NI).

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Further information

It would also be considered reasonable to adhere to guidance, advice or directions provided by a sports body or other relevant organisation. Many sports have their own guidance around things such as:

- travel arrangements
- recruitment and selection procedures
- training and qualifications.

For more information please contact the relevant sport's governing body.

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