

Common Law Duty of Care Help Sheet

Management Committee members are expected to ensure that their responsibilities and those of the organisation are carried out with due care.

This duty of care may be breached through individual action (or failure to act) by management committee members, staff or volunteers, or through the activities of the wider organisation.

In either case, the Management Committee members remain ultimately responsible for ensuring that others do not suffer damage or loss through the organisation's activities. As the employer, they are responsible for the actions of their staff or volunteers, even where the individual concerned failed to follow established rules or procedures. They may become personally liable for debts or claims which result from actions or inactions (see section on accountability and legal liability for more information).

Where does a duty of care exist?

A duty of care exists where:

- a) there is a **relationship** between two parties, particularly where this is a relationship of trust (e.g. between service provider and service user, counsellor and client, patient and carer, employer and employee); and
- b) the **consequences** of the actions could reasonably have been foreseen.

For example: An organisation is set up to provide advice or counselling to the general public. It is anticipated that service users may rely on such advice. Therefore, it would be reasonable for the Management Committee to ensure that those employees and volunteers giving advice were qualified to do so and that the advice being issued, was accurate and timely. In such circumstances it would also be reasonable to assume that the Management Committee have a duty of care to those in receipt of such advice.

How can we ensure that we don't breach our duty of care?

Breach of duty of care is concerned with the standard of care that ought to have been applied in the situation. Therefore, if the conduct of the individual or organisation fell below the standard that a reasonable person would have expected, they will have been negligent in their duty.

The Management Committee has therefore a responsibility to ensure that the organisation's activities meet with expected standards of good practice. Where an organisation has acted in accordance with generally accepted practice, as it occurs within the same or a similar field of work, it is likely that they will have acted reasonably, unless particular additional risks existed.

For example: An organisation that works with children, young people and/or adults at risk can be reasonably expected to have a safeguarding policy in place, supported by robust procedures and guidelines. The organisation should have clearly defined procedures for recruiting, selecting and managing staff and volunteers; raising awareness of, responding and reporting concerns about abuse; and for risk management and the general safety of activities. The organisation should also provide guidelines through a Code of Behaviour for all involved with the organisation.

In order to avoid breaching your duty of care, you need to be aware of where you have a duty of care and where there is a risk that you may cause damage or loss to other individuals or parties.

As a Management Committee, you should ensure that a thorough risk management strategy exists for the organisation - one which is regularly reviewed and updated to ensure that the necessary actions are taken to reduce the likelihood or impact of risks faced. ([Click here](#) for more guidance on how to manage risks within your organisation).

Duty of care towards the organisation

Charity Commission for Northern Ireland

Guidance on the statutory duty of care and its application - www.charitycommissionni.org.uk.

Management Committee members must also be aware of the duty of care that they collectively and individually take on in relation to the organisation and care of its assets and reputation. This means that they must be aware of their responsibilities to the organisation as management committee members and ensure that they are effective 'guardians' of the organisation and its assets. Management Committee members must act in the organisation's interests, not in their own personal interest, and not in the interests of another organisation.

By ensuring that they act reasonably and diligently in carrying out their duties, Management Committee members will also limit their personal liability for any loss or damage caused through breach of duty of care.

Prudence

The management committee/board must act prudently to protect the assets and property of the organisation and ensure that they are used to deliver the organisation's objectives. Prudence is defined within the Code of Governance as 'care, caution and good judgement as well as wisdom in looking ahead'. It is the management committee/board's responsibility to safeguard the interests of the charity through good planning and management of finances, activity, and risk.

[More on liability](#)

[More on management committee integrity](#)