

Duty of Care

What institutions working in challenging environments needs to know

by



The current global environment presents countless challenges to those seeking to engage in overseas research and international development. The emergence of new conflict dynamics, targeting of those with 'Western' affiliations, and an increased frequency of natural disaster events continues to obstruct effective programme work and threaten staff safety. Knowing your legal responsibilities regarding the duty of care you owe, as well as being able to systematically reduce the risks faced, is essential for protecting the interests of any institution working in such environments. By implementing an enabling risk management system you may also be able to increase your opportunities, your productivity and ultimately, your reputational advantage. This paper outlines what you need to know about duty of care, and leads you towards self-assessing if your institution is legally fulfilling its obligations.

What Do We Mean By Duty Of Care?

English law states that employers have a legal responsibility to take reasonable care for the health and safety of their **employees, contractors and sub-contractors** wherever they are working. In addition, they are also responsible for third parties who could be affected by the acts or omissions of an employer's, employee's or contractor's behaviour. Employers should take all reasonable steps to ensure the health, safety and wellbeing of employees and ensure that their activities do not cause injury or damage to another through some act of carelessness or through an omission.

In English law, employers must take reasonable care to avoid acts or omissions which you would reasonably foresee to be likely to injure your 'neighbour'. Conditions to be proved for this are:

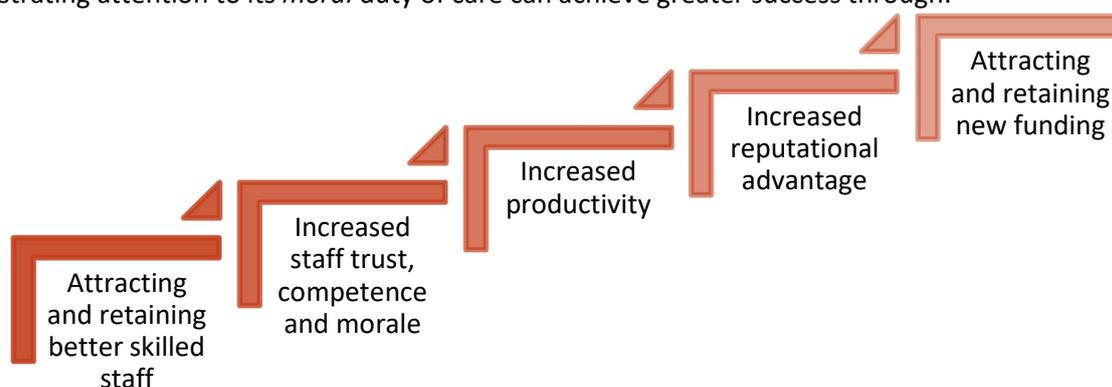
1. **A duty of care must be owed by the employer to the employee/contractor/third party** - duty to take reasonable care to avoid injury, loss and damage to other persons based on reasonable foresight of harm and a relationship of proximity. It must be fair, just and reasonable to impose a duty of care.
2. **The duty of care must have been breached** - using the 'reasonable' person test did the organisation act or fail to act in a way that a reasonable person would have in those particular circumstances.
3. **The injury or loss suffered by the employee/contractor/third party must have been due to the breach of duty of care** - the injury, disease, damage and/or loss suffered was as a direct result of the breach

What Are The Costs And Benefits?

A lack of adequate duty of care exposes your institution to numerous potential implications:

- **Damage** – injury or death to employees/contractors/third parties, property damage
- **Research disruption** – damage to key equipment/infrastructure, suspension or cessation of research activities, reduced morale and productivity, legal restrictions
- **Financial** – medical and evacuation expenses, sick pay, compensation claims for damage, increased insurance costs, legal claims resulting from injury or death, litigation costs
- **Reputational** – inability to achieve research aims, loss of donors, inability to attract new funding, high staff turnover

An appropriate duty of care system, fully integrated into institutional practice and culture, will mitigate these implications. Beyond the legal requirement for duty of care, it is increasingly seen that an institution demonstrating attention to its *moral* duty of care can achieve greater success through:



Moreover, it will allow your institution to **work more safely for longer** in challenging environments, further increasing your ability to achieve greater research and institutional success.

What Are The Requirements?

An employer owes a duty of care to its employees, contractors, sub-contractors and others who may be affected by its actions or the actions of its employees, contractors and sub-contractors.

Duty of Care applies at:

- All employers' offices and other places of work
- At third party premises where employees or contractors/sub-contractors are working on behalf of the employer
- Anywhere else where employees, contractors and sub-contractors may be working on behalf of the employer, e.g. out in the field

What Must An Employer Do To Satisfy Its Duty Of Care?

In English law, an employer must provide:

1. A safe place of work, including access and egress
2. Safe plant and equipment
3. A safe system of work
4. Safe and competent fellow employees
5. Adequate levels of supervision, information and training

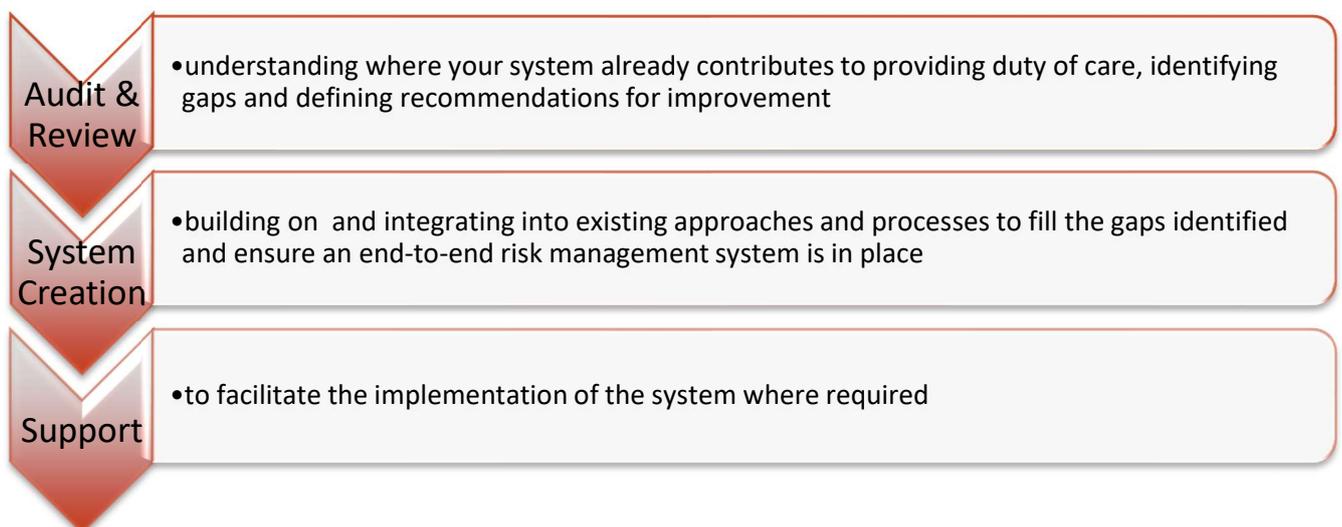
Employers are expected to demonstrate good management of safety, through a common sense approach, in a way that assesses hazards and ensures that appropriate controls (mitigating measures) are put in place.

In practical terms, for institutions working in challenging environments, this includes:

- Undertaking risk assessments as part of research design and prior to travel
- Monitoring changing contexts and updating risk assessments as required
- Implementing standard procedures to mitigate the identified risks
- Ensuring adequate accommodation and transport
- Tracking of employees
- Considering if employees/contractors are capable and suited to working in particular environments
- Training employees so that they understand the context they will work in, the threats they may be exposed to and the mitigation procedures they must follow
- Providing travel and medical insurance
- Ensuring contingency plans are in place for managing incidents or crises that may occur, such as medical evacuation or kidnap

An Enabling Risk Management Solution

We recommend a simple three-step process to ensure that institutions are able to provide sufficient duty of care through an enabling risk management system:



On-going Support Services

Once your Risk Management system is in place, it gives you a framework within which to effectively manage risk. However, different requirements to support that system will be identified as your institutional operations progress. Additional support will ensure you further build your institution's capacity and confidence in risk management, allowing you to rapidly exploit new opportunities as they arise. Support requirements may include:

Advisory: Safety reviews, risk assessments, pre-deployment context briefings, facilities reviews, budgeting guidance, logistics support (accommodation, venues, transport), incident/crisis management advice

Capacity Building: General or bespoke face-face training, live online training, coaching/mentoring

On the Ground: Arrival briefings, unarmed protection, emergency local contacts, trauma medics, safety managers, partner organisation support

Ultimately, this approach will ensure you achieve a functioning risk management system, adaptable as your research projects grow, that enables proactive engagement with risk management, and that reduces your legal, financial and reputational vulnerability.

Enabling Risk Management in Practice

A legal company adopted a complete integrated and inclusive risk management solution to support and protect their teams of legal staff over a three year period of work in the Niger Delta area of Nigeria. This focused on a high profile case, requiring travel to and around remote locations. The security management plan and in-country logistic support, based on inclusive security principles, facilitated travel around remote locations in support of the high profile, sensitive case. The project remained incident free, was low cost and highly effective.

Several institutions, including a leader in international development studies, have recently adopted a more pro-active, enabling risk management approach. As a result they have been able to:

- Better understand country contexts and associated risks, and so develop context-appropriate procedures to minimise those risks ahead of each trip taken
- Provide employees and consultants with pre departure briefings, and in-country support if required
- Provide appropriate training to those travelling to low, medium and higher risk locations, to ensure researchers are able to take more responsibility for their own safety and make appropriate, informed decisions regardless of the situation they might face
- Develop an effective crisis management process and build capacity and confidence amongst all those who may be required to deal with such a crisis

Safer Edge

At Safer Edge we are passionate about enabling people and institutions to achieve their purpose whilst working in challenging environments. We have a long history of supporting aid organisations in security and risk management, enabling them to establish and maintain projects delivering aid to people in the most unstable parts of the world. More recently we have adapted the same approach to support development organisations and academic institutions. Our aim is to support your institution in addressing safety and security needs to reduce the risks faced and comply with legal requirements. This is achieved through an enhanced Risk Management system, tailored to integrate with your existing ways of working and complimentary to your institutions structure and culture. In so doing, we will provide a stronger foundation upon which your institution can better capitalise on opportunities and achieve project success in the complex global arena.

If you think your institution needs to strengthen its approach to duty of care please contact us for further advice or to discuss how we can assist
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