

University Sports Club ‘Club Officers’ and their ‘Duty of Care’

The term ‘Duty of Care’ is often mentioned and looking at the University Sports Clubs it is important that ‘Club Officers’ and members are clear about their responsibilities and duties.

The definition of ‘Duty of Care’ is as follows: “You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour”.

As such there are two branches of law – that of Criminal and that of Civil. Criminal Law is concerned with offences against society generally and involves individuals being prosecuted for a breach of the Criminal Law. With regards to proof, the means of demonstrating that the offence has been committed - has to be “beyond reasonable doubt”. Civil Law is concerned with the rights and duties of individuals (and organizations) towards each other. Civil cases comprise of an action brought by one person against another in order to seek recompense (normally financial) for some form of wrong-doing. The burden of proof in a case has to be decided on “the balance of probabilities”. Therefore University Sports Clubs should be aware that claims are more likely from a civil case and cases could be brought against an organization or individual on the basis of negligence. What forms ‘negligence’ is often founded on previous case law. Club Officers and members should note the following:

‘DUTY OF CARE’: COMMON LAW NEGLIGENCE

This document contacts a very general and basic view of negligence. It sets out and hopefully answers the questions that you ought to be asking. The term ‘injury’ used herein means primarily physical injury and consequential financial losses.

1. WHERE DOES NEGLIGENCE FIT INTO OUR SOCIAL FABRIC?

- 1.1 All of us understand that deliberately causing injury to others is a criminal offence ordinarily resulting in punishment of the perpetrator.
- 1.2 All of us understand that some injuries are accidental, i.e. the circumstances giving rise to them are wholly unforeseeable. No one is responsible. No compensation is payable.
- 1.3 In between those two ends of the spectrum are ‘negligent acts’ i.e., they are not deliberate, but the injury is foreseeable. The negligent person will not be punished however, the injured party may seek financial compensation as a result. The compensation is paid by the individual who has caused the loss and could amount to millions of pounds!

2 WHAT DOES IT DO?

- 2.1 The system of rules is designed to determine in any incident or injury whether an act was negligent, whether the negligent act actually caused injury, whether compensation should be paid and if so how much.

3. HOW DOES IT AFFECT ME?

- 3.1 Each of us owes a 'duty of care' to our 'neighbours' not to cause them injury by our negligent acts and omissions.
- 3.2 In order to satisfy or 'discharge' that duty of care you must behave as a 'reasonable person' would but taking into account your specific skills, knowledge and experience. For example, a 'reasonable' non medically qualified 'rescuer' might be forgiven a medical mistake which a reasonable qualified paramedic would be expected not to make.
- 3.3 Your neighbours are those people whom, if you thought about it might be injured by your negligent acts and omissions.

For example:-

- a) when driving a motor car your neighbours would include:-
 - any passengers in your car
 - other road users, drivers and their passengers
 - pedestrians, cyclists etc
 - owners of property adjoining the road
 - b) Anyone for whom you have accepted responsibility (see later for the effect of being a group leader/club's officer)
- 3.4 The duty of care requires you to consider the consequences of your acts and omissions and to ensure that those acts and/or omissions do not give rise to a foreseeable risk of injury to any other person. Clearly, one is not expected to guarantee the safety of others, merely to act reasonably.
 - 3.5 In short, all of us owe a duty not to injure other people by our negligent acts and omissions and that is an individual duty which each of us owe all of the time to our 'neighbours'.

4. DOES ORDINARY MEMBERSHIP OF A CLUB OR SOCIETY AFFECT MY ORDINARY DUTY OF CARE?

- 4.1 Not usually. You still owe the individual duty of care to your neighbours. However, the people who are your 'neighbours' might alter and/or increase to include other club members and others with whom you may now come into contact as a result of membership of that club.

5. WILL BEING A GROUP LEADER OF A CLUB OR OTHER ACTIVITY AFFECT MY ORDINARY DUTY OF CARE?

- 5.1 It may do. As a group leader (or team captain) you have accepted the responsibility of leading others. You owe them a duty to ensure that they are not exposed to a foreseeable risk of injury, as far as you reasonably can.

- 5.2 It should be noted that on any outing where a group leader has not been appointed the most experienced and or qualified person there ought reasonably to intervene and at least advise if a foreseeable risk of injury arises.

6. WILL ACCEPTING OFFICE IN A CLUB AFFECT MY DUTY OF CARE?

- 6.1 Yes, it may well do so. If you accept a position you are likely to agree to carry out certain functions which may affect the safety of others both inside and outside the club. You are accepting responsibility and you must fulfil those duties to the best of your ability without negligence. That is, you must not create a foreseeable risk of injury and you must take reasonable steps to deal with any foreseeable risk of injury which exists or arises.

For example: if you agreed to be the equipment officer you must carry out regular audits of the equipment to see that it is reasonably safe.

7. CONCLUSION

- 7.1 The law of negligence seeks to ensure that as individuals we are responsible for our actions and inactions and that we consider those who might be injured by those acts and omissions.
- 7.2 The actual standard varies according to an individual's skill and experience and requires us all to behave reasonably.
- 7.3 It is possible to lay down golden rules which, if followed, will preclude the possibility of a successful civil claim. However, behaving responsibly and considerably is likely to mean that no injury will be occasioned in the first place.
- 7.4 The safety net that we all hope we will never need is third party liability insurance. If a compensation claim is successfully brought then this insurance should pay out. All members of the Students Union automatically have such cover. Members of certain clubs may have additional cover where affiliated to NGB's with that facility.

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An alternative way of looking at things is...

Legal Liability

The following has been included to inform committee members of their responsibilities when leading and organizing activities. Committee members and/or leaders should be aware that in most cases they owe participants a 'duty of care'. If an accident does happen and a breach of the duty is established, then organisers and others could be held liable and a claim for damages then result.

Negligence

Negligence has been described as conduct that falls below the standard which is normal or desirable in a given community. Negligence does not involve intentional acts or omission, but is behaviour that fails to meet the standard acceptable behaviour. For damages to be awarded in a case of negligence it has to be established that a 'duty of care' was owed to the injured person, and the injuries sustained resulted from a breach of that 'duty of care'.

'Duty of Care'

Confirming a duty of care was owed depends upon establishing a relationship between the injured party and the party being liable. Depending on these circumstances, it may be established that the organisers, leaders, coaches, participants and/or spectators owed a 'duty of care' to the injured party.

Once a duty of care is established in the legal sense, it must then be dealt if a breach of the duty occurred at the time of the injury, i.e. was the standard expected at the time of the incident breached. The tests to establish this duty of care is, how a reasonable person would have behaved if in the same situation i.e. was the result of the act/omission reasonably foreseeable.

For example, if goal posts are not padded, it is foreseeable that a player may run into a post and injure himself. To minimize the risk of injury, all posts should be padded. If the posts were not padded and injuries sustained from a collision with the post, there could be a legal action for negligence.

The legal aspects of negligence are complex. The best way to avoid this situation is to take all reasonable steps to prevent injury to participants on day trips, tours sporting and other activities. To minimize the possibility of negligence being alleged, it is advisable to:

- Prevent accidents from occurring by identifying risks and reducing them as much as possible.
- Prepare or know the emergency procedures to deal with accidents.
- If an accident does occur then first aid should be administered.

Examples of Preventative Measures:

- Ensure that only qualified instructors are operating equipment or conducting sessions.
- Check all equipment prior to use is in good condition.
- Ensure all participants have completed a medical form and the forms are readily accessible, should they be required.
- Ensure a First Aid person is present at activities.
- Identify all possible risks to participants and reduce the risks as far as possible
Etc.

Section 2 refers to the Proctors guidelines for University Sports Clubs.