# Duty of care

## Introduction

This guidance provides information on duty of care to inform your practice. It covers:

- duty of care and speech and language therapy
- what is duty of care
- the standard of care
- responsibilities
- guidance on specific issues
- national guidance

### Related topics

- **Confidentiality**
- **Consent**
- **Information governance**
- **HCPC standards**

## Key points

- Everyone holds a duty of care
- Duty of care is a moral and legal obligation

# Duty of care and speech and language therapy

‘Duty of care’ is the moral or legal obligation to ensure the safety and wellbeing of others. Health and social care workers owe a duty of care to patients/service users, colleagues, employers and themselves. It applies to everyone.

As SLTs there is a requirement that you are up to date with current UK legislation and able to exercise a professional duty of care. You are autonomous healthcare professionals who are responsible for your own clinical decisions. Every day you work within a number of legal and professional frameworks: for example, you are regulated by the Health and Care Professions Council (“the HCPC”), you may have a contract of employment with an NHS or private employer, or you may enter into contracts with service users on a private basis.

Changes in the health and social care system across the UK, including reforms to services, management structures and budget cuts, have meant extra pressures on staff. Sometimes those pressures may lead to clinicians and healthcare staff having concerns, particularly in relation to situations that they feel may compromise their duty of care.

In these pages, RCSLT has created guidance and information to help members communicate and manage any concerns. These pages summarise some of the principles which apply, in connection with our duty of care as SLTs. It complements, and must be read in conjunction with, guidance provided by SLTs’ regulatory body (the HCPC), the RCSLT and, if you have a contract of employment, your employer. This document is not exhaustive and does not constitute legal advice.

## What is duty of care?

The legal concept of a “duty of care” has been established by decisions made by courts in legal cases over the years. To establish whether a duty of care arises, several different tests have been applied by the courts.

By way of background, the court’s starting point for establishing whether a duty of care arises (or in other words, whether a duty of care is owed to a third party) is the three-fold test which asks whether:

- the damage which occurs is foreseeable
- there is a sufficiently proximate relationship between the parties; and
- it is fair, just and reasonable in all the circumstances to impose a duty of care.

Another way that this test has been approached is by asking whether a professional person (such as an SLT), had undertaken a responsibility towards a third party to exercise reasonable skill and care.

It should be noted that, in practice, there is generally no dispute as to the existence of a duty of care that is owed between a treating clinician and a patient or service user, as it arises out of the relationship between the two.

Another point to note is that whether a duty of care arises will involve looking at the relevant principles (some of which have been summarised above), in the context of the circumstances of your case. You cannot create your own additional requirements as to when a duty of care will arise.

# The standard of care

Where a duty of care exists, it will have been breached (whether by action or omission) if the relevant standard of care has not been met.

The standard of care is that of the 'reasonable man'. The standard is objective; it is not that of an individual, but that which might be expected from a reasonably competent professional (e.g. for us it would be a reasonably competent SLT), with the standard and type of skill of that person, acting with ordinary care (Whitehouse v Jordan; 1981).

If an allegation is made against you that you have breached your duty of care, then you are likely to have a defence to this if you can show that you acted in accordance with practice accepted as proper, by a responsible body of practitioners who work in that area. In other words, such a defence may be available, if you can produce evidence that there is a responsible body of SLTs who would have taken the same action as you in the circumstances of that case (**Bolam v Friern Hospital Management Committee; 1957)**. Such evidence will, however, be carefully scrutinised to ensure that the opinion relied upon is, in fact, reasonable (**Bolitho v City and Hackney Health Authority; 1998)**.

When approaching the question of what conduct constitutes accepted professional practice, a court may well look at professional codes, to provide evidence as to the standard required of a reasonable speech and language therapist, or consider other sources of information, such as local or national policies.

However, this is not definitive and a breach of such a code or a policy will not necessarily mean that an SLT has breached their duty of care.

It is also worth being aware that inexperience does not give a healthcare professional a defence to an allegation that they have breached their duty of care. In a case concerning the conduct of a junior doctor, the judge found that it was legitimate for patients to expect that they will receive, from each person concerned with their care, a degree of skill appropriate to the task which that professional undertakes (Wilsher v Essex Area Health Authority; 1987).

## Responsibilities

Duty of care is everyone's responsibility. Everyone holds a duty of care to everyone else.

The duty requires that all that is reasonable must be done to secure the best outcome possible.

Organisations, whether public, private or voluntary, have a duty of care to:

- provide a comprehensive service
- demonstrate that, within available resources, the appropriate priorities are chosen
- ensure that those providing care are able to do so safely.

All staff, of all occupations, at all organisational levels whether paid or voluntary hold a duty of care. The duty of care to a service user exists from the moment they begin to receive services. This may be, for example, on admission to a ward or acceptance onto a caseload.

You hold this duty, even if you are not directly responsible for the care.

The duty of care means that staff must aim to provide high quality care to the best of their ability, and say if there are any reasons why they may be unable to do so. Staff must adhere to a standard of reasonable care and are expected to:

- keep their knowledge and skills up to date
- provide a service of no less a quality than that to be expected, based on the skill
- responsibilities, and range of activities within their particular trade or profession
- be in a position to know what must be done to ensure that the service is provided safely
- keep accurate and contemporaneous records of their work and share information with those
- be involved in an individual's care
- not delegate work, or accept delegated work, unless it is clear that the person to whom the work is delegated is competent to carry out the work concerned in a safe and appropriately skilled manner
- protect confidential information
- share information when appropriate to do so (e.g. when consent has been obtained).

The Health and Care Professions Council standards of proficiency (2023) states that speech and language therapists should:

"2.9 understand the scope of a professional duty of care, and exercise that duty."

Refer also to HCPC:

- **Standards of conduct, performance and ethics**

- **Standards of proficiency for speech and language therapists**
- **Standards of continuing professional development**

# Guidance on specific issues

## Duty of care and limited resources

Duty of care does not mean an employee or employer has to do everything that they believe needs to be done. There are not limitless resources available. The obligation is to ensure that what is actually done is done safely and skilfully and in an appropriate time and manner. It should also be made clear what cannot be done, e.g. when a service user requests a service that cannot be provided, the reasons why need to be explained.

## Duty of care and conflict of interests

Sometimes service providers may feel that there is a conflict between their duty of care and the wishes of the person using the service. Normally the preferences of the individual must be respected if they have the capacity to make a decision, and where they do not, staff should act in their best interests.

## Duty of care allegations

If an allegation is made against you that you have breached your duty of care, then you are likely to have a defence to this if you can show that you acted in accordance with practice accepted as proper by a responsible body of practitioners who work in that area.

In other words, such a defence may be available if you can produce evidence that there is a responsible body of SLTs who would have taken the same action as you in the circumstances of that case. Such evidence will, however, be carefully scrutinised to ensure that the opinion relied upon is, in fact, reasonable.

## Duty of care and professional experience

Inexperience does not give a healthcare professional a defence to an allegation that they have breached their duty of care. Service users should expect to receive a degree of skill appropriate to the task which that professional undertakes, from each person concerned with their care. Speech and language therapists have a duty of care to work within the limits of their skills set and to source advice, support and guidance, as required.

## Claims of negligence

Negligence is the breach of a legal duty of care owed to one person by another which results in damage being caused to that person.

In simple terms, in order for a claim against an SLT to be brought that they had been negligent, the person bringing the claim would need to demonstrate that:

- the SLT owed them a duty of care
- duty of care had been breached
- the breach caused damage to the person bringing the claim.

If you are ever concerned about a claim being brought against you for negligence, you should discuss this with your employer and also refer to the terms of your policy of insurance, which is likely to require that you also notify your insurer.

# National guidance

**Please note**: the resources on this page are provided for informational purposes only. No endorsement is expressed or implied, unless otherwise stated. While we make every effort to ensure this page is up to date and relevant, we cannot take responsibility for pages maintained by external providers.

Visit **meeting the HCPC standards** for guidance to support you in adhering to the standards of the regulator.

### Equality and Human Rights Commission

- **Guidance about the implications of equality legislation**

### Gov.uk

- **Public Interest Disclosure Act 1998**
- **Maximum weekly working hours**

### Information Governance Alliance (2015) – Duty of Care

- The duty of care requires staff to keep accurate and contemporaneous records of their work and share information appropriately with those involved in an individual's care.
- Health and social care organisations must provide as comprehensive a service as they can and must provide staff with an environment in which they can provide care safely.
- Organisations and their staff must ensure that they have identified all partner organisations that might contribute to care and put in place the necessary information sharing agreements; policies; procedures; fair processing; communications arrangements, and technical measures to enable staff to share information securely and appropriately.
- Information is shared because there is a duty of care and the default position should be that information is shared when it is likely to contribute to improved care and outcomes for an individual, and where the individual is aware of the sharing and hasn't objected.
  Policies, procedures and systems should be designed around this principle. However, an important element of the duty of care is to protect confidentiality and to respect the preferences of patients and service users about information sharing decisions. These two requirements are by no means incompatible but must shape how services are designed and managed.

# Resources

As stated above, these pages provide only an introduction to the duty of care. Depending on your own circumstances, there are a number of sources that you may wish to consult or refer to, in relation to the matters outlined above.

Below, we have included both RCSLT links and external links. We should mention that the RCSLT has no control over any external links (these are not produced or maintained by us, we cannot change these, and they can be changed without our knowledge). It follows that the inclusion of these links are not an endorsement by the RCSLT of these websites or their content:

- The Health and Care Professions Council
- RCSLT guidance:
    - **Clinical A to Z**
    - **Delivering quality services A to Z**
- Other information:
    - Health and Safety Executive's **Guidance on health and safety**
    - Government information about **working time limits**
- Free and impartial advice on employment matters can be sought from the **Advisory, Conciliation and Arbitration Service (ACAS)**
- Royal College of Nursing **Duty of care** advice guides
- The Health Foundation's **Framework for measuring and monitoring safety**

# Contacts

If you require information or advice on a specific set of circumstances, because you are concerned about issues relating to your duty of care, then there are various sources you may wish to consult. These include RCSLT, your employer and your union, or you may wish to seek legal advice.

It is important that you seek appropriate advice, because the question as to whether a duty of care arises (and, if so, whether this has been breached, or is likely to be breached in the future) will depend on the particular circumstances of your case.

**Your Union:**

- **Unite** – provides free legal advice and representation to members who have employment-related problems.
- **UNISON** have also published a **Duty of Care handbook (PDF)** in 2011 (which is intended to help members working in health and social care settings to maintain the duty of care, particularly when there is pressure on services.

**Advisory, Conciliation and Arbitration Service (ACAS)** – free and impartial advice on employment matters.

# Reflective questions

## Referral

- Are the general public and potential referrers aware of my service in terms of scope and access?
- How am I/are we informing them?
- How are we dealing with incomplete or inappropriate referrals?
- How am I/are we monitoring the receipt of appropriate referrals and referral rate?
- Am I/are we processing all referrals in a 'timely manner'?
- If not, how am I/are we raising concerns about this?
    - Data collection?
    - Questionnaires and feedback?
    - Written Information and reporting to line manager or equivalent about risks and possible shortfalls?

## Assessment

- Have I documented clearly the 'use of reasonable care and skill'?
- Am I working within my level of skill and competence?
- Am I working within my job description?
- Are service users fully informed about the assessment?
- Have I produced a clear written record of how I identified:
    - The nature and impact of the presenting difficulties?
    - Whether the service user will benefit from intervention?
    - The risks of intervening or not intervening?
- Have I accurately and clearly specified the service users' needs in terms of:
    - Suitability for my service?
    - Need to refer on?
    - Current availability of service to provide the intervention indicated from the assessment?
    - Existence (or otherwise) of a speech and language difficulty?

## Consultation

Consultation via telephone or drop-in advice sessions.

- How have I recorded my involvement – advice given and actions taken?

- If I am unable to meet an identified need, have I documented this and informed the service user?
- Do I need to raise my concerns? If so, how?
    - Data collection?
    - Written Information and reporting to line manager or equivalent about risks and possible shortfalls?
- Have I considered and sought advice, as required, about the implications of different types of service provision?

## Intervention

- Am I working within my level of competence?
- Are my knowledge and skills up-to-date and relevant to my post?
- Am I working within my job description?
- Are service users fully informed about the intervention and the evidence for the intervention?
- Have I provided them with all the information and any reasonable alternatives?
- Have I discussed what could happen if this intervention does not go ahead?
- Have I recorded the rationale for my clinical judgements, in order to support a view on what was reasonable at the time?
- If I have delegated any part of the intervention to another person, am I sure that he or she understands my instructions and is competent to carry out the task?
- If I am unable to meet an identified need, have I documented this and informed the service user and manager?
- Do I need to raise my concerns? If so, how?
    - Data collection?
    - Written information and reporting to line manager or equivalent?
    - Report in accordance with any whistleblowing policy?
    - Collect evidence to support innovation to deliver cost-effective and efficient services
    - Evidence to identify and articulate the risk with relevant partners.

## Discharge

- How am I evaluating and recording therapy outcomes?
- How is this information shared with service users and local budget holders?
- How am I documenting that my involvement is over?
- Should an onward referral be made?
- If onward referral is not possible because the appropriate alternative source of care is not available, how am I documenting this?

- Have I notified all relevant agencies?
- Have I informed the service user and the referrer of routes for re-referral, if necessary?
- Have I made clear that my service can be contacted in the future, if new concerns arise?
- Data collection?
- Collect evidence to support current level of service? Evidence to identify and articulate any risk with relevant partners? Please refer to the HCPC Standards.

## Contributors

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The RCSLT develops guidance to promote good **clinical** and **professional** practice in line with HCPC standards. **Please read our statement on guidance** to understand how it is developed and how to use it.