

Duty of Care

What organisations and institutions
working in challenging environments need to know

by



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Introduction

The current global environment presents countless challenges to those seeking to engage in international development, research and business opportunities. Significant economic turbulence, targeting of those with 'Western' affiliations and an increase in the frequency of natural disaster events continues to obstruct effective project delivery and threaten employee safety. Knowing your legal obligations 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 business working in such environments. However, by implementing an enabling risk management system, you may also be able to increase your ability to operate, your productivity and ultimately, your reputational advantage. This paper outlines what you need to know about your duty of care, and leads you towards self-assessing if your organisation 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

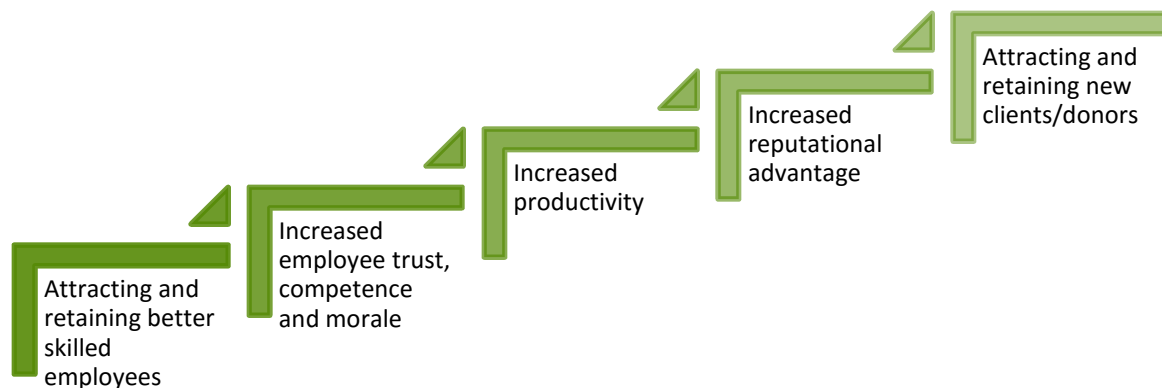
"An employer can be deemed to have breached their duty of care by failing to do everything that was reasonable in the circumstances to keep the employee safe from harm. Employees also have responsibilities for their health and wellbeing at work - for example, they are entitled by law to refuse to undertake work that isn't safe without fear of disciplinary action." ACAS

What Are The Costs And Benefits?

A lack of adequate duty of care exposes your organisation or institution to several potential implications:

- **Damage** – injury or death to employees/contractors/third parties, property damage
- **Project disruption** – damage to key equipment/infrastructure, suspension or cessation of project 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 project/research aims, loss of clients/donors, inability to attract new business, high staff turnover

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



Moreover, it will allow your organisation to **work more safely for longer** in challenging environments, further increasing your ability to achieve greater project and organisational 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

In essence, 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.

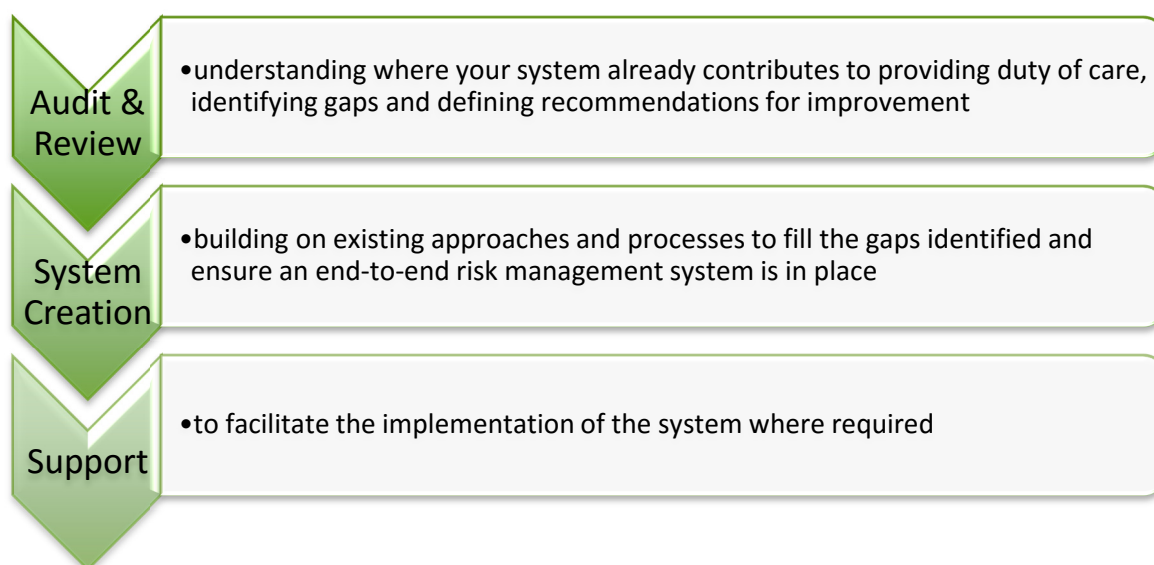
In practical terms for organisations or institutions working in challenging environments this includes:

- Undertaking risk assessments as part of project design and prior to travel
- Monitoring changing contexts and updating risk assessments as required
- Implementing standard procedures to mitigate the identified risks
- Providing 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 organisations and institutions are able to provide sufficient duty of care through an enabling risk management system:



System Audit & Review - review of relevant documentation, and discussions with individuals and group meetings with key management. This will reveal strengths in the current ways of working, identify where existing systems may be lacking, prioritise gaps and determine who is owed what level of duty of care.

Creating/Adapting the System - with a comprehensive picture of your requirements collaborative design of the risk management system can be achieved, formulating a solution that builds on and fully integrates into your existing practices and procedures. The solution elements are likely to cover safety & security policy, collation of relevant information, provision of an analytical framework to make informed decisions, ability to record and disseminate decisions and guidance, standard procedures for everyday operations/activities, business continuity planning, development of crisis management capacity, insurance arrangements, analysis of employee training requirements.

On-going Support Services – whilst the Risk Management system gives you a framework in which to effectively manage risk different requirements to support that system will be identified as your organisational operations/projects develop. Additional support will ensure you further build your organisational capacity and confidence in risk management, allowing you to rapidly exploit new opportunities as they arise. Support requirements may include:

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

On The Ground: Arrival briefings, unarmed close protection, emergency local contacts, trauma medics, safety and security managers, partner organisation support

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

Ultimately, this approach will ensure you achieve a functioning risk management system, adaptable as your organisation grows, 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 organisations, including a growing and internationally active Monitoring and Evaluation organisation, a large multi-national Development organisation, and a leading academic development institute have recently adopted a more pro-active, enabling risk management approach. As a result they have been able to:

- Provide the content for compelling and credible risk management elements to fulfill duty of care criteria in project bids
- Ensure trustees/management can make more informed Go/No Go decisions for international projects
- Ensure that security considerations are properly budgeted in proposals according to 'minimum effective dose' principles – enough to stay cost-effective/competitive and enough to ensure that the project does not lose money due to unforeseen costs
- Understand a country context and associated risks, and so develop context-appropriate procedures to minimise those risks
- Provide employees, consultants or researchers with pre departure briefings, in country briefings, and any required training
- Easily locate suitable accommodation and other logistics requirements
- Develop capacity within the organisation to manage potential crises in order to reduce the personal, financial and reputational impact faced by the organisation

Safer Edge

At Safer Edge we are passionate about enabling people, organisations and institutions to achieve their purpose whilst working. 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. Our aim is to support your organisation in addressing safety and security needs to reduce the risks faced and comply with legal requirements. This is achieved through the development of a comprehensive Risk Management system, tailored to integrate with your existing ways of working and complimentary to your organisational structure and culture. In so doing, we will provide a stronger foundation upon which you can better capitalise on opportunities and achieve project success in the complex global environment.

To talk to Safer Edge about ensuring your duty of care please contact us:
+44 (0)208 560 9972 or operations@saferedge.com

An Example Risk Management System

An outline of the main elements of a risk management system as it would progress through the life of a project. The precise structure can be adapted to suit individual organisations or project management structures, and works best when capitalising on existing processes and organisational culture. Tools to support the system can be created to suit each project and their information management processes.

Risk Management System

Step #1 - Initial Viability Assessment: Risk vs Costs vs Outcomes - Is the project worth pursuing?

Step #2 - Budgeting: Avoiding surprises, building in security - What do we need to do to make this safe?

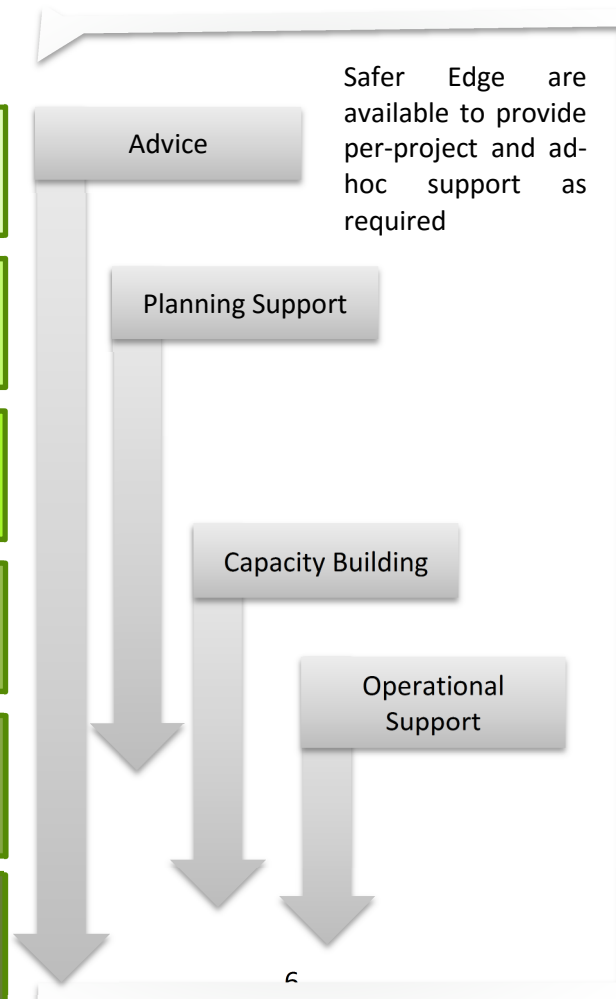
Step #3 - Contracting: Ensuring all parties are doing their bit - Who is responsible for what?

Step #4 - Preparation: Risk Assessments, Creating SOPs, training -Staff are prepared, resourced and empowered.

Step #5 - Implementation: Doing the work and keeping our people safe - single trip, repeat travel or long-term presence.

Step #6 - Review: Capturing experience, growing corporate knowledge, building capacity, refining the system.

On-Going Support



Safer Edge remains engaged to provide continual refinement of the system and process and help build individual and organisational capacity.

Tools will be created to guide and structure the process. Understanding how an organisation tracks and manages its projects is key to creating the right supporting tools and documents. Tools may include:

Planning matrix to identify at an early stage in each project, what training, briefings, equipment and other Duty of Care provisions will be required for financial and person-time budgeting

Costing matrix to quickly generate accurate costs for inclusion in budgets

Travel Authorisation to ensure employees are prepared and approved for travel

Security plans to outline appropriate procedures for in-country activities

Incident Reporting and Tracking Process to ensure incidents are systematically captured and analysed to enable appropriate changes in standard procedures

Post event reviews to ensure that all lessons are systemically captured and used to improve safety and save money ☑