



National Ambulance  
Resilience Unit  
**NARU**



## The Duty of Care for Ambulance Responders



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## NARU DOCUMENT INFORMATION TABLE

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Equality Impact Assessment Statement*	Completed. See separate assessment form. No adverse impact. This guidance is an update of existing published guidance.		
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Summary of Amendments	<p><b>March 2021</b></p> <p>General content update in line with review schedule. Minor changes to clarify responsibilities. Correction in relation to Article 2 explanation. Principles remain unchanged from the previous version. Inclusion of comments from legal peer review by Weightmans LLP. Additional clarity and emphasis included based on the hearings for the Manchester Arena Inquiry (2020 – 2021) and the reports from the Ambulance Experts to that inquiry.</p>		

\* The full Equality Impact Assessment (EIA) will be provided on request.

Document Information Table

The photo used on the front cover is from an exercise and all casualties are simulated.





## INTRODUCTION

It is obvious that ambulance clinicians have a duty to provide care to their patients but establishing exactly how that duty applies to some emergency situations can be challenging.

The duty of care represents moral, professional and legal obligations. The moral obligation to provide care is a matter of individual and social conscience. The professional obligation arises from a clinician's professional registration and organisational procedures or national practice guidelines. The legal obligation arises from several sources which are summarised below.

It is particularly hard for ambulance clinicians to discharge their duty of care correctly at incidents where patients need clinical interventions, but hazards expose responders to considerable risk.

### APPLICATION

The duty of care applies to ambulance clinicians and commanders in two fundamental ways:

1. **Staff safety.** The duty to keep yourself and your team safe.
2. **Patient care.** The duty to provide a reasonable standard of care to your patient.

Whilst the United Kingdom has three legal jurisdictions - England & Wales, Scotland and Northern Ireland - the duty of care principles are broadly consistent.

### HEALTH AND SAFETY DUTIES

The Health and Safety at Work Act 1974 and associated regulations require ambulance clinicians to have a safe system of work. NHS ambulance services have a legal duty to implement and maintain safe systems of work for their employees and in turn employees have a legal duty to comply with these systems.

A safe system of work is usually achieved through:

- Effective operating procedures.
- Staff competence (qualifications and training).

- Fit for purpose equipment.
- Effective risk assessments.

This means ambulance clinicians and commanders should:

- Ensure they and their colleagues engage in approved activities which have procedures and controls in place to mitigate the risks.
- Ensure that they are competent to perform those activities (i.e. they have been suitably trained to do it and that training is up to date or current).
- Ensure that they have the necessary equipment for those activities and the equipment being used is fit for purpose (i.e. appropriately maintained). This includes personal protective equipment (PPE).
- Ensure that staff and commanders are aware of pre-existing generic risk assessments for the specific activity being undertaken and that subsequent dynamic risk assessments are used just prior to committing to the activity so that specific situational hazards and risks are considered.





A safe system of work does not necessarily mean one which is free of risk. It is one where the risk is being appropriately managed or controlled. Given the nature of pre-hospital ambulance work, a level of risk exposure will need to be accepted.

Safe systems of work must also be reviewed periodically and / or when the work activity or risk changes. NHS ambulance services must also implement appropriate monitoring / supervision to ensure compliance with the safe system of work.

### THE TORT OF NEGLIGENCE

The emergency services (including police and fire and rescue services) do not generally owe a legal duty of care to individual members of the public except in certain, limited circumstances (*Hill v Chief Constable of West Yorkshire* [1989] AC 53 (HL)). Their duty is focused more on protecting the public 'at large'.

The law will recognise a breach of duty by Police or Fire and Rescue Services if they have acted in a certain way in certain specific situations (*Caparo Industries Plc v Dickman* [1990] 2 AC 605).

However, the NHS Ambulance Service has an established legal duty to provide a reasonable standard of care to patients without unreasonable delay. This is a positive duty which engages from the point at which the Ambulance Service accepts the emergency call and agrees to attend (*Kent v Griffiths* [2001] QB 36).

A reasonable standard of care relates to clinical care that can be supported by a responsible body of medical opinion (*Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118). The opinion relied upon must have a logical basis (*Bolitho v City and Hackney Health*

*Authority* [1998] AC 232). With regard to the clinical practice of ambulance staff, these standards are set out in approved clinical practice guidelines and the standards set by relevant professional bodies.

This puts the ambulance service in a position where the care provided or any unreasonable delay in the provision of care may need to be explained and legally justified to avoid liability. Failure to discharge this duty could expose the ambulance service to a charge of clinical negligence.

### ARTICLE 2 – THE RIGHT TO LIFE

It has been recognised that Article 2 of the Human Rights Act 1998 creates a positive duty on public sector organisations, including the NHS ambulance services, to do all they reasonably can to protect those they know, or ought to know, are at real and immediate risk (*Van Colle v CC of Hertfordshire* [2007] EWCA Civ 325).

However, there may be occasions where it is justifiable not to act immediately to save someone's life. For example, ambulance clinicians are not under a duty to sacrifice their own life to save a patient.

If you manage to effectively balance two fundamental duty of care obligations by putting a safe system of work in place and avoiding any unreasonable delay in providing care to patients, then you will invariably discharge your obligations under Article 2.





## SUMMARY

The duty of care requires ambulance clinicians and commanders to achieve a careful balance. They must take reasonable steps to ensure they are as safe as is realistically possible, but they must also be prepared to accept some risk to deliver effective care to patients in the pre-hospital setting. They must also be sufficiently trained and experienced to act quickly where life is at risk.

To do this they must:

- **Implement an approved safe system of work and associated procedures.**
- **Avoid any unreasonable delays in providing emergency care to patients that require it.**

The following aide memoire has been developed to assist ambulance clinicians and commanders in applying the duty of care correctly.



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Peer reviewed by Weightmans LLP  
(March 2021).



Endorsed by:  
**Professor  
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(April 2021).





## APPENDIX 1: THE DUTY OF CARE MEMOIRE

Appendix 1:  
The Duty of Care  
Aide Memoire

Duty of Care Requirement		Steps to Take	Explanation
Duty of Care to Staff	Take all reasonable and practical steps to keep employees safe.	Perform approved activities and apply the controls specified in procedures. Ensure there is a generic risk assessment already in place.	<p>These are statutory duties under the <i>Health and Safety at Work Act 1974</i> and associated regulatory provisions.</p> <p>These steps will help ensure you have a safe system of work. Most of these provisions should already be established prior to the incident.</p>
		Ensure you are trained and competent to undertake the activity.	
		Ensure the minimum equipment mandated by procedures is available and used, including your Personal Protective Equipment (PPE).	
Duty of Care to the Patient	Provide a reasonable standard of care without any unreasonable delay.	<p>Undertake a dynamic risk assessment and determine the action you need to take as quickly as possible. Continually review the position and deliver care as soon as possible.</p> <p>If you need specialist support, make sure you request it as soon as possible.</p>	This is an established duty at common law. It is a positive duty on the ambulance service to provide a reasonable standard of care without unreasonable delay. This duty is unique to the ambulance service. The police and fire services have duties to the public at large but their duty to individual patients is largely discretionary ( <i>Kent v Griffith</i> [2001] QB 36).
Article 2 Right to Life	Take steps to protect people from harm which may lead to loss of life.	Balance the two duties set out above.	If the correct balance is achieved (staff safety but also avoiding unreasonable delay in treating patients) this duty will be discharged. If the rescue is too dangerous for the responders, Article 2 positive duties can be temporarily avoided.
Risk Assess the Activity	Assess the risks for both staff and patients.	Supplement the pre-existing generic risk assessment with a dynamic risk assessment at the scene considering the situation and hazards. Mitigate the risks as best you can. The risk to patients must be included in that assessment. Regularly review the risk assessment.	<p>If the activity is likely to result in death or serious injury to you or a member of your team despite the controls, do not commit. Statutory health and safety obligations provide justification for the temporary delay in care.</p> <p>If the risk of death or serious injury to you or your team can be mitigated by a safe system of work, making the likelihood low but accepting some residual risk, you must avoid unreasonable delay in committing and providing emergency care.</p>
Multi-Agency Joint Doctrine	Contribute to the joint risk assessment as part of JESIP and ensure a common understanding of the risks.	<p>For complex incidents involving a multi-agency response, ensure there is a joint risk assessment using the JESIP tools.</p> <p>Ensure the ambulance service duty of care is considered as part of this joint risk assessment.</p>	<p>For complex or major incidents, Ambulance commanders are responsible for balancing these principles.</p>

