



## Duty of Care

### It's in all our policy documents but how well understood is it?

The OSCAR Standards require our services to clearly communicate "duty of care" responsibilities to all staff. Duty of care is a special legal relationship between a provider of services and their client. An operator of a bungee jump will have a duty of care towards people doing the jump. A company making breakfast cereals will have a duty of care towards the people who eat their product. In simple terms, this means you must take care that your actions or inactions don't cause harm to someone else.\*

The operator of an OSCAR service and their staff owe a duty of care to the children attending. To reflect this, an agreement is usually signed by the parent as part of the enrolment process. Certain terms and conditions are specified in it, which determines the scope of the agreement: duty of care applies while the child is attending the programme and continues until the child is safely handed back to an approved person, parent or otherwise. When a child is still at your after school programme after closing time, your duty of care continues. It would probably be seen as "negligent" (a breach of duty of care) to leave the child outside your venue with a note saying "had to go, sorry". Yes, "common sense" and duty of care often go hand in hand!

Duty of care can also be said to signify a professional obligation. All people working in OSCAR services arguably have an obligation to "care for" and "care about" children, not just because there is a contract between their employing body and parents whose children attend, but because it's an essential part of their role. This is why the OSCAR Standards requires each staff member to sign off against "duty of care" expectations as part of their employment agreement.

How well do OSCAR staff understand their duty of care? Our conversations with operators suggest that this largely depends on the efforts made by employers at the recruitment and induction stages. When an employer talks about staff who appear disinterested in their role and the children, it seems as if duty of care is poorly understood.

Effective supervision of children requires staff to be active, involved and attentive to changing circumstances and the dynamics of the group they are responsible for. Supervision is more than just being there, a part of the ratios; standing back and only stepping in if there are problems. An effective supervisor will be watching, encouraging, questioning, reminding, laughing, scanning, directing and re-directing. Reacting and interacting. This is without a doubt, skilful work, much more than a "baby sitting" role.

We are really talking about a duty *to* care. Care about the work, understand its importance and stay tuned into the children. Inert, unresponsive and disinterested people still find their way into our profession. It's about time they woke up and realised what the job is all about.

*OSCN will shortly release its revised Code of Conduct and staff conduct will be a topic for discussion at the Employment Forum later this term in Point Chevalier. Training in Duty of Care is an integral part of OSCN's Safe OSCAR course*

\*"Duty of care" doesn't mean that you avoid everything that might cause harm. The potential harm must be "reasonably foreseeable". Many situations are easily managed, thanks to the OSCAR Standards specifying appropriate procedures.



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### Duty of Care—Some scenarios for your staff...

- Children are trying to stand up on top of the high monkey bars.
- It's time to put on sun screen and a child tells you "I am not allowed any of that on me."
- You have a group of about 6 children playing tag. A little later 10 more have joined in.
- Someone wants to take a child from your group and you don't know who they are.



## Duty of Care (cont.)

### The Legal Low-Down

DEFINITION: A DUTY TO USE DUE CARE TOWARD OTHERS IN ORDER TO PROTECT THEM FROM UNNECESSARY RISK OF HARM. (MARTINDALE-HUBBELL LAW DIRECTORY)

The staff in an OSCAR programme has a duty of care in respect of the children enrolled in the programme. DUTY OF CARE continues for as long as children are at the OSCAR programme. For example, if a child has not been collected from your programme after it has closed, you still have a 'duty of care' towards that child.

Programmes should be clear about when they wish to hand the DUTY OF CARE back to the parent, especially if children are leaving a programme unaccompanied. The same issues apply when children are arriving at the programme. This is why sign in and sign out registers are required.

### Negligence

Negligence is a common law tort. 'Tort' is a legal term meaning "a civil wrong". In the case of a tort, a judge has the power to award monetary compensation ("damages") to the person who has suffered the wrong.

An organisation is usually responsible for the action of all those acting on its behalf: employees, volunteers, outside contractors etc. This applies only if people were carrying out duties as outlined in their job descriptions, employment agreements, contracts for service etc.

- To prove negligence the following must apply
- There was a duty of care
- here incident, action or inaction that caused a breach of the duty of care
- There was a harm or loss as a result
- The incident, action or inaction was reasonably foreseeable or preventable

In New Zealand there is statute law that limits the use of the tort of negligence. ACC legislation prohibits people being able to sue for damages that result from any accident, if the accident is covered by ACC legislation.