

Unpacking duty of care

Employee mental health
and wellbeing



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What does duty of care mean?



Duty of care is a moral or legal obligation to ensure the safety or well-being of others.

The Education Reform Act 1988 (ERA) introduced fundamental changes to the management of Local Education Authorities (LEA) schools. Nevertheless, the LEA still remains the employer of teachers in county, voluntary controlled and special agreement schools and is the body which determines the majority of their conditions of service. They have a duty of care to ensure staff are kept safe at work.

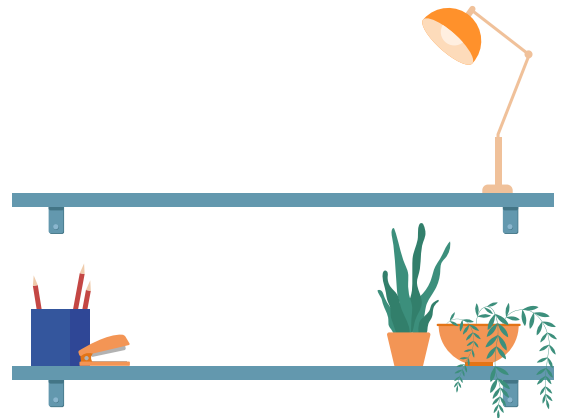
However, although the LEA has overall responsibility school leaders can still play a vital role in creating safe environments for school staff.

When we think about duty of care, we often think about keeping people physically safe, but it is just as important for employers to prioritise their employee's *psychological safety at work*.

Duty of care extends to looking after the mental health and wellbeing of all employees and making sure that staff with mental health conditions are not discriminated against.



What does fulfilling a duty of care look like for headteachers and school leaders?



For headteachers and school leaders, fulfilling a duty of care in relation to staff mental health and wellbeing, can feel overwhelming. As can taking action to create psychologically safe work environments.

This is understandable – mental health and wellbeing is complex and the impact on individuals differs from person to person.

Here are a series of steps to consider and signposting to resources that are already available to help:



Carry out stress risk assessments

Understanding the work related drivers of stress and poor mental health within your school is an important aspect of fulfilling a duty of care. To do this you need to understand what the risks are.

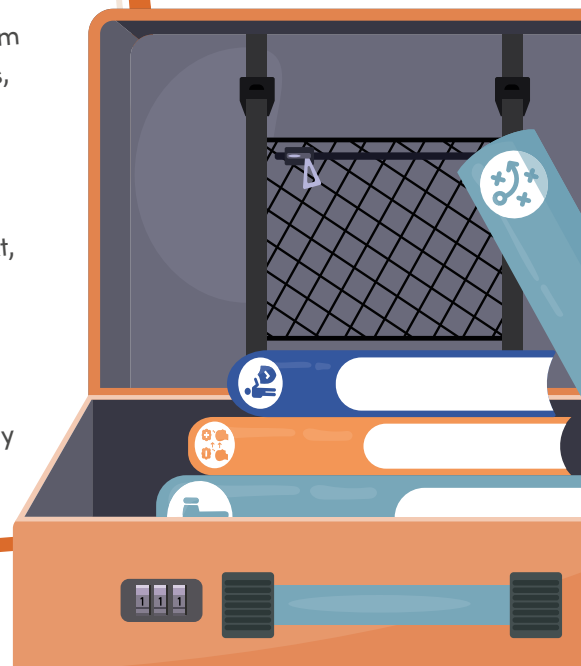
The Health and Safety Executive (HSE) have designed a set of *Management Standards* to help all employers identify, evaluate and mitigate risks related to stress at work. The standards cover five key steps:

- Identify the risk factors
- Who can be harmed and how?
- Evaluate the risks
- Record your findings
- Monitor and review

HSE have also created a *workbook* to help all employers understand how to implement the standards and a *risk assessment template*.

The important thing to note is that you don't have to start from scratch. Using these standards, and the risk assessment, are a great starting point.

It's important to note, that given the Coronavirus context, physical safety has been a source of much uncertainty and anxiety this year so carrying out regular risk assessments more often may be important too.





Make a plan

Once you have gone through the process of identifying the risks, and recording your findings, make a plan of what you are going to do to mitigate the risks identified.

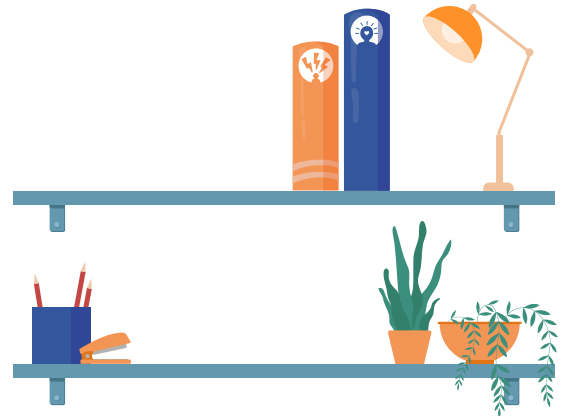
This may form part of your wider *Staff Mental Health and Wellbeing Plan*, which we recommend every school should have.

Clearly outline the risks, and the actions you are going to take.

This sets out your intention to fulfil your duty of care and it creates transparency when communicating to your staff. Staff value transparency, which is an important aspect of creating psychologically safe work environments.

Identify any risks you cannot mitigate.

There will be things that are outside of your control. Where possible, outline what these are and the reasons they are outside of your control. Using the circle of *control and influence* might be helpful for this when communicating these risks to staff.



Protect staff from discrimination

Discrimination comes in many forms. For staff living with mental health problems, they can be at higher risk of experiencing discrimination especially within the workplace.

The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. This includes people living with a mental health issue.

A mental health issue can be considered a disability under the law if all of the following apply:

- It has a 'substantial adverse effect' on the life of an employee (for example, they regularly cannot focus on a task, or it takes them longer to do).
- It lasts at least 12 months, or is expected to.
- It affects an employee's ability to do their normal day-to-day activities (for example, interacting with people, following instructions or keeping to set working times).

A mental health issue can be considered a disability even if there are not symptoms all the time, or the symptoms are better at some times than at others.

Employees are still protected from discrimination if they had a disability in the past. That means that if their past mental health problem had a substantial, long-term and adverse effect.

School leaders have a responsibility to understand the act and to ensure that employees who are protected by this act, are not discriminated against.





Making reasonable adjustments

Employers have a responsibility to make reasonable adjustments if an employee is protected by the Equality Act 2010. By law an employer must consider making reasonable adjustments when:

- They know, or could be expected to know, an employee or job applicant has a disability
- An employee or job applicant with a disability asks for adjustments
- An employee with a disability is having difficulty with any part of their job
- An employee's absence record, sickness record or delay in returning to work is because of or linked to their disability

The employer must make the changes if they're reasonable.

Every staff member is different and what is the right adjustment for one person, may not be the same for somebody else. It's a good idea to work with any staff members to make the right adjustments for them. When it comes to making adjustment for

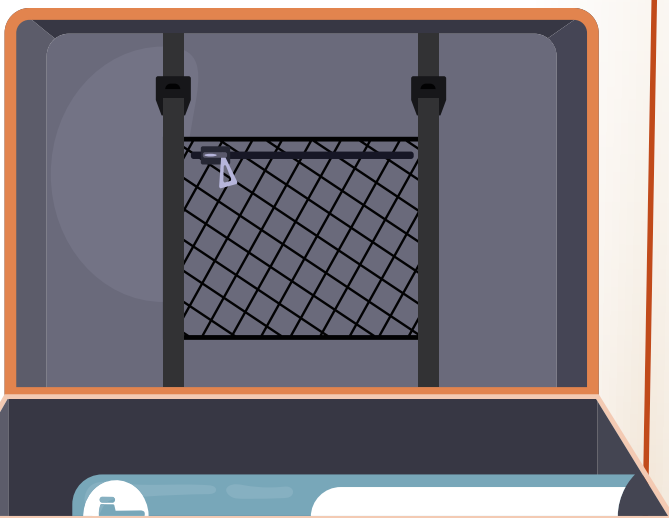
somebody who is might be living with a mental health issue, you can follow these three steps:

- Have a conversation about reasonable adjustments early on, so that the staff member feels encouraged to be open about anything they might need as part of their induction.
- Ask the staff member to complete a *Wellness Action Plan*, as a way to encourage them to identify and share any reasonable adjustments they may need. This should also help encourage any discussions about support for their mental health and wellbeing that they might need.
- Put in a regular review of any reasonable adjustments so that the conversation remains live and the staff member feels able to request changes where needed.

Some examples of adjustments staff typically ask for are:

- Changes to their working area
- Changes to their working hours – flexible working, part-time working
- Spending time working from home
- Being allowed to take time off work for treatment, assessment or rehabilitation. This might include therapy or counselling.
- Temporarily re-allocating tasks they might find stressful and difficult
- A phased return to work for an employee who's been on long-term sick leave because of their mental health issue.

In a school setting, some of these may be more difficult. For example, it's very difficult to change the working area of a teacher who needs to be in a classroom. As school leaders it's worth putting in some time to consider the types of reasonable adjustments you could put in place should somebody need them.



DUTY
OF
CARE



Understand the law

In addition to the Equality Act 2010, employers have an obligation to comply with health and safety law.

The Health and Safety at Work Act 1974 sets out the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all employees.

Although there is no specific mention of mental health within the act it does set out the role of employers in ensuring that places of work are maintained in a condition that is safe and without risks to health.

The Health and Safety Executive have a host of *information* on their website to help employers comply with the Health and Safety at Work Act 1974.



You wouldn't ignore a trip hazard





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