

● Medico-legal advice

The good Samaritan and civil liability - Part II



In the second part of her article on good Samaritan and civil liability, **Madeleine Delaney**, Beauchamps Solicitors, examines the standard of care where someone intervenes

In the first article (*IMT*, 2 April www.imt.ie/opinion/2010/03/the-good-samaritan-and-civil-liability.html), it was established that there is no legal duty on citizens to go to the aid of another and that there is no proposal to impose such a duty.

However, it was also evident that there are circumstances in which a duty to act will arise or is voluntarily assumed. This article examines the standard of care that is required of individuals who do so act or intervene.

Duty of care and standard of care are concepts central to the law of negligence and will be familiar to medical practitioners and, in particular, the duty of care and standard of care that are required of them in the doctor-patient relationship.

The general proposition is that a person is required to take reasonable care to avoid acts or omissions that would be likely to harm any person that they ought reasonably to foresee as being harmed by their action or inaction.

Duty of care

In order to establish a duty of care, it must be shown that there is a relationship of sufficient proximity between an individual and the injured person and that the damage or injury caused was reasonably foreseeable, and that it is just and equitable to impose a duty of care.

The latter is a public policy consideration, whereby the court takes into account various social goals such as that of encouraging individuals to go to the aid of another in appropriate circumstances. In the context of intervention by a good Samaritan, this last criterion is likely to be important.

The Law Reform Commission (LRC) in its 2009 consultation paper on 'Civil liability of good Samaritans and volunteers' believes that where a good Samaritan intervenes to provide physical assistance to a stranger, then a relationship of sufficient proximity is created.

Accordingly, good Samaritans may come under a duty to act with reasonable care where a good Samaritan voluntarily



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intervenes to assist a stranger and the stranger relies on this intervention and the good Samaritan is aware of this reliance.

The Commission notes that where the good Samaritan advertises that he is especially skilled (by announcing they are a doctor, for example), then the likelihood of reliance will be greater.

As to the question of foreseeability, much will depend on the type of intervention undertaken by the good Samaritan and the level of skill he possesses. For example, further injury result-

ing from an invasive procedure undertaken by someone without the requisite skill would be reasonably foreseeable.

On balance, the LRC considers that the general principles of negligence point towards the imposition of a duty of care in certain circumstances and, in particular, where the good Samaritan has medical skills.

The LRC believes that the likelihood of the good Samaritan being held liable for a breach of duty is remote given public policy considerations and the high social utility of the intervention.

Standard of care

Standard of care refers to the requirement to exercise such care as would be exercised by the so-called reasonable person in similar circumstances. The factors by which a court assesses the requisite standard in a particular case include the likelihood of the harm occurring as a result of the act or omission (similar to foreseeability); the gravity of the threatened injury; the cost of eliminating the risk; and the social utility of the conduct.

Similar to the above, the courts are likely to take a more circumspect view of conduct with a perceived high social utility. However the standard of care required will also depend on the persons' level of skill.

The LRC is aware that the good Samaritan will not always be aware of the circumstances giving rise to the predicament that the stranger finds himself in or be aware of his precise condition.

This means that the assessment made by the good Samaritan as to the nature of the intervention required might not meet with the required standard under normal circumstances. Accordingly, the standard of care imposed must take account of this.

There is also a need to balance the risk of intervention which may cause harm, against

the risk posed by the independently created emergency situation which may result in death in the absence of an intervention.

In short, the LRC notes that saving a life may justify taking risks that would not be ordinarily permissible.

Legislative proposals

The LRC is of the view that the requirement that the good Samaritan act 'in good faith' does not need to be explicitly provided for in legislation, as it is already encompassed in the concept of standard of care. It does, however, recommend that the proposed legislation include the requirement that individuals act 'voluntarily and without expectation of payment or other reward'.

The LRC also recommends that a threshold and test for 'gross negligence' be set out in the proposed legislation in respect of activities undertaken by individual good Samaritans to protect them from claims where the ordinary principles of negligence apply.

The full report is available at: www.lawreform.ie/fileupload/Reports/Report%20Good%20Samaritan.pdf.

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