

● Medico-legal advice

The good Samaritan and civil liability



Madeleine Delaney, Beauchamps Solicitors, looks at the legal situation in Ireland regarding the protection of members of the public who go to the aid of another person

There is no 'good Samaritan' law in Ireland (a common law jurisdiction) to protect members of the public who go to the aid of another person. Similarly, there is no general legal obligation for a person to go to the aid of another. This is in contrast to the situation that prevails in many civil law jurisdictions, which encompasses most EU member states.

These issues have been examined recently by the Law Reform Commission (LRC) in its 2009 consultation paper on 'Civil liability of good Samaritans and volunteers'. The first part of this two-part article looks at the issue of when a person has a duty to go to the aid of another person. The second part will examine what standard of care is imposed on a person when they do intervene to assist another.

When is there a duty to intervene?

There are specific circumstances in which a duty to in-



Ireland has no laws to protect 'good Samaritans'

tervene and rescue have been imposed by the courts. This duty to intervene also arises in certain legislation, such as in the case of a parent and child; the occupier of land and a visitor; a transport carrier and passenger; and a hotel proprietor and guest.

Where a 'special relationship' exists, such as between an employer and an employee, or a physician and a patient, a

duty to act is likely to be implied by the courts in common law jurisdictions such as Ireland, the UK, Australia and the United States.

In other words, where there is a relationship of dependency, the 'dominant' party may have assumed a duty of care in respect of the dependant party and a failure to act, and to a sufficient standard, might attract liability.

Duty to treat?

Similarly, in Ireland, no duty to provide medical care is imposed on emergency services or healthcare professionals, unless the person seeking medical attention is already a patient of the practitioner in question.

However, in the 1996 Australian case of *Lowns v Woods*, a doctor was held to be negligent for refusing to treat a boy who was having an epileptic fit, even though there was no pre-existing doctor patient relationship.

The court found that the doctor was nearby, had the competence and ability to treat the child and had no other commitments at the time. This proximity justified the imposition of a duty on the doctor, which was breached by him.

This case has not, however, translated into a change in approach in common law jurisdictions where the principle (that mere physical proximity between a doctor and a sick person, of itself, does not create a duty to treat) remains intact.

There can be degrees of variation in the approach however. For example, in the 1969 English case of *Barnett v Chelsea and Kensington Hospital Management Committee*, it was held that a doctor/patient relationship was effectively created when a person who was ill, presented himself at an open accident and emergency unit.

In other common law jurisdictions, liability has been imposed in certain situations where responsibility is voluntarily assumed by professional rescuers.

In the 2001 case of *Kent v Griffiths*, the English Court of Appeal equated the ambulance services with hospitals and other health service providers who do owe duties of care to patients.

It was held that a relationship of sufficient proximity was established as soon as the GP had phoned the emergency services and notified them of the emergency status of the call.

The ambulance service was held liable for damages that would not have occurred but for their delayed response, which was deemed unreasonable and negligent. This approach is considered equitable on public policy grounds in so far as it is reasonable for society to insist that certain statutory func-

tions are discharged properly, with damages payable where appropriate.

LRC recommendations

The LRC has recommended that there be no change in the law to impose a duty to intervene and rescue on citizens. It considers that persons who do intervene tend to do so on moral grounds and that to impose a legal duty might make such persons reluctant to act and thereby have the opposite effect.

It recommends, however, that the legal duty of care, if any, of good Samaritans, voluntary rescuers and voluntary service providers should be set out in legislation in order to avoid further confusion in this area.

The legislation should accommodate: the range of individuals that may constitute good Samaritans and volunteers; the various types of intervention that might be made; and the different situations in which those interventions might take place.

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

● **Madeleine Delaney**, Associate, Beauchamps Solicitors. Email: m.delaney@beauchamps.ie