

Legal overview for RCRP

About the legal basis for this toolkit and the duty of police to respond in the context of Right Care Right Person (RCRP).

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The guidance in the Right Care Right Person (RCRP) toolkit is based on legal advice that supports the delivery of services between health, social care and the police. A summary of this legal advice is as follows.

Force policies should use the guidance in this toolkit to help decide the appropriateness of a police response to non-crime related incidents.

Legal advice summary

Common law duty of care

The police do not generally owe a duty of care under common law to protect individuals from harm – either harm caused by themselves or others. Where the police do not act, it is unlikely that they will be held to have breached a duty of care. The police may owe a duty of care to protect persons from harm where they have either:

- assumed responsibility to care for them
- created (directly or indirectly) the risk of harm

Human Rights Act 1998 duty of care

Police can owe duties under the Human Rights Act 1998 to protect individuals from harm caused by others or harm caused by the person themselves. The police owe responsibility to take all reasonable measures to assist where there is either:

- a real and immediate risk to the life of a person (European Convention on Human Rights (ECHR) Article 2)

- a real and immediate risk of that person being subject to serious harm or other inhumane treatment (ECHR Article 3)

The risks of harm where a duty can arise generally comes from the criminal acts of a third party – but not always. A duty to act would only arise if a threat included all of the following.

- For a duty to arise under Article 2 the threat must be of death. A threat of injury, even serious, is not enough to create a risk of death.
- Threats or risks that do not qualify under Article 2 may still qualify under Article 3. A duty may arise under Article 3 where there is a threat of serious injury, inhumane or degrading treatment. For example, a serious sexual assault would qualify as conduct breaching Article 3, even if no injury resulted from the attack.
- For both Articles 2 and 3, the threat or risk must be real and immediate. That means the threat must be present and continuing. Threats are not defined as real and immediate if they are conditional on other events happening or are said to occur at some point in the non-immediate future.
- The threat has to be against a specific and identifiable person or group of persons. Generalised threats do not give rise to a duty.

The Children Act 1989

The **Children Act 1989** outlines the statutory obligations on local authorities to investigate where there is reasonable cause to suspect that a child has suffered, or is likely to suffer, significant harm (as defined in **section 31 of the Children Act 1989**). An incident which reaches the threshold of harm within the meaning of section 31, but where there is not a real and immediate risk under Article 2 or 3 of the ECHR, will not necessarily give rise to an immediate police response.

Tags

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