

CACHE Level 2

Certificate in Understanding Dignity and Safeguarding in Adult Health and Social Care

INFORMATION AND SUPPORT

DILEMMAS

PERSON-CENTRED

SAFEGUARDING

DUTY OF CARE

PROMOTING DIGNITY

Workbook 1

Section 1: Understand duty of care in adult health and social care

In this section you will find out about the duty of care that applies within adult health and social care. You will look at the conflicts and dilemmas you may face between duty of care and individuals' rights and consider what is unsafe practice. Finally, you will look at the impact of your own actions on individuals and others.

What is duty of care?

Please read the following as it will help you to answer questions 1 and 2.

The concept of 'duty of care' has a very interesting and somewhat surprising origin known as the Paisley snail. In 1932, a court in the UK considered a case which involved snails that had found their way into a glass of ginger beer. The woman who drank the ginger beer suffered from nervous shock as a result of seeing the snails in the bottom of her glass. The woman took action against the manufacturer who had produced the drink. She was able to establish that the manufacturer owed her a duty of care and that he had breached that duty of care by allowing the snails to get into the ginger beer. After a lot of deliberation, the court upheld the woman's claim and the principle of 'duty of care' was established.

Since that day the courts have been full of people claiming that they are owed a duty of care by someone – that the other person had been negligent in observing that duty of care and had, as a result, breached it.

In health and social care, a duty of care means that health and social care workers must always act in the best interests of the individuals they support.

Duty of care is defined as a legal and moral obligation to:

- always act in the best interest of individuals and others
- not act or fail to act in a way that results in harm
- act only within your competence and not take on anything which you have not been trained to do

It is about providing care and support for individuals in line with the law as well as policies, procedures and agreed ways of working. It is about caring for individuals in a way that protects them from abuse or harm.

All health or social care workers owe a duty of care to the individuals they support, their colleagues, their employer, themselves and the public interest. It is not something that health or social care workers can opt out of.

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The duty of care affects your practice when working in a care role. As a health or social care worker you must ensure that you do not do anything, or omit to do anything, that could result in harm to someone. For example, you have a duty of care to act only within your own sphere of competence and you must not undertake tasks for which you have not been trained.

The duty of care underpins everything that health or social care workers do. Exercising duty of care is a legal requirement, and can be tested in court should negligence or malpractice occur.

Thinking about duty of care is helpful when planning care and work tasks. It helps health and social care workers to consider whether what they are planning to do is in the best interests of the individuals they are supporting.

Knowledge Activity 1: Think about duty of care and what it means to the role of a health or social care worker. Make a note of your thoughts below.



Did you know?



As well as the duty of care, health and social care services also have a duty of candour. This means being open and honest with individuals using the care service even when things go wrong.

See Regulation 20: Duty of Candour on the CQC website at www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-20-duty-candour

Ella's story

I've been working as an adult care worker for about a year now. Whenever I'm carrying out a care activity with an individual, I think about whether it's something I've been trained to do, whether it's what the individual needs and wants, and whether I'm able to carry out the task properly. My supervisor says this is a good way to make sure that I'm meeting my duty of care to individuals.

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Dilemmas that may arise between the duty of care and an individual's rights

Please read the following as it will help you to answer question 3.

Exercising a duty of care is not about preventing individuals from taking risks for fear that they might harm themselves. Although you have a duty of care for the individuals you support, they also have a right to make their own informed choices based on information they are given, and make decisions about actions they want to take and the way they would like to live their lives. There may be times when you find yourself in a position where a conflict arises between the individual's rights and your duty of care. Sometimes, having a duty to act in an individual's best interests and protecting them from harm can be very difficult to balance with enabling individuals to take control of their own lives. This can lead to dilemmas or conflicts.

The majority of individuals requiring the support of health or social care services will be in a position to make their own decisions about what they do in their lives. In order to exercise your duty of care, you must ensure that any decisions and choices that individuals make are based on understanding the consequences and potential risks of what they want to do. It is therefore important to ensure you give information about risks and consequences in a way that they can understand. There is no point in giving individuals information they need in order to be able to make decisions, if it is not in a format that is understandable to them. Once you are sure that the information you have given about the possible consequences of actions has been understood, individuals can make their own decisions.

Knowledge Activity 2: What types of dilemmas do you think might arise between duty of care and the rights of individuals?



Note that individuals can only make informed choices where they have the capacity to do so. This means where they are able to consider the information for themselves and understand any risks. We will look at capacity later in this section.

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Some examples of dilemmas are:

- an individual may refuse medication even though it is in their best interests to take it
- an individual may refuse to take part in a care planning meeting about their care
- an individual may want to go out alone when they have mobility problems that will make it difficult for them

Individuals have the right to choose even where their choice may not be in their best interests.

Potential conflicts between duty of care to an individual and the demands of an employer

Please read the following as it will help you to answer question 4.

Having a duty of care means that we must always aim to provide high-quality care to the best of our ability and to speak out if there are any reasons why we may be unable to do so.

When health and social workers have a duty of care they must do what a reasonable person, with their training and background, would be expected to do. So, for example, a chef must store and prepare food in such a way that the people eating it do not get food poisoning. In the same way, a health or social care worker is expected to be trustworthy, in accordance with their code of practice, and apply the skills they have been trained in when carrying out care services.

Care workers must always take reasonable care. This means they must:

- ensure their knowledge and skills are up to date
- provide a good quality service, based on the skills, responsibilities and range of activities within their particular area of work or profession
- be in a position to know what must be done to ensure that the service is provided safely
- keep accurate and up-to-date records of the care and support that is required, including any assessments of capacity (ability to make decisions) and the rationale for any decisions that are taken on an individual's behalf
- not delegate work, or accept delegated work, unless it is clear that the person to whom the work is delegated is competent to carry out the work

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Employers also have responsibilities to create a culture that promotes a duty of care and encourages personal responsibility. Employers can do this by ensuring employees are given:

- clear guidelines and expectations of performance
- good training
- mechanisms that enable them to highlight and correct poor care
- encouragement, praise and support when they highlight shortcomings

All of these things help to ensure that care workers are working safely and professionally. Conflicts can arise when these requirements are not maintained.

Some examples of situations where the expectations of an employer may conflict with the duty of care might include where the care worker is:

- expected to undertake an excessive or unsafe workload, for example being expected to provide care without appropriate levels of staff
- asked to take on tasks without the proper training or to delegate tasks to someone else who is not properly trained
- told to follow potentially unsafe instructions, for example, being asked to undertake a task with inadequate or faulty equipment
- expected to work in an environment which is unsafe for staff or individuals receiving care, for example poor hygiene which could put people at risk of infections
- harassed at work by other staff, managers or members of the public or suffering from bullying or stress
- working in an environment where fear prevents concerns from being raised
- asked to collude in inappropriate allocation or reduction of resources not in the best interests of individuals using the service

The role of the health or social care worker can be very demanding. These workers often have high levels of responsibility and can sometimes feel isolated and unsupported. It may be difficult for them to see excellent standards of care in action and to get the right development opportunities. They may not be very well supervised, are often poorly paid and have little or no access to training or support. It is important that health and social care workers have a rewarding environment in which good performance is recognised.

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Where to get additional support and advice about dilemmas

Please read the following as it will help you to answer question 5.

If you are unsure about how to respond to a dilemma in relation to your duty of care and an individual's rights, your first port of call should be your manager or supervisor, who should be able to advise on the best approach to take. You could also discuss the issue with experienced colleagues and check the procedures and working practices set out by your organisation.

If the dilemma involves your employer asking you to do something that conflicts with your duty of care, you should point this out to your supervisor or manager. If they are unable to help, you may take your concerns to someone higher in the organisation such as a senior manager or director.

However, if you feel you are not supported by your manager or supervisor you may need to escalate your concerns. Under the Public Interest Disclosure Act 1998 workers have a right to 'blow the whistle' if management instructions are conflicting with their duty to act in the public interest. Examples might include when an individual believes that people are being put at risk because of conflicts of interests such as when workplace practices or equipment are unsafe. Every employer should have a whistleblowing policy and procedure in place to facilitate a disclosure of this kind of information. Employees can contact the Care Quality Commission (CQC) if they have concerns about the health or social care service they work for. You can whistleblow to the CQC by telephone on 03000 616161 or by email at enquiries@cqc.org.uk.

You can get free, independent and confidential advice from the Whistleblowing Helpline for NHS and Social Care on 08000 724725 or you can email them at enquiries@wbhelpline.org.uk. You can also call the independent whistleblowing charity Public Concern at Work for free and confidential advice on 020 7404 6609, or you can email them at whistle@pcaw.org.uk.

Knowledge Activity 3: Write down the sources of support that might be available to you if you were faced with a dilemma relating to your duty of care to individuals.



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