

The Duty of Care

1. One of the key messages of Dame Fiona Caldicott's 2013 Information Governance Review¹, was that 'the duty to share information can be as important as the duty to protect patient confidentiality'. A number of questions have been asked regarding the derivation of this new 7th principle added to the existing Caldicott principles. The common law duty of care includes both the duty of confidentiality and the duty to share information where appropriate for safe, optimal care. The duty to share has also been reinforced recently by a new statutory obligation placed upon the providers and commissioners of care by the Health and Social Care (Safety and Quality) Act 2015².

The Duty of Care in the context of broader Information Governance

2. The duty of care requires staff to keep accurate and contemporaneous records of their work and share information appropriately with those involved in an individual's care. Health and social care organisations must provide as comprehensive a service as they can and must provide staff with an environment in which they can provide care safely. There is therefore a need for organisations and their staff to ensure that they have identified all partner organisations that might contribute to care and put in place the necessary information sharing agreements, policies, procedures, fair processing and communications arrangements and technical measures to enable staff to share information securely and appropriately.
3. Information is shared because there is a duty of care and the default position should be that information is shared when it is likely to contribute to improved care and outcomes for an individual and where the individual is aware of the sharing and hasn't objected. Policies, procedures and systems should be designed around this principle. However, an important element of the duty of care is to protect confidentiality and to respect the preferences of patients and service users about information sharing decisions. These two requirements are by no means incompatible but must shape how services are designed and managed.

What is the Duty of Care³

4. 'Duty of care' is a phrase used to describe the obligations implicit in the roles of every health and social care worker. Health or social care workers owe a duty of care to patients/service users, colleagues, employers and themselves. Everyone has a duty of care - it is not something that you can opt out of.
5. The duty of care applies to all staff of all occupations and levels. It applies to those working part time or full time, those in agency or temporary roles as well as students and volunteers. It applies to everyone, from nurses to porters, cleaners to receptionists, paramedics to therapists and technicians to social workers.

¹ www.gov.uk/government/publications/the-information-governance-review

² The IGA is preparing separate guidance on the provisions of the Health and Social Care (Quality and Safety) Act 2015

³ UNISON has published an invaluable 'Duty of Care' Handbook available at:
http://www.unison.org.uk/acrobat/19786_Duty%20of%20care%20rev4.pdf

6. The duty of care to a patient or service user exists from the moment they are accepted for treatment or a task is accepted and they begin to receive services. This may be, for example, on admission to a ward, acceptance onto a caseload or once registered at an accident and emergency department. You have a duty of care to all patients or service users even if you are not directly responsible for their care. The duty requires that all that is reasonable must be done to secure the best outcome possible.
7. All health and social care organisations, whether they are public, private or voluntary organisations, also have a duty of care. Their duty of care is to provide a comprehensive service and to demonstrate that, within the available resources, the appropriate priorities are chosen. They must also ensure that those people who are providing care are able to do so safely.
8. Just because an employee or employer cannot do everything that they believe needs to be done, does not mean they have breached their duty of care. There are not limitless resources available, therefore the obligation of an employee and employer is to ensure that what is actually done is done safely and skilfully and in an appropriate and timely manner. They should also make it clear what cannot be done, e.g. when a service user requests a service that cannot be provided, the reasons why need to be explained.
9. Sometimes care workers may feel that there is a conflict between their duty of care and the wishes of the person using the service. Normally the preferences of the individual must be respected if they have the capacity to make a decision and where they do not staff should act in their best interests. However, best interest decisions can only be made for individuals who cannot, even with support, decide matters for themselves at the time a particular decision needs to be taken. So before starting to think about best interests, there is a need to be reasonably sure that the person concerned doesn't have the capacity to make the decision themselves.
10. The duty of care means that staff must aim to provide high quality care to the best of their ability and say if there are any reasons why they may be unable to do so. Staff must adhere to a standard of reasonable care and are expected to:
 - keep their knowledge and skills up to date
 - provide a service of no less a quality than that to be expected based on the skills, responsibilities, and range of activities within their particular trade or profession
 - be in a position to know what must be done to ensure that the service is provided safely
 - keep accurate and contemporaneous records of their work and share information with those involved in an individual's care
 - 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 concerned in a safe and appropriately skilled manner
 - protect confidential information⁴; and
 - share information when appropriate to do so (e.g. when consent has been obtained).

⁴ Guidance on confidentiality can be found at <https://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice>