

## Duty of Care and Dignity of Risk

### Policy Statement

The Service recognises that through the operation of services, the organisation has a duty of care to Team Members and Service Users. The organisation will respect the Service Users Dignity of Risk as long as it does not adversely impact upon the organisations duty of care obligations. The organisation will ensure they fulfil their duty of care to Service Users, volunteers and Team Members in all aspects of the Services operation by ensuring that appropriate working standards and care standards are met.

### Definitions

**Dignity Of Risk:** Is the belief that each person that is aged, frail aged or with a disability is entitled to experience and learn from life situations even if these, on occasion, may be a threat to their well being. Each person experiencing a risk, of which they have been informed, is to receive support in the situation.

**Duty of Care:** Is the obligation to take reasonable care to avoid injury to a person whom it can be reasonably foreseen might be injured by an act, or omission.

**Negligence:** The failure of a responsible person to provide the necessities of life (or the refusal to let others provide these) to an older person or person with a disability.

**Could Reasonably Be Foreseen:** Refers to acts and omissions which a reasonable person in that situation should predict could lead to harm. So you must attempt to predict the consequences of your actions and inactions.

**Harm:** Can include physical harm (injury, disease) psychological harm and financial harm or 'loss. (Not loss of reputation).

**Someone:** Includes a Service User, a worker, a volunteer, a visitor, and to a limited extent, the general public.

### Policy Protocols

The Service recognises that every person owes a duty of care to every other person who is reasonably likely to be injured by the first person's actions or failure to act.

The appropriate standard of care is assessed on what action could reasonably be foreseen by a reasonable person in a particular situation.

Team Members will use their professional skills and experience to decide on what actions they should take in each situation of potential harm. Where possible, decisions should be discussed with the Manager.

Duty of Care will take precedence over the right of informed individuals to take calculated risks where that risk may pose a threat to the health and/or safety of the Service User and/or others.

Except in cases of known Service User diminished capacity, the Service recognizes that everyone has a right to an assumption of competence.

## **The Law**

Duty of Care is a matter of Law. For a civil damages claim against either the Team Members or a Service to succeed, the claimant has to prove negligence by showing that:

- Harm was actually caused;
- The alleged harm resulted from a breach of Duty of Care;
- The resultant harm was foreseeable; and
- Reasonable steps were not taken to avoid harm.

To establish negligence it must be shown that:

- duty of care existed;
- there has been a breach of duty, meaning the accident could have reasonably been foreseen, and the person failed to take reasonable steps to prevent the accident from occurring;
- harm has been suffered; and
- the harm was a result of the breach of duty of care.

Team Members should be clear about policies, procedures and instructions that assist in ensuring duty of care.

## **Related Procedures**

- Diversity
- Assessment
- Service Care Plans
- Reassessment & Care Plan Review
- Case Management

## **Relevant Standard**

### **Community Care Common Standards**

1. Effective Management
2. Appropriate Access & Service Delivery
3. Service Users Rights & Responsibilities

### **Disability Service Standards**

2. Individual Needs
3. Decision Making & Choice
5. Participation & Integration
6. Valued Status
9. Family Relationships
10. Rights & Freedom from Abuse