

Wot – no duty of care?

By Peter Bates

When an Advocate told me that their role meant they had no duty of care, I was shocked and had to go away somewhere quiet with my laptop to think. What on earth could she mean? Was she dodging her obligations under common law, or observing that advocacy does not have a seat at the Health and Care Professions Council? Was she resigning from the human family, becoming a machine with no feelings for other people? Of course, it can be frustrating to have influence without control, but could she have been hinting that her limited formal powers to do things meant she had no corresponding duty to carry out her work in a professional manner?

Of course, we know that care workers have a duty of care, as Victoria Johnson found out when she was imprisoned for 12 months for abusing a person with dementia. So too do employers, as St Anne's Community Services found out when they were fined £190,000 for wilful neglect of a resident in their care home. But advocates don't provide health or social care, so perhaps my provocative Advocate felt that she was beyond the reach of the law.

But, hold on a minute, that can't work either. Some advocacy services receive public funds, and so share some of the local authority's responsibilities under the Care Act 2014. What's more, some of the professional bodies impress on their members that they have a duty of care towards citizens, even when they are off duty. So, for example, Dr Abdul Ashish paused on his way to work to rescue Stefan Balogun from choking, and so met the expectation of his Royal College. Unlike advocates, doctors and social workers have restricted title and can be struck off for failing to do their duty, but our efforts to consolidate advocacy training and the Advocacy Quality Performance Mark may eventually bring forward this kind of regulation.

Some trade unions, of course, attempt to confine this expansive obligation and restrict it to people assigned to their member's caseload, but such grudging help is not really what the public expect. Indeed, even ordinary citizens are lauded for stepping in to help where others fear to tread, perhaps because the bystander effect makes it harder to act when there are others around who could take responsibility on our behalf. But then, most of the advocates I have met strike me as just the kind of people who would step in to challenge injustice, abuse or distress. Most would feel that they had a duty to care for the toddler running headlong into traffic.

Perhaps the word 'care' denotes patronising control and oppressive practice, as if a duty of care is a duty to do things to and for the person, rather than with them. In this sense, caring infantilises the recipient, harming them by enforcing unwanted help and creating dependency. Advocates certainly should not be caring in this way, but then nor should care workers or health professionals. And many don't. Instead, they provide useful technical information, well translated into the language of the hearer, that promotes the person's own choice and control. If that sort of negative, oppressive thing is what a 'duty of care' looks like, then nobody should have one.

So there seem to be many ways in which people interpret their duty of care. Most advocates I have met feel keenly their responsibility to know their limits, engage their best selves and work diligently on behalf of others. They take care how they discharge their duty as employees and responsible citizens.

I have moved freely from a discussion of the legal framework into a second argument, rooted in the views of the professional bodies and then on to a third which asks about popular views promoted by the media and cultural norms. The kaleidoscope turns a fourth time to highlight the colours of

ethical, moral and spiritual beliefs which illuminate the value and autonomy of the individual and their contribution to the wider community.

At the end of the day, our subtle interpretations of the advocates' duty of care might be less important than what advocacy partners and their friends think we mean, how referrers interpret our words and actions, even what the local newspaper or the Twittersphere make of our assertions. Whether it is a paramedic or a traffic warden, we all hope that people employed through public funds will fulfil their duties and, while they do it, treat us with a bit of humanity.

Most advocates will continue to let people know that they do their work carefully, that they care about the humanity and self-determination of the people they meet on duty and off it, and that they try their hardest to fulfil the obligations not just of law, regulation and contract, but also the call to view people with respect and dignity, deserving of their best. Might a shorthand for all this be that old phrase 'duty of care'?

I'd be fascinated to hear your views, either in response to this blog or to my longer exploration of this subject [here](#).