

## DUTY OF CANDOUR

### STATUTORY DUTY OF CANDOUR

Extract from the NHS Constitution for England 2009: “when mistakes happen to acknowledge them, apologise, explain what went wrong and put things right quickly and effectively.”

Extract from CQC Regulation 20: “The aim of this regulation is to ensure that health service bodies are open and transparent with the “relevant person” (as defined in the regulation) when certain incidents occur in relation to the care and treatment provided to people who use services in the carrying on of a regulated activity.”

The Duty of Candour was introduced in England as a direct result of the Francis Inquiry Report into The Mid Staffordshire NHS Foundation Trust, which recommended that a statutory “duty of candour” be imposed on all healthcare providers, which defined “Openness”, “Transparency” and “Candour”.

**Openness** – enabling concerns and complaints to be raised freely without fear and questions asked to be answered.

**Transparency** – allowing information about the truth about performance and outcomes to be shared with workers, service, the public and regulators.

**Candour** – any service user harmed by the provision of a healthcare service is informed of the fact and an appropriate remedy offered, regardless of whether a complaint has been made or a question asked about it.

The intention is that there is a culture of openness and truthfulness to improving the safety of service users, workers, and visitors, as well as raising the quality of healthcare systems. If patients or workers have suffered harm as a result of using healthcare services, they should be able to confidently investigate, assess and if necessary, apologise for and explain what has happened.

It is also intended to improve the levels of care, responsibility and communication between healthcare organisations and service users and/or their carers, workers, and visitors and makes sure that openness, honesty, and timeliness underpins responses to such incidents.

### BEING OPEN

A culture of “being open” should be fundamental in GPS’s relationships with (and between) service users, the public, workers, client providers and other healthcare organisations.

The Duty of Candour is the contractual requirement to ensure that the Being Open process is followed when an incident that affects patient safety results in moderate or severe harm, or death.

### **WHAT IS A PATIENT SAFETY INCIDENT?**

The National Patient Safety Agency defines a Patient Safety Incident as: “Any unintended or unexpected incident which could have or did lead to harm for one or more service users receiving NHS care”.

### **BEING OPEN AND DUTY OF CANDOUR**

GPS and client providers must:

- Acknowledge, apologise and explain when things go wrong.
- Carry out investigations into incidents affecting Patient Safety.
- Provide support for those involved in the incident (patients and workers) to cope with the physical and emotional impact.
- Reassuring service users, families and carers that lessons learned will prevent any patient safety incidents happening in future.

### **DEFINITION OF “LEVELS OF HARM”**

#### **No harm**

- Impact prevented – any incident that had the **potential** to cause harm but was prevented and resulted in no harm to workers or service users.
- Impact not prevented - any incident that has occurred but resulted in **no harm** to people receiving care.

#### **Low**

- An incident that required extra observation or minor treatment and caused **minimal harm**, to one or more person’s receiving care.

#### **Moderate**

- An incident that resulted in a moderate increase in treatment (e.g. increase in length of hospital stay by 4-15 days) and which caused **significant but not permanent harm**, to one or more persons receiving NHS-funded care.

#### **Severe**

- An incident that appears to have resulted in **permanent harm** to one or more persons receiving care.

#### **Death**

- An incident that directly resulted in the death of one or more person’s receiving care.

## A SINCERE APOLOGY

The Francis Report indicated the importance of affected parties receiving a sincere apology for the impact that any incident can have on the service users, their families, next of kin and their carers, especially in incidents that cause severe harm or the loss of life. A meaningful apology for the incident or the circumstances that have led to the incident is an important part of coping with the effect that it has caused and means that the organisation has taken these events (major or minor) seriously.

However, the Duty of Candour also states that an apology does not constitute an admission of liability. Service Users and relatives will request detailed explanations of what led to the incident(s) occurring (and their adverse outcomes), and an apology and acknowledgement of the impact it has on them helps to understand that there are lessons that the provider can learn to ensure this does not happen again in the future.

To meet the requirements of **CQC Regulation 20**, a provider must:

- Be open and transparent way with relevant persons in relation to care and treatment provided to people who use services in carrying on a regulated activity.
- Tell the relevant person (in person) as soon as reasonably practicable after becoming aware that a safety incident has occurred and provide support to them in relation to the incident, including when giving the notification.
- Provide an account of the incident which, to the best of the organisations knowledge, is true of all the facts the organisation knows about the incident as at the date of the notification.
- Advise the relevant person what further enquiries the organisation believes are appropriate.
- Give a timescale for the enquiries to be made and reported.
- Offer an apology.
- Follow up by providing the same information in writing, and any update on the investigations.
- Keep a written record of all communication with the relevant person.

### CQC Key Lines of Enquiry relevant to Being Open and Duty of Candour

KEY QUESTION	KLOE	PROMPT
Is it Safe?	S2	Are people who use services told when they are affected by something that goes wrong, given an apology and informed of any actions taken as a result?
Is it Well Led?	W3	Does the culture encourage candour, openness, and honesty, with regular meetings and a culture of challenge and debate?

CQC Inspections will report on “Duty of Candour” under the Key Question of Safety – if the care provided does not reflect the required characteristics of “Good” (as defined in the CQC Provider Handbook), then inspections are recommended to assess whether the service “Requires Improvement” or “Inadequate”, and whether there has been a breach of the regulation.

As this is an issue that affects patient safety, any information received from a member of the public or workers relating to Duty of Candour will be investigated in line with the CQC’s Safeguarding and Whistleblowing protocols where relevant.

## RECOGNISING AN INCIDENT

The relevance of the Duty of Candour begins with an acknowledgement that as the result of a safety incident, a service user has suffered moderate or major harm, or has died.

As soon as an incident has occurred or been identified:

- Clinical care must be administered to prevent further harm.
- If any additional treatment is necessary, it should happen as soon as reasonably practicable after discussing with the service user (or carer if the service user is unable to participate in discussion) and with the appropriate consent.

Moderate / severe incidents, or any incidents that result in the death of a service user, must be reported to the service user or next of kin (with the appropriate consent) within a maximum of 10 working days from the incident being reported.

The initial notification of the incident must be verbal (face to face where possible) unless the service user/carer/family cannot be contacted or decline notification.

An explanation and a sincere expression of apology must be provided verbally and recorded. At the time of the incident, an initial apology and explanation must be given.

The service user/Carer must be offered a written notification of the incident along with a sincere apology.

A step -by-step explanation of the incident must be offered as soon as it is practicably possible, even if this is an initial view pending investigation of the incident.

The organisation must maintain full written documentation of any letters, discussions, and meetings during this investigation, including the response from any of the patients/carers. If any meetings or interviews are offered and declined, then there must be a record of this.

Once the investigation has been completed and a final report has been made, the results should be shared with service user/relatives/carers within 10 working days.

### Summary of CQC Regulation 20: Duty of Candour

When a notifiable safety incident has occurred, the relevant person must be informed as soon as reasonably practicable after the incident has been identified, **up to a maximum of 10 working days (as per the NHS Standard Contract)**.

All workers must have responsibility to adhere to that organisation's policies and procedures around duty of candour, regardless of their level of seniority or whether they are permanent, temporary/casual members of staff.

The 'Being Open Framework' provides guidance on how to ensure good communication with the service user, their families, and carers.

**Regulation 20** defines what constitutes a notifiable safety incident. It includes incidents that could result in, or appear to have resulted in, the death of the person using the service or severe harm, moderate harm, or prolonged psychological harm.

Where the degree of harm is not yet clear, the relevant person must be informed of the notifiable safety incident in line with the requirements of the regulation.

The organisation is not required by the regulation to inform a person using the service when a 'near miss' has occurred, and the incident has resulted in no harm to that person.

There must be appropriate arrangements in place to notify the person using the service who is affected by an incident if they are:

- **16 years and over** and
- **lack capacity to make a decision regarding their care or treatment** (as determined in accordance with sections 2 and 3 of the 2005 Mental Capacity Act)

This includes ensuring that a person acting lawfully on their behalf (e.g. persons acting as Carer) is notified as the relevant person.

A person acting lawfully on behalf of the person (e.g. persons acting as Carer) using the service must be notified as the relevant person where the person using the service is under 16 and not competent to make a decision regarding their care or treatment.

A person acting lawfully on behalf of the person (e.g. persons acting as Carer) using the service must be notified as the relevant person, upon the death of the person using the service.

Other than the situations outlined above, information should only be disclosed to family members or carers where the person using the service has given their express or implied consent.

A step-by-step account of all relevant facts known about the incident at the time must be given, in person, by one or more appropriate representatives of the organisation. This should include as much or as little information as the relevant person wants to know, be jargon free and explain any complicated terms.

The account of the facts must be given in a manner that the relevant person can understand. For example, the organisation should consider whether interpreters, advocates, communication aids etc. should be used, while being conscious of any potential breaches of confidentiality in doing so.

The organisation must also explain to the relevant person what further enquiries they will make and when a follow-up report will be made.

The organisation must ensure that a meaningful apology is given, in person, by one or more appropriate representatives of the organisation to relevant persons. An apology is defined in the regulation as an expression of sorrow or regret.

In making a decision about who is most appropriate to provide the notification and/or apology, the organisation should consider seniority, relationship to the person using the service, and experience and expertise in the type of notifiable incident that has occurred. The Being Open Framework referenced below provides guidance on this.

The organisation must give the relevant person all reasonable support necessary to help overcome the physical, psychological and emotional impact of the incident.

This could include all or some of the following:

- Treating them with respect, consideration, and empathy.
- Offering the option of direct emotional support during the notifications, for example from a family member, a friend, a care professional, or a trained advocate.

- Offering access to assistance with understanding what is being said e.g. via interpretative services, non-verbal communication aids, written information, Braille etc.
- Providing access to any necessary treatment and care to recover from or minimise the harm caused where appropriate.
- Providing the relevant person with details of specialist independent sources of practical advice and support or emotional support/counselling.
- Providing the relevant person with information about available impartial advocacy and support services, their local **Healthwatch** and other relevant support groups, for example **Cruse Bereavement Care and Action against Medical Accidents (AvMA)**, to help them deal with the outcome of the incident.
- Arranging for care and treatment to be delivered by another professional, team or provider if this is possible, should the relevant person wish.
- Providing support to access its complaints procedure.
- The Being Open Framework referenced below provides guidance on how to support service users, their families, and carers when a patient safety incident has occurred.

The organisation must ensure that written notification is given to the relevant person following the notification that was given in person, even though enquiries may not yet be complete.

The written notification must contain all the information that was provided in person including an apology, as well as the results of any enquiries that have been made since the notification in person.

The outcomes or results of any further enquiries and investigations must also be provided in writing to the relevant person through further written notifications, should they wish to receive them.

The organisation must make every reasonable attempt to contact the relevant person through all available communication means. All attempts to contact the relevant person must be documented.

If the relevant person does not wish to communicate with the organisation, their wishes must be respected and a record of this must be kept. If the relevant person has died and there is nobody who can lawfully act on their behalf, a record of this should be kept.

Following a duty of candour incident it is advisable that it is then discussed at both clinical and non-clinical staff meetings so that lessons can be shared and learnt.

## APPENDIX 1: ACTIONS AND TIMESCALES FOR DUTY OF CANDOUR REQUIREMENTS

REQUIREMENT UNDER DUTY OF CANDOUR	TIMEFRAME
Service user or their family/carer informed that incident has occurred (moderate harm, severe harm, or death)	<b>Maximum 10 working days</b> from incident being reported
A verbal notification of incident (preferably face-to-face where possible) unless service user or their family/carer decline notification or cannot be contacted in person.  A sincere expression of apology must be provided verbally as part of this notification.	<b>Maximum 10 working days</b> from incident being reported
Offer of written notification made. This must include a written sincere apology.	<b>Maximum 10 working days</b> from incident being reported  A record of this offer and apology must be made (regardless if it has been accepted or not)
Step-by-step explanation of the facts (in plain English) must be offered.	As soon as practicable  This can be an initial view, pending investigation, and stated as such to the receiver of the explanation.
Maintain full written documentation of any meetings.	No timeframe  If meetings are offered but declined this must be recorded.
Any new information that has arisen (whether during or after investigation) must be offered.	As soon as practicable
Share any incident investigation report (including action plans) in the approved format (Plain English)	<b>Within 10 working days</b> of report being signed off as complete and closed
Copies of any information shared with the service user to the commissioner, upon request.	As necessary