

Adult
Social
Care
Services

Commissioning &
Improvement
People
Services



Duty of Candour Standard

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Policy should be read alongside:	<i>Department of Health, Section 20, Health and Social Care Act 2008 (Regulated Activities) Regulations 2014</i> <i>Care Quality Commission (CQC), Regulation 20</i> <i>Borough of Poole, "Whistle-Blowing" policy</i> <i>Borough of Poole, Staff code of conduct</i>	
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Contents

Principle and Legal Framework	4
Scope of 'Duty of Candour'	4
Applying 'Duty of Candour'	4
Creating an 'Open Framework'	5
References and related information	6
Summary of the regulation.....	6
Contact Information.....	7

Principle and Legal Framework

A statutory duty of candour applies to NHS Bodies (Trusts, Foundation Trusts, Special Health Authorities) from November 2014 and is contained within **Section 20 of the Health & Social Care Act 2008 (Regulated Activities) Regulations 2014**.

The Care Quality Commission (CQC) have enshrined this within Regulation 20 and this in turn is in line with Standard Condition 35 of NHS Contract Conditions.

Following a government review by the Department of Health and a consultation by CQC the 'Duty of Candour' regulations have been introduced for all other providers of care registered with CQC from April 2015.

This new statutory duty is aimed at organisations providing care to individuals. It is part of a cultural shift aimed at ensuring that honesty and transparency are integral to each and every healthcare organisation. Individual practitioners will continue to have their own duty of candour under their professionalism bodies' codes of conduct.

However, the principle of 'Duty of Candour' that can be summarised as a duty to be open and honest when untoward events occur which in practice means being open and honest with people when things go wrong can and should be applied across the whole of adult social care.

Scope of 'Duty of Candour'

Although the regulations limit the legal requirement to adopt 'Duty of Candour' to all NHS Bodies and Social Care Regulated Activities it is apparent that the principles of 'Duty of Candour' should be adopted across the whole of adult social care.

Applying 'Duty of Candour'

'Duty of Candour' now applies to all providers of health and social care services who are registered with the CQC including private and publically funded care homes.

Under the new regulations Borough of Poole Adult Social Care are required on becoming aware of a notifiable incident to notify the individual involved and other 'relevant persons' (people acting lawfully on behalf of them) that the incident has occurred and:

- ▷ provide an account detailing all facts known at time of incident
- ▷ include an apology (defined as an expression of sorrow or regret)
- ▷ provide reasonable support to the individual
- ▷ record the account in writing and keep securely

Does an apology equate to an admission of liability?

An expression of regret or apology does not necessarily equal an admission of legal liability. It is important that any notification demonstrates compliance with the duty.

Creating an 'Open Framework'

Adult Social Care must act in an open and transparent way with relevant persons in relation to care and treatment provided to service users in carrying on a regulated activity.

The 'Being Open Framework' below provides guidance on the action that should be taken to create a culture that supports staff to act in an open and transparent way. To achieve this it is important that the organisation should:

- ▶ have a high level commitment to being open and transparent in relation to care and treatment.
- ▶ have a culture that encourages candour, openness and honesty at all levels, as an integral part of a culture of safety that supports organisational and personal learning.
- ▶ have policies and procedures in place to support a culture of openness and transparency, ensuring these are followed by all staff.
- ▶ take action to tackle bullying, harassment and undermining in relation to duty of candour, and must investigate any instances where a member of staff may have obstructed another in exercising their duty of candour.
- ▶ have a system in place to identify and deal with possible breaches of the professional duty of candour by staff who are professionally registered, including the obstruction of another in their professional duty of candour. This is likely to include an investigation and escalation process that may lead to referral to their professional regulator or other relevant body.
- ▶ make all reasonable efforts to ensure that staff operating at all levels within the organisation operate within a culture of openness and transparency, understand their individual responsibilities in relation to the duty of candour, and are supported to be open and honest with patients and apologise when things go wrong.
- ▶ ensure that staff receive appropriate training, and there should be arrangements in place to support staff who are involved in a notifiable safety incident.
- ▶ in cases where a relevant person informs the provider that something untoward has happened, the organisation should treat the allegation seriously, immediately consider whether this is a notifiable safety incident and take appropriate action.

References and related information

Department of Health, Section 20, Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

Care Quality Commission (CQC), Regulation 20

Borough of Poole, 'Whistle-Blowing' Policy and Procedure

Borough of Poole, Code of conduct for employees.

Summary of the regulation

The intention of 'Duty of Candour' is to ensure that organisations are open and transparent with people who use services, and other 'relevant persons' (people acting lawfully on behalf of them) in relation to care and treatment. This is specifically pertinent when things go wrong with care and treatment; the regulations ensure that organisations provide people with reasonable support, truthful information and an apology when things go wrong.

Definitions

Open and transparent

Openness

If you are open-minded, not closed, you are open to new ideas, to new thoughts, to new people and to new ways of working. When you come across new things you are curious and eager to explore them. You are non-judgmental and you look to engage other people in conversation – not so much in debate, but more in dialogue.

You deliberately go out of your way to discover new things. You are an explorer!

You ask for criticism from people -- not praise. You are not afraid when people challenge your ideas -- in fact you welcome it. This is how you learn. You are willing to 'let things in'. People can 'come in'. Hence the word: 'open'.

Transparency

If you are transparent, you work in a way which naturally enables people to see what you are doing. You publish your activity and your 'work in progress' as a by-product of the way that you work. You deliberately go out of your way to try to be honest and open about who you are. There is no façade, no pretence – with you, people get what they see.

You speak in your own voice. You are authentic. Others can see clearly who you are, what you are doing and why you are doing it.

You do not try to hide things out of fear of being seen to make a mistake. You actually want your mistakes to be seen. And you want others to point them out to you – that way you get to learn and to get even better at what you do. You make it easy for people to find you and to connect with you. You 'let things out'. People can 'see in'. Hence the word: 'transparent'.

Services provided

Any service, provision or resource provided for the residents of Poole by or on behalf of Borough of Poole

Relevant person

Means the customer or resident or, a person lawfully acting on their behalf in the following circumstances:

- ▶ on the death of the customer or resident,
- ▶ where the service user is under 16 and not competent to make a decision in relation to services provided, or
- ▶ where the customer or resident is 16 or over and lacks capacity (as determined in accordance with sections 2 and 3 of the Mental Capacity Act 2005) in relation to the matter.

Links to relevant policy and information

Borough of Poole, "Whistle-Blowing" policy

Borough of Poole, Staff code of conduct

Borough of Poole, Safeguarding Guidance

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