The Duty of Candour: A Brief Guide for Adult Social Care
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Please note that this guide is intended as an introduction to and overview of the duty of candour. It is not intended as official or legal advice.
What is the duty of candour?
WHAT IS THE DUTY OF CANDOUR?

The statutory duty of candour has been in force in England since 2014.

Despite this, there remains little discussion about it within the social care sector and very few information resources are available.

The duty of candour originated from the response to the failings and cover-up scandal at Mid-Staffordshire NHS Foundation Trust. The lack of transparency and openness at the Trust shocked campaigners, the public and regulators.

The subsequent Francis Inquiry report, published in February 2013, recommended a statutory duty as a way to force health and social care providers to be more open in their dealings with patients and people who use care and support services.

The result was Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 20, which looks to ensure that health and social care providers are open and transparent with people using services, their legal representatives and their families.

In short, it means that when something goes wrong that may impact upon a person’s wellbeing, that person and/or their representatives or family must be informed, and the error or failing must, if possible, be put right.
DEFINITIONS

The following definitions are used within Regulation 20 and by the Care Quality Commission (CQC):

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

- **Transparency** - allowing information regarding the truth about performance and outcomes to be shared with staff, patients, the public and regulators.

- **Candour** - any patient 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.
Regulation 20: Duty of candour

“The intention of this regulation is to ensure that providers are open and transparent with people who use services and other 'relevant persons' (people acting lawfully on their behalf) in general in relation to care and treatment. It also sets out some specific requirements that providers must follow when things go wrong with care and treatment, including informing people about the incident, providing reasonable support, providing truthful information and an apology when things go wrong.”

CQC, Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 20, 2018
What does it mean in practice?
WHAT DOES IT MEAN IN PRACTICE?

The regulation creates a process that must be followed whenever an incident occurs.

A registered person must:

1. **Notify** whoever is affected in person, providing “reasonable support” where necessary. The individual affected must be given:
   - An account of all the facts available at the time
   - Information on any further enquiries or actions that might take place
   - An apology

   A written record of the notification should be kept.

2. **Issue a written notification** to the individual including the information listed above.

3. **Keep a written record** of any attempts to contact the person, if they can’t get in touch with them or if the person does not want to be contacted.
What needs to be reported?
WHAT KIND OF INCIDENTS NEED TO BE REPORTED?

The regulation defines a “notifiable safety incident” as any unintended or unexpected event that results in the death of an individual using services or that has an impact on the physical or mental health of an individual using services.

The regulation specifically references incidents that cause:

- “moderate harm” (moderate increase in medical treatment, but not permanent harm);
- “severe harm”, and;
- “prolonged psychological harm” (psychological harm that will endure more than 28 days).

This includes short-term and long-term impacts.

This also includes any health problems that are treated by healthcare professionals. Even if the health problems are easily rectified, the person and/or their representatives must still be notified.

Technically, people do not need to be notified of low impact incidents or “near misses”. Your organisation may, however, wish to do this, where practicable, as part of your culture of openness.
Creating a culture of openness
The notification process is just one part of the regulation; the broader aim is to engender a culture of openness and transparency.

This should reinforce the fact that health and social providers are offering a service to the people in their care.

The guidance around the regulation specifically states that providers will be expected to:

- Have policies and procedures in place to “support a culture of openness”
- Investigate and tackle any instances of bullying or harassment
- Implement procedures to deal with breaches of the duty of candour
- Provide appropriate training and support for staff involved in a “notifiable safety incident”
How does the CQC evaluate?
HOW DOES THE CQC EVALUATE?

The CQC have two key lines of enquiry (KLOEs) relevant to the duty of candour for social care services.

It is these that it applies when evaluating the performance of organisations against the duty. They are:

**S2: How are risks to individuals and the service managed so that people are protected and their freedom is supported and respected?**

*Prompt:* Are there plans for responding to any emergencies or untoward events, and are these understood by all staff?

**W1: How does the service promote a positive culture that is person-centred, open, inclusive and empowering?**

*Prompt:* Is there an emphasis on support, fairness, transparency and an open culture?
FURTHER RESOURCES

You can find further reading about the duty of candour for social care by visiting the CQC and government websites.

Some key resources include:

**CQC – Regulation 20: Duty of Candour**
https://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-20-duty-candour

**CQC – Guidance on Regulation 20: Duty of Candour (pdf)**

**UK Government - Consultation outcome: statutory duty of candour for health and adult social care providers**
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THANK YOU

We appreciate you taking the time to read this guide, and we hope you find it useful.