

Adult Social Care and Health Directorate

Service Provision

Duty of Candour: Policy and Procedure

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Introduction:

Providers of health and social care have a legal Duty of Candour set out in:

The Health and Social Care 2008 (Regulated Activities) Regulations 2014:
Regulation 20.

The Regulation 20 Duty requires CQC registered providers to operate a culture of openness and transparency with people who use their services. This is particularly relevant when things do not go to plan with their treatment and care.

A range of factors can contribute to errors, accidents and incidents, including:

- process problems
- organisational structures
- systems errors
- the behaviour of an individual
- lack of knowledge or skills
- human error

An open culture of incident reporting, whistle blowing, and transparency enables learning from adverse incidents that lead to harm, as well as near misses.

Purpose:

This document:

- clarifies the Directorate's approach to implementing the Duty of Candour
- defines how the Duty of Candour aligns with accidents and incident reporting processes
- provides template response letters

Scope:

This policy applies to all staff employed by the Directorate irrespective of whether they are delivering a registered service. All staff are required to be open and honest in relation to harmful incidents. All staff have a duty to act assertively and proactively challenge the practice of others where they are concerned that this may be placing an adult(s) at risk of harm, they should follow the KCC Whistle Blowing Policy and Procedures if required.

The Duty of Candour applies if an action or inaction is thought to be a contributory factor in cases of:

- Incidents resulting in unexpected death/s
- Serious harm
- Moderate harm
- Prolonged psychological harm other notifiable safety incidents as set out in Reg 20(9)

References:

Legislation:

Health and Social Care Act 2008(Regulated Activities) Regulations 2014

- Regulation 18: Notification to CQC of other incidents
- Regulation 20: Duty of Candour

KCC Policies:

- Kent and Medway Safeguarding Adults Board: Multi-Agency Safeguarding Adults Policy, Procedures and Practitioner Guidance for Kent and Medway
- Kent County Council Whistle Blowing Policy and Procedure
- Kent County Council Safety Complaints Policy and Procedure

KCC Strategy:

- Kent County Council's Strategic Delivery Plan (2019-2022); Outcome 3: Older and vulnerable residents are safe and supported with choices to live independently.
- The Adult Social Care and Health Directorate's aim, which is to make sure that Kent's population of people who need social care lead fulfilled and independent lives in their community. **See Appendix 1.**

Roles, Responsibilities and Expectations:

- Directorate Management Team (DMT) members are responsible for actively supporting the Corporate Director for Adult Social Care and Health, who has ultimate responsibility, to promote and deliver the Duty of Candour principles.
- The CQC Nominated Individual has responsibility for compliance with the Reg 20 Duty of Candour and ensuring a Duty of Candour policy is in place.
- Line managers are responsible for supporting their staff to understand and to comply with the Duty of Candour principles and processes.
- Employees must comply with this policy and with any professional codes relevant to their role, if applicable – for example, the Health and Care Professions Council, Nursing and Midwifery Council.
- All Managers are responsible for ensuring all safeguarding incidents to which the Duty of Candour applies are escalated in accordance with the Kent and Medway Safeguarding Adults Board: Multi-Agency Safeguarding Adults Policy, Procedures and Practitioner Guidance for Kent and Medway.

Procedure:

Reg 20 Duty of Candour: notifiable safety incidents

Notifiable safety incident' is a specific term defined in the [duty of candour regulation](#). It should not be confused with other types of safety incidents or notifications.

'notifiable safety incident' means any unintended or unexpected incident that occurred in respect of a service user during the provision of a regulated activity that, in the reasonable opinion of a health care professional, could result in, or appears to have resulted in:

- the death of the service user, where the death relates directly to the incident rather than to the natural course of the service user's illness or underlying condition, or
- severe harm, moderate harm or prolonged psychological harm to the service user

You must start the procedure laid out in the Duty of Candour regulation as soon as reasonably practicable.

Consider who is the most appropriate in terms of seniority, relationship to the person, expertise and circumstances of the incident, to provide the notification.

Someone may act on the behalf of the person who was harmed if:

- the person has died
- is under 16 and not competent to make decisions about their care or the consequences of the incident
- is over 16 and lacking mental capacity.

This is in accordance with the Mental Capacity Act 2005

Duty of Candour response to concern – *Prior to investigation*

1. Consult written guidance and contact the relevant person straight away. Incidents must be reported without delay. Ensure that your senior manager and the Nominated Individual are also informed.
2. Tell the relevant person/relevant person's representative verbally/face to face, in person or using technology if at all possible.
3. In order to ensure an audit trail, a [SECURE] email must be sent to the relevant person/relevant person's representative confirming the face-to-face conversation with them that an incident has occurred and offering further support.
4. Provide a full and honest account of the incident to the relevant person/relevant person's representative, including possible short and long term effects of what has happened, outlining what action was taken to manage the situation (**Appendix 2 provides a template letter**).
5. Inform the relevant person/relevant person's representative of any further actions will be taken.
6. Offer an apology.
7. Keep the relevant person/relevant person's representative informed of enquiries via email/face to face/telephone and offer support.
8. Keep a record of all communication with the relevant person/relevant person's representative.

If the relevant person cannot be, or refuses to be, contacted, you may not be able to carry out all of the above. You must keep a written record of all attempts to make contact.

You must still report the incident through the appropriate notifications system and investigate it in order to prevent harm occurring to others.

The purpose of these meetings and communications is to share whatever is known about the incident truthfully, openly and with compassion and support. The person who was harmed has a right to understand what has happened to them. The meeting is not about trying to apportion or evade blame.

People are sometimes uncertain about how to apologise when an incident is still being investigated. But from the start, simple straightforward expressions of sorrow and regret can and should be made for the harm the person has suffered.

Duty of Candour response – *following investigation*

1. Inform the relevant person/relevant person's representative, your senior manager and the Nominated Individual of the outcomes of the investigation., **(Appendix 3 provides a template letter).**
2. Share learning and changes made as a result of the investigation.

Service Provision non regulated services, although not subject to Regulation 20 CQC Notifications, services are required to:

1. Notify the Senior Manager immediately when they are aware a situation has occurred
2. Agree if Duty of Candour process is to be followed
3. Copy the Business Support Manager in all Duty of Candour communications

A Duty of Candour spreadsheet will be completed by the Business Support Manager and this will be held centrally for all non regulated services.

Notifications to CQC or Ofsted¹

When regulated services complete notifications for either CQC or Ofsted, they will include in their notification if Regulation 20 Duty of Candour requirements have been followed.

All notifications must be discussed with the Senior Manager and seen by the Responsible Person prior to submission.

All regulated notifications must be forwarded to the Business Support Manager for logging. Notifications will capture what action has been taken in compliance with the Duty of Candour.

Throughout the process you must give 'reasonable support' to the relevant person, both in relation to the incident itself and when communicating with them about the incident.

¹ Ofsted do not have a Duty of Candour, but it is good practice to consider similar outcomes across age groups with regards to transparency.

Governance:

Duty of Candour should be discussed at, and learning shared, via:

- 1:1 Supervisions
- Team Briefings
- Senior Managers Meeting
- Good Practice Groups

In addition to the above, for both regulated and non regulated services, Senior Managers will review all near misses, errors accidents and incidents that require the Duty of Candour within their Services as they happen, ensuring measures are taken to avoid or reduce further incidents. The Nominated Individual will be emailed the outcome of senior manager's reviews of all near misses, errors accidents and incidents that require the Duty of Candour policy to be applied.

A report of all regulated and non regulated Duty of Candour incidents will be provided by the Business Support Manager and presented to the Service Provision Senior Management Team on a quarterly basis. This will provide a forum to discuss trends, patterns and share lessons learnt.

Key themes will be taken to Health and Safety Strategic Meetings by the Head of Service and Registered Provider will feed back at Health and Safety Committee and report on trends and patterns and lessons learnt.

Impact Assessments:

Equality – no additional impacts identified as a result of the policy.

Appendix One:

The Duty of Candour is a legal requirement of [Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#)

The legislation applies specifically to CQC registered persons providing regulated services.

In KCC's Adult Social Care and Health Directorate, the Duty of Candour applies to all services provided or arranged by the Directorate.

Duty of Candour legislation aligns with incident reporting and investigation policies, listed below:

- Regulation 18 [Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#):
- Notification of other incidents. In line with incident reporting requirements, providers must notify CQC of all incidents that affect the health, safety and welfare of people who use services. The full list of incidents can be found in the text of Regulation 18: Notification of other incidents
- Kent and Medway Safeguarding Adults Board: Multi-Agency Safeguarding Adults
- Policy, Procedures and Practitioner Guidance for Kent and Medway
- Kent County Council's Whistle Blowing Policy and Procedures which encourage individuals working with KCC to raise serious concerns internally within KCC, without fear of reprisal or victimisation
- Kent County Council's Safety Complaints Policy and Procedures which are used to raise any issues, concerns or complaints of a health and safety nature and which are not confidential

Appendix Two:

INITIAL LETTER PRIOR TO INVESTIGATION

Dear

I am writing to inform you [confirm to you if a discussion has already taken place] that [name of individual] [*outline of incident* e.g. had a fall whilst walking down the corridor/fell out of bed and suffered a broken rib] on [date].

As you know [name of individual] was [*outline immediate action taken* e.g. taken to hospital, seen by a medical practitioner].

[Name of individual] is [*outline current position* e.g. now comfortable, remains in hospital].

I would like to say on behalf of the Council that we regret that any such incident has occurred. We are currently investigating the incident in order that we can fully understand what happened and seek to identify whether there are any lessons to be learnt.

We will keep you updated on the progress of the investigation and will write to you again when it is complete to let you know the outcome.

In the meantime, please do contact me if you have any queries or comments you would like to make.

Yours sincerely

Registered Manager (or Senior Manager)

Appendix Three:

FOLLOW UP LETTER AFTER INVESTIGATION - to relevant person acting lawfully for the person using the service

Dear

I wrote to you previously to inform you that [name of individual] [*outline of incident* e.g. had a fall whilst walking down the corridor/fell out of bed and suffered a broken rib] on [date].

As you know [name of individual] was [*outline immediate action taken* e.g. taken to hospital, seen by a medical practitioner].

[name of individual] is [*outline current position* e.g. now comfortable, remains in hospital].

I am writing to you again to let you know the outcome of the investigations which we undertook. *Give a brief outline of what lessons were learned.*

Following the incident that happened to [name of individual] we have made the following changes to try to reduce the likelihood that this could happen again:

- *List the changes made*

We will monitor these changes to ensure that they are effective in reducing the risk to the people using our services.

Once again, I would like to say on behalf of the Council that we regret that any such incident has occurred.

Yours sincerely

Registered Manager (or Service Manager)