

Policy Name	Module
Duty of Candour	Operations

#### Statement of purpose

The Duty of Candour is a statutory requirement (Regulation 20) of the Health and Social Care Act 2008 (Regulated Activities) 2014 and is regulated by the Care Quality Commission (CQC), which applies to all Health and Social Care providers registered with the Care Quality Commission. This policy sets out the approach we will take to follow our obligations in accordance with the above regulation.

This policy is intended as a guide to assist staff to effectively communicate with individuals and/or their relatives/carers involved in safety incidents and to ensure that staff feel supported and empowered to do so.

Hand in Hands recognises its obligations to *'act in an open and transparent way with relevant persons'* in relation to care and treatment provided to our individuals. The organisation aims to promote a culture that encourages candour, openness, transparency and honesty on all levels and fulfil our duty to:

- ✓ Notify the person affected where care may have gone wrong and appears to have caused significant harm or has the potential to result in significant harm in the future;
- ✓ Apologise and offer a meeting to give an account of what happened;
- ✓ Review the incident;
- ✓ Offer support to those affected.

It should be stressed that this policy is not intended to cover all eventualities and not all of the stages of the processes which follow will be applicable or necessary in respect of all of the incidents which are covered by this policy.

It is the overall responsibility of the Registered Manager to ensure that all staff have read and signed (as understood) this policy and procedure for Hand in Hands, and that it is implemented as required. Failure to follow this policy may lead to disciplinary action.

A current copy of the policy will be available in the Main Office.

This policy will be reviewed at least annually, or more frequently if significant changes occur.

This person accountable for this Policy/Procedure is Michelle Dudderidge.

This Policy / Procedure was last updated on 17/02/2023.

This Policy / Procedure is due to be reviewed on 12/11/2023.

## Policy & Procedure

### Definitions

**Duty-** is a legal and moral responsibility that staff have as part of their job role and responsibilities.

**Candour (as per CQC Duty of Candour Guidance)-** Any person who uses the service harmed by the provision of a service provider is informed of the fact and an appropriate remedy is offered, regardless of whether a complaint has been made or a question asked about it.

**Transparency-** means to allow information about the organisation's performance and outcomes to be shared with staff, individuals, the public and regulators.

**Openness (CQC definition) -** Enabling concerns and complaints to be raised freely without fear and questions asked to be answered.

**Apology-** in the context of this policy, means an expression of sorrow or regret in respect of a notifiable safety incident.

**Relevant Persons (as per CQC Provider Guidance)-** in Regulation 20 "relevant person" means the person using the service or, in the following circumstances, a person lawfully acting on their behalf:

- ✓ When the person using the service dies
- ✓ Where the person using a service is under 16 and not competent to make a decision in relation to their care or treatment; or
- ✓ Where the person using the service is 16 or over and lacks capacity to make decisions.

**Notifiable Safety Incident-** is any incident that is unintended or unexpected that results in moderate harm, prolonged psychological harm, severe harm or death.

**Moderate Harm-** refers to harm that requires a moderate increase in treatment, but not permanent harm.

**Severe harm-** refers to a permanent lessening of bodily, sensory, motor, physiologic or intellectual functions, including removal of the wrong limb or organ or brain damage that is related directly to the incident and not related to the natural course of the individuals' illness or underlying condition.

**Prolonged Pain-** means pain which an individual has experienced, or is likely to experience, for a continuous period of at least 28 days.

**Prolonged Psychological Harm-** means psychological harm which an individual has experienced, or is likely to experience, for a continuous period of at least 28 days.

### Responsibilities of the Registered Manager & Management Team

- ✓ The Registered Manager & Management Team will promote a culture that encourages candour, openness and honesty at all levels.
- ✓ Ensure detailed policies and procedures are in place to support a culture of openness and transparency, and ensure that all staff follow them.

- ✓ Action will be taken to tackle bullying and harassment in relation to the duty of candour and will investigate any instances where a member of staff may have obstructed another in exercising their duty of candour.
- ✓ Will ensure that systems are 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 the professional regulator.
- ✓ Will 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 responsibilities in relation to the duty of candour, and are supported to be open and honest with individuals and apologise when things go wrong.
- ✓ Staff will be provided with appropriate training, and arrangements will be in place to support staff who are involved in a notifiable safety incident.
- ✓ In cases where Hand in Hands are made aware that something untoward has happened, the allegation will be treated seriously, and will immediately consider whether this is a notifiable safety incident and take appropriate action.

### **Responsibilities of All Employees**

- ✓ All staff working within Hand in Hands have a responsibility to adhere to the organisation's policies and procedures around the duty of candour, regardless of their role or permanency.
- ✓ Staff must report all safety incidents that may have been prevented i.e. 'near-misses', no harm and low harm incidents, as well as safety incidents that have caused moderate harm, prolonged psychological, severe harm or death.
- ✓ For minor or low incidents, it is anticipated that our 'being open' principles will still be applied and an apology and/or explanation will be provided at the time the incident or issue occurs.

### **Staff Awareness & Support**

All staff within Hand in Hands will be made aware of their responsibility to report incidents regardless of whether they are covered under duty of candour or not.

All staff will be provided with all organisational policies and procedures that relate to duty of candour at the point of induction.

Hand in Hands will ensure that regular one to one meetings, team discussions, supervisions and appraisal, will encourage open discussions around duty of candour principles.

All staff will be reminded through these communications that attempts by other staff to prevent them from reporting incidents will be deemed as bullying and/or harassment, and that they must report this immediately to a member of the management team.

Where any staff member feels pressured from a member of the management team, such as the Registered Manager, staff must escalate their concerns to the next most senior person i.e. the CEO/Director.

Any bullying or harassment will be dealt in accordance with the organisation's '*Anti-Bullying and Harassment*' Policy & Procedure.

### **Reporting of Incidents**

- ✓ All staff must report incidents defined in this policy without delay, via the Accident/Incident Form. All information recorded must be clear, accurate and factual.

- ✓ The report must be made to the Registered Manager or other member of the management team in charge at the time of the incident.
- ✓ All reports made to a member of the management team, must then be forwarded to the Registered Manager (if this is not the same person) as soon as possible.

### **Near Misses**

Hand in Hands are 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.

### **Incidents that were not 'Unexpected'**

The regulation specifies that the incident must be 'unexpected **or** unintended'. So long as the incident falls into at least one of the two categories, it could qualify as a notifiable safety incident

For example, if a frail elderly man who was known to be at risk of falling had a further fall. This might not be unexpected. But in this example, it would be 'unintended'.

👉 Further examples have been provided by the Care Quality Commission (CQC) here: <https://www.cqc.org.uk/guidance-providers/all-services/duty-candour-examples-notifiable-safety-incidents>

### **Initial Assessment**

Following a notification of an incident, the Registered Manager will:

- ✓ Carry out an initial assessment of whether the report includes details of a notifiable safety incident under the regulation.
- ✓ Where the conclusion of the assessment finds that the incident is classed as a notifiable safety incident or appears to be borderline, then the procedures within this policy are to be taken.
- ✓ Where it is considered that the incident is not a notifiable incident under Regulation 20, the usual incident reporting procedures will be followed.

### **Notifiable Safety Incidents**

A 'Notifiable Safety Incident' is a specific term defined in the Duty of Candour Regulation. It must not be confused with other types of safety incidents or notifications.

#### **A notifiable safety incident must meet all three of the following criteria:**

- ✓ It must have been unintended or unexpected.
- ✓ It must have occurred during the provision of a regulated activity.
- ✓ In the reasonable opinion of a healthcare professional, already has, or might, result in death, or severe or moderate harm to the person receiving care (this element varies slightly depending on the type of provider).

In relation to a registered person who is not a health service body (any other registered person), "notifiable safety incident" means any unintended or unexpected incident that occurred in respect of

an individual during the provision of a regulated activity that, in the reasonable opinion of a health care professional-

Appears to have resulted in:

- ✓ The death of the individual, where the death relates directly to the incident rather than to the natural course of the individual illness or underlying condition;
- ✓ An impairment of the sensory, motor or intellectual functions of the individual which has lasted, or is likely to last, for a continuous period of at least 28 days;
- ✓ Changes to the structure of the individuals body;
- ✓ The individual experiencing prolonged pain or prolonged psychological harm, or
- ✓ The shortening of the life expectancy of the individual; or
- ✓ The required treatment by a health care professional in order to prevent-
- ✓ The death of the individual, or
- ✓ Any injury to the individual which, if left untreated, would lead to one or more of the outcomes mentioned in above.

### **Notifying the Relevant Person**

It is Hand in Hands's responsibility to inform the "relevant person" as soon as reasonably practicable and in person, after the incident has been identified, in order to fulfil our duty as a provider, in the event of a notifiable incident.

Where the degree of harm is not yet clear but may fall into the above categories in future, the relevant person must be informed of the notifiable safety incident in line with the requirements of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: (Regulation 20).

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

A written record must be taken of the notification in person, which must be kept securely by the Registered Manager, alongside all other relevant notes.

### **Notifying Relevant External Agencies**

As with all incidents, it is of utmost importance that this policy is used alongside the relevant external notification procedures to:

- ✓ Ensure that relevant agencies are notified; and
- ✓ If an investigation is required, that there is a clear understanding of roles and responsibilities.

### **Duty of Candour Procedure**

#### **Acknowledgement**

- ✓ All individual incidents should be acknowledged and reported as soon as they have been identified.

#### **Communication**

- ✓ 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 provider. This should include as much or as little information as the relevant person wants to hear, 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, providers should consider whether interpreters, advocates, or other communication aids should be used while being conscious of any potential breaches of confidentiality in doing so. Providers must also explain to the relevant person what further enquires they will make.

### **Apology**

- ✓ The presence or absence of fault on the part of a provider has no impact on whether or not something is defined as a notifiable safety incident. Saying sorry is not admitting fault. Even if something does not qualify as a notifiable safety incident, there is always an overarching duty of candour to be open and transparent with people using services.
- ✓ individuals and/or another relevant person should receive a sincere expression of sorrow or regret for harm that has resulted from an individuals' safety incident. This should be in the form of an appropriately worded and agreed manner of apology, as early as possible.
- ✓ Both verbal and written apologies should be given. The organisation will decide on the most appropriate member of staff to issue these apologies. The decision should consider seniority, relationship to the individual, and experience and expertise in the type of individual safety incident that has occurred.
- ✓ Verbal apologies are essential because they allow face-to-face contact between the individual and/or another relevant person and the care team. This should be given as soon as staff are aware that an incident has occurred.
- ✓ A written apology, which clearly states that Hand in Hands is sorry for the suffering and distress resulting from the incident, must also be given.

Hand in Hands will ensure that a written notification to the relevant person will be given 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 and any further steps and timescales.

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

### **Investigation**

The Registered Manager will assess the information they will need to carry out an investigation, taking statements and gathering evidence.

Once all information has been obtained, a robust investigation must then take place. All information and statements gained must be clearly recorded on relevant documentation and kept securely in line with data protection laws.

The purpose of the investigation is to establish if the incident took place, define its nature, gather all evidence about the processes around the incident, and to identify causes where possible.

### **Final Statement to the Relevant Person(s)**

After the investigation, a final statement must be given to the relevant person(s) stating the outcome of the investigation. It must be remembered that Duty of Candour is based on the organisation's transparency and openness when such events occur.

The statement should aim to include any lessons learned from the incident and changes that will be made to the service due to the incident.

Again the final statement must provide a sincere apology, as the causes of the incident should by now have been established.

### **Providing Support to the individual or Relevant Person**

Hand in Hands will 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 the individual 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 help to understand what is being said, for example, through an interpreter, 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' (<https://www.healthwatch.co.uk/>) and other relevant support groups, for example, 'Cruse Bereavement Care' (<https://www.cruse.org.uk/>) and 'Action against Medical Accidents (AvMA - <https://www.avma.org.uk/>)', to help them deal with the outcome of the incident.
- ✓ Arranging for care and treatment from another professional, team or provider if this is possible and if the relevant person wishes.

### **Correspondence with the Relevant Person**

Hand in Hands will make every reasonable attempt to contact the relevant person through all available means of communication. All attempts to contact the relevant person will be documented in full and kept securely.

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 also.

Hand in Hands will keep a record of the written notification, along with any enquiries and investigations and the outcome or results of the enquiries or investigations.

Any correspondence from the relevant person relating to the incident must be responded to appropriately and a record of communications should be kept.

## **Mental Capacity**

Hand in Hands supports the following principles, as set out in the Mental Capacity Act 2005 and has applied them in the development of this policy:

- ✓ A person must be assumed to have capacity unless it is established that they lack capacity.
- ✓ A person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success.
- ✓ A person is not to be treated as unable to make a decision merely because they make an unwise decision.
- ✓ An act completed, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests.
- ✓ Before the act is completed, or the decision made, regard must be had as to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

👉 Please refer to our '*Mental Capacity and Best Interests*' Policy & Procedure for more information.

## **Breach of Candour by a Professionally Registered Person**

If a breach of candour is found to have occurred following the investigation, and that this breach was by a professionally registered person, then that person should be reported to their professional registration body for further consideration.

The same action should be taken if, during the investigation, it is found that a professionally registered person had obstructed another person in their professional duty of candour.

## **Reporting a Possible Breach of Candour**

- ✓ If any individual believes that a breach of candour has taken place, they must report this without delay to the Registered Manager.
- ✓ If an individual has been stopped or hindered in their duty of candour, they must report this without delay to the Registered Manager.
- ✓ The Registered Manager will conduct an investigation into such allegations and report the findings for action to be taken where appropriate.
- ✓ If an allegation concerns the Registered Manager, the individual must report the matter to the next most senior person within Hand in Hands i.e. the CEO/Director, who will then carry out an investigation and take the appropriate action if required.
- ✓ If the allegation concerns Hand in Hands then the individual must report to the Care Quality Commission.



The following policies and procedures should be read in conjunction with this 'Duty of Candour Policy & Procedure':

- ✓ Safeguarding Adults at Risk Policy & Procedure
- ✓ Complaints Policy & Procedure
- ✓ Whistleblowing Policy & Procedure
- ✓ Accident & Incident Policy & Procedure
- ✓ Mental Capacity & Best Interests Policy and Procedure

#### Relevant Legislation

<http://www.legislation.gov.uk/ukpga/2014/23/contents>

↻ The Care Act 2014

<http://www.legislation.gov.uk/ukpga/2005/9/contents>

↻ Mental Capacity Act 2005

<http://www.legislation.gov.uk/uksi/2014/2936/contents/made>

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

[http://www.legislation.gov.uk/uksi/2015/64/pdfs/uksi\\_20150064\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/64/pdfs/uksi_20150064_en.pdf)

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

<http://www.legislation.gov.uk/ukpga/1998/42/contents>

↻ Human Rights Act 1998

#### Relevant Regulations

<https://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-20-duty-candour#legislation-links>

↻ Regulation 20: Duty of Candour

<https://www.gov.uk/government/publications/nhs-screening-programmes-duty-of-candour/duty-of-candour>

↻ Public Health England: Duty of Candour Regulations

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/497253/Mental-capacity-act-code-of-practice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf)

↻ Mental Capacity Act Code of Practice

#### Key Lines of Enquiry KLOE

**SAFE:** How are risks to people assessed and their safety monitored and managed so they are supported to stay safe and their freedoms respected?

- Are lessons learned and improvements made when things go wrong?

**Caring:** How does the service ensure that people are treated with kindness, respect and compassion, and that they are given emotional support when needed?

- How are people's privacy, dignity and independence respected and promoted?

**Responsive:** How effectively are complaints handled, including ensuring openness and transparency, confidentiality, regular updates for the complainant, a timely response and explanation of the outcome, and a formal record?

**Well-led:** Is there a clear vision and credible strategy to deliver high-quality care and support, and promote a positive culture that is person-centred, open, inclusive and empowering, which achieves good outcomes for people?



Appendix 1

Flow Chart provided by the Care Quality Commission (CQC)

