



Duty of Candour Policy

Purpose

The overall purpose of Duty of Candour (DoC) is to ensure organisations are open, honest and supportive when there is an unexpected or unintended incident resulting in death or harm, as defined by Health (Tobacco, Nicotine etc and Care) (Scotland) Act 2016.

The organisational Duty of Candour underpins the Scottish Government's commitment to openness and learning which is vital to the provision of safe, effective and person-centred health and social care. The duty applies to organisations (as 'responsible persons') and not individuals.

It should be noted that Better Lives Partnership is not a registered provider of health and social care; we are a provider of services to vulnerable adults and as such are not required to be registered and are not subject to regulation by the Care Inspectorate. Our adoption of this policy is a voluntary commitment to the key principles of the Act.

Provisions in the Act include:

Duty of Candour - This creates a legal requirement for health & social care organisations to inform people (or their families/ carers/Guardians) when they have been harmed as a result of the care or treatment they have received.

Ill-treatment and wilful neglect - The Act establishes a new criminal offence of ill-treatment or wilful neglect which applies to individual health and social care workers, managers, and supervisors. The offence also applies to organisations.

Organisations are required:

- to notify the person affected (or family/relative/Guardian, where appropriate)
- to provide an apology
- to carry out a review into the circumstances leading to the incident
- to offer and arrange a meeting with the person affected and/or their family
- to provide the person affected with an account of the incident
- to provide information about further steps taken
- to make available, or provide information about, support to persons affected by the incident
- to prepare and publish an annual report on the Duty of Candour. This will include the number of incidents, how we have implemented the duty and what learning and improvements have been put in place.

Incidents which activate DoC:

The Better Lives Partnership (BLP) must activate the DoC procedure as soon as reasonably practicable after becoming aware that an unintended or unexpected incident has occurred AND in the reasonable opinion of the BLP Safeguarding Officer, has resulted in or could result in death or harm.

See www.gov.scot/Topics/Health/Policy/Duty-of-Candour for further definitions of harm or injury.

The start date is the date BLP receives confirmation from the Safeguarding Officer.

Duty of Candour Apology:

An 'apology' means a statement of sorrow or regret in respect of the unintended or unexpected incident that caused harm or death.

An apology does not itself amount to an admission of negligence or a breach of statutory duty.

It is important that an 'open and honest' apology is provided from the outset as this sets the tone for things moving forward.

The Act states that the responsibility for the apology rests with the responsible person i.e. the organisation delivering the service.

However, it's everyone's responsibility to make an apology, where appropriate.

Monitoring and Reporting:

It is important that unintended or unexpected incidents triggering the DoC procedure are monitored, recorded and reported.

BLP monitors accident/incidents using robust accident and incident reporting processes. Any possible DoC incidents should immediately be reported to the Team Officer and/or Operations Director.

DUTY OF CANDOUR PROCEDURE

The Duty of Candour Procedure (Scotland) Regulations 2018

Made: 8th February 2018

Laid before the Scottish Parliament: 12th February 2018

Coming into force: 1st April 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 22(1) and (2) of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 and all other powers enabling them to do so.

1. Citation, commencement and interpretation

(1) These Regulations may be cited as the Duty of Candour Procedure (Scotland) Regulations 2018 and come into force on 1st April 2018.

(2) (a) In these Regulations—

“the Act” means the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016;

“incident” means the unintended or unexpected incident by virtue of which section 21(2) of the Act applies to a person; and

“procedure start date” is the date on which an opinion referred to in section 21(2)(b) of the Act is provided to the responsible person.

(b) A document required by virtue of these Regulations to be “written” includes an electronic communication, as defined in section 15(1) of the Electronic Communications Act 2000.

2. Communication with relevant person

1) If, in respect of an incident, the responsible person (“Responsible person” is defined in section 25 of the Act.) is unable to contact the relevant person (“Relevant person” is defined in section 22(3) of the Act.) or the relevant person declines to communicate with the responsible person:

- a) the record kept under regulation 9 must include information about the attempts made to contact or to communicate with the relevant person; and

- b) any requirement in these Regulations to provide information to, or communicate with, the relevant person does not apply in respect of that incident.

2) The responsible person must take reasonable steps to ascertain the relevant person's preferred method of communication and, where reasonably practicable, communicate with the relevant person by this method.

3) The responsible person must take reasonable steps to ensure any communication with the relevant person is in a manner that the relevant person can understand.

3. Limitations on provision of information

These Regulations do not permit or require a responsible person to disclose any information which:

- a) would prejudice any criminal investigation or prosecution;
- b) would contravene any restriction on disclosure arising by virtue of an enactment or rule of law.

4. Notification

1) In respect of an incident, the responsible person must notify the relevant person in accordance with this regulation.

2) The notification must include:

- a) an account of the incident insofar as the responsible person is aware of the facts at the date the notification is provided;
- b) an explanation of the actions that the responsible person will take as part of the duty of candour procedure; and
- c) where the procedure start date is later than one month after the date on which the incident occurred, an explanation of the reason for this.

5. Apology

In addition to any apology provided at the time of an incident, the responsible person must offer the relevant person a written apology in respect of the incident and must provide one if the relevant person wishes it.

6. Meeting

1) In respect of an incident, the responsible person must invite the relevant person to attend a meeting as described in paragraph (2), and must give the relevant person the opportunity to ask questions of the responsible person in advance of that meeting.

2) The meeting must include:

- a) the provision of an account of the incident by the responsible person;
- b) the provision of an explanation of any further steps that will be taken by the responsible person to investigate the circumstances which it considers led or contributed to the incident;
- c) an opportunity for the relevant person to ask the responsible person questions about the incident;
- d) an opportunity for the relevant person to express their views about the incident; and
- e) the provision of information to the relevant person about any legal or review procedures that are being followed in respect of the incident in addition to the duty of candour procedure.

3) Following the meeting the responsible person must provide the relevant person with:

- a) a note of the meeting; and
- b) contact details for an individual member of staff acting on behalf of the responsible person.

4) If the relevant person does not wish to or is unable to attend the meeting, the responsible person must provide the relevant person with the information mentioned in paragraphs (2)(a), (b) and (e) and (3)(b) if the relevant person wishes it.

7. Review

1) The responsible person must carry out a review of the circumstances which it considers led or contributed to the incident.

2) Where the review is not completed within a period of 3 months beginning with the procedure start date, the responsible person must provide the relevant person with an explanation for this.

3) In carrying out the review, the responsible person must seek the views of the relevant person and take account of any views expressed.

4) The responsible person must prepare a written report of the review, which must include:

- a) a description of the manner in which the review was carried out;
- b) a statement of any actions to be taken by the responsible person for the purpose of:
 - i. improving the quality of service provided by the responsible person;
 - ii. sharing learning with other persons or organisations in order to support continuous improvement in the quality of health, care or social work services; and
- c) a list of the actions taken in accordance with the duty of candour procedure in respect of the incident and the date or dates each action was taken.

5) The responsible person must offer to send the relevant person:

- a) a copy of the written report of the review;
- b) any further information about the actions mentioned in paragraph (4)(b) for the purpose of improving the quality of service provided by the responsible person or other health, care or social work services; and
- c) details of any services or support which the responsible person considers may provide assistance to the relevant person, taking into account the relevant person's needs.

6) If the relevant person wishes to receive any of the information mentioned in paragraph (5), this should be provided by—

- a) the responsible person; or
- b) where in the opinion of the responsible person it is appropriate to do so, by another responsible person where that other responsible person is:
 - i. undertaking a duty of candour procedure in respect of the incident; and
 - ii. agrees to do so.

8. Training and support

1) The responsible person must ensure that all employees who carry out the duty of candour procedure on its behalf:

- a) are aware of the duty of candour procedure;
- b) can provide relevant persons with the information mentioned in regulation 7(5)(c); and
- c) receive relevant training and guidance on the duty of candour procedure and any services and support which may be available to relevant persons.

2) The responsible person must provide an employee who is involved in an incident with details of any services or support of which the responsible person is aware which may provide assistance or support to any such employee, taking into account:

- a) the circumstances relating to the incident; and
- b) the employee's needs.

9. Records

- 1) The responsible person must keep a written record for each incident in respect of which the duty of candour procedure is followed.
- 2) The written record must include a copy of every document and piece of correspondence relating to the application of the duty of candour procedure to the incident.

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