# Policy:
## MD 010 Duty of Candour and Being Open
### Policy and Procedure
Communicating Patient Safety Incidents with Patients and their Carers

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<thead>
<tr>
<th>Executive or Associate Director lead</th>
<th>Deputy Chief Executive, Executive Medical Director</th>
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<td>Policy author / lead</td>
<td>Patient Safety and Risk</td>
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<tr>
<td>Feedback on implementation to</td>
<td>Head of Integrated Governance</td>
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| Target audience                      | All staff, clinical and non-clinical, particularly anyone involved in Being Open/Duty of Candour meetings e.g. Consultants, Clinical and Service Directors, Assistant Clinical Directors and Assistant Service Directors, Matrons and Ward Managers/Lead Nurses, Serious Incident investigators, Chief Executive and Directors, SUMEU, Complaints and Litigation Department and Risk Management Department, Clinical Governance, Patient Safety and Information Governance. |

**Policy Version and advice on document history, availability and storage**

This policy is available through the SHSC intranet.

This is version 4 of this policy and replaces the first version issued in December 2008.
Duty of Candour and Being Open Policy and Procedure version 4 2019

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Duty of Candour Flow Diagram

1. Incident occurs – Incident report immediately.


3. Agree how disclosure discussion will occur with patient- urgent preliminary multi-team discussion as soon as possible (involve the risk team when required).

4. Initial disclosure and apology **DO NOT DELAY** – As soon as possible; must be within 10 days of incident being known.
   - By Consultant/MDT/Ward Manager/Senior Nurse
   - Face to face/verbal or letter (template).
   - Give disclosure, apology, information and support.
   - Give outline of investigation. If a complaint and SI – complaint is handled through SI investigation process.
   - Identify when/if patient would like to meet.
   - Identify senior person for further communication, if needed
   - Refer to investigation if severe harm/death - give Being Open leaflet

5. Record communication in Insight health records “Being Open – Duty of Candour” – Date, time, names present, issues, apology, and plan for further communication (update the risk team as needed)

6. Maintain contact, as agreed with patient/family
   - Consider a second meeting, telephone call etc.
   - On approval of investigation report – apology letter and summary sent to patient/family in conjunction with risk team processes.
1. Introduction

Candour and being open simply mean apologising and explaining what happened to service users and/or their carers who have been involved in a complaint or service user safety incident. A service user safety incident is defined as: ‘any unintended or unexpected incident that could have or did lead to harm for one or more service users receiving NHS funded healthcare’ (NPSA 2005)

Communicating effectively with service users and/or their carers is a vital part of the process of dealing with errors or problems in their treatment. In doing so, NHS organisations can mitigate the trauma suffered by service users and potentially reduce lengthy formal complaints.

Candour and openness can also decrease the trauma felt by service users following a Service user Safety Incident or Complaint. Research has shown that service users fully support the Duty of Candour and Being Open and will be more understanding of healthcare errors when they are disclosed promptly, fully and compassionately.

Candour and openness have benefits for healthcare staff. These include satisfaction that communication with service users and/or their carers has been handled in the most appropriate way; developing a good professional reputation for handling a difficult situation properly; and improving their understanding of incidents from the perspective of the service user and/or their carers. Candour and openness is also beneficial for the reputation of the Trust.

Setting the agenda for patient safety

Following the tragic events at Mid Staffordshire NHS Foundation Trust, the Patient Safety Domain has played a key role in taking forward the recommendations of the Francis Report, Berwick Report and Hard Truths, which set out the government’s official response to the Francis Report.

Service user safety and safe services are a key priority for Sheffield Health & Social Care, NHS Foundation Trust and there are a number of ongoing safety initiatives that focus on the reduction of harm and the increase in safety within the organisation. The Trust is committed to being an open and honest organisation that learns from safety incidents.

NHS England

NHS England is focused on safety and the continual reduction of avoidable harm, it supports organisations to become local learning systems with the ability to deliver high quality reliable healthcare. Systems centered on patients and devoted to learning have the freedom to evolve locally and become rooted in a culture relentlessly focused on safety at every level across the system.

National Health Service Resolution

The NHS Resolution is established to indemnify NHS Trusts in respect of both clinical negligence and non-clinical risks. It manages both claims and litigation and has established risk management programs against which NHS Trusts are assessed. The promotion of good risk management and governance are integral components of the NHS Resolution strategy.
The NHS Resolution strategy envisages doing more, to save more money for patient care and to work with, and through others, to drive improvement.

What is staying the same?
- Core delivery – expert management of claims, concerns and disputes according to established principles of law.
- Saving money for patient care by the robust defence of claims where no compensation is due, including testing cases at trial and in the higher courts.
- Challenging over-charging by claimant lawyers, fighting fraud and excessive claims for compensation

What is different?
- Moving upstream to provide support closer to the incident with learning and local resolution.
- Reducing legal costs by keeping cases out of formal court proceedings and deploying alternative models for dispute resolution.
- Increased insight into what drives the costs of harm and developing interventions to respond to these, in partnership with others.

2. Scope of this policy

This policy is aimed at all healthcare staff responsible for ensuring the infrastructure is in place to support openness between healthcare professionals and service users and/or their carers following a complaint or an incident that led to moderate harm, severe harm or death.

It only relates to incidents or complaints that are classed as; Moderate harm (3), Major harm (4) or Catastrophic harm (5). It does not apply to Negligible (1) or Minor (2) incidents or complaints. However the principles of candour and being open apply to all the Trust’s dealings with those receiving services and members of the public.

<table>
<thead>
<tr>
<th>Description</th>
<th>Impact on individual</th>
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<tbody>
<tr>
<td>1. Negligible</td>
<td>No Injury</td>
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<tr>
<td>2. Minor</td>
<td>Short term injury / no permanent damage/harm. Will be resolved in about 1 month.</td>
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<tr>
<td>3. Moderate</td>
<td>Semi-permanent injury/damage (emotional, physical or psychological) likely to resolve within one year.</td>
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<tr>
<td>4. Major</td>
<td>Permanent injury (Physical or psychological)</td>
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<td>5. Catastrophic</td>
<td>Unexpected or untoward death</td>
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3. Definitions

Complaint
A complaint is defined as an expression of dissatisfaction which requires a response whether it is verbally or in writing. Complaints may be about the activities of the Sheffield Health and Social Care NHS Foundation Trust and/or its staff.
Incident
An incident is any unplanned event which causes injury to people, damage or loss to property or contributes to both including those involving medication, e.g., prescribing, dispensing, administration or storage of medicines and missing patients.

A Serious Incident is an accident/incident when a patient, staff or visitor suffers serious injury, major permanent harm or unexpected death (or the risk of death or injury) on Trust premises where healthcare is provided or where actions of health service staff are likely to cause significant public concern.

Serious incidents include adverse or critical clinical incidents where events or circumstances arising during NHS care could have, or did, lead to unintended or unexpected harm, loss or damage. (Harm is defined as physical or psychological injury, disease, suffering, disability or death. Normally, harm is considered to be 'unexpected' if it is not related to the natural course of the patient's illness or underlying condition). (Serious Incident Framework 2015)

4. Purpose of this policy

This Trust is committed to the principles of the Duty of Candour and being Open Policy and this policy details the meaning of the Duty and Openness in practice.

5. Duties

All staff working at SHSC should be aware of this policy and promote the principles and procedure of the Duty of Candour and Being Open when providing or supporting services.

All senior managers and in particular those staff investigating incidents or complaints must read and follow this policy. Staff in the risk management and complaints management teams will provide support and advice in the application of the policy.

6. Responsibility for this policy

The Deputy Chief Executive and Medical Director have overall responsibility for this policy assisted by a non-Executive Director who also sits on the Trust Quality and Risk group. The joint operational leads for the implementation of the Policy are the Head of Integrated Governance and the Trust Clinical Risk Manager.

7. Specific details

7.1 Process and requirements

The Duty of Candour and Being Open process begins with the recognition that a service user or staff member has suffered moderate or severe harm, or has died, as a result of a service user safety incident.

A face to face apology should be given immediately. Clinical staff may worry that being open with patients may compromise the ability to deal with a claim if one is subsequently made by the patient. In reality candour is simply about sharing accurate information with service users and/or their family and should be encouraged. The facts are the facts and Duty of Candour and Being Open Policy and Procedure version 4 2019
staff will be encouraged and supported to help service users understand what has happened to them.

Please refer to SHSC’s Incident Management Policy and Procedure for details of how an incident should be identified, reported and managed (via Risk management and systems improvement techniques) or the Complaints Policy for how complaints should be handled. It is important that throughout the process, all communication relating to the incident or complaint is documented (details of the responsibilities relating to documentation can be found in the Trust’s Incident Management Policy.

7.2 Preliminary Team Discussion

The multidisciplinary team, including the most senior health professional involved in the complaint or service user safety incident, should meet as soon as possible after the event to:

- Establish the basic clinical and other facts;
- Assess the complaint incident to determine the level of immediate response;
- If the complaint or incident is rated as Moderate, Major or Catastrophic harm, the Duty of Candour and Being Open process will apply:
  - Offer a face to face apology immediately and document this in the health care record
  - Identify who will be responsible for ongoing discussion with the service user and/or their carers
  - Consider the appropriateness of engaging service user support at this early stage. This includes the use of a facilitator, a service user advocate or a healthcare professional who will be responsible for identifying the service user’s needs and communicating them back to the healthcare team; where criminal cases are involved, obtain specialist advice from the Police/Crown Prosecution Service (CPS), however, where it is advised not to share information until a case is concluded, a letter/telephone contact should be considered by the appropriate Network lead to advise the service user or their carer that information will be shared and meetings facilitated as soon as possible following the Police investigation.
  - Identify immediate support needs for the healthcare staff involved;
  - Ensure there is a consistent approach by all team members around discussions with the service user and/or their carers;

Consider the timing of the Duty of Candour and Being Open discussion with the service user and/or carer. This meeting should happen as soon as possible after the complaint/incident is recognised but availability of key stakeholders and the clinical condition of the service user should be considered.

7.3 Choosing the individual best placed to communicate with the service users and/or carers, and who to communicate with

The healthcare professional who informs the service user and/or their carers about a service user safety incident should be the most senior person responsible for the service user’s care and/or someone with experience and expertise in the type of incident that has Duty of Candour and Being Open Policy and Procedure version 4 2019
occurred. This could either be the service user’s consultant, nurse consultant, or any other senior healthcare professional that has a designated caseload of service users. They should have received training in the communication of service user safety incidents.

Consideration also needs to be given to the characteristics of the healthcare professional nominated to lead the Duty of Candour / Being Open process. They should:

- Be known to, and trusted by, the service user and/or their carers;
- Have a good grasp of the facts relevant to the complaint/incident;
- Be senior enough or have sufficient experience and expertise in relation to the type of service user safety incident to be credible to service users, carers and colleagues;
- Be able to commit to the time needed to complete the Duty of Candour and Being Open process;
- Have excellent interpersonal skills, including being able to communicate with service users and/or their carers in a way they can understand and avoiding any use of medical jargon;
- Be willing and able to offer an immediate face to face apology, reassurance and feedback to service users and/or their carers;
- Be able to maintain a medium to long term relationship with the service user and/or their carers, where possible, and to provide continued support and information;
- Be culturally aware and informed about the specific needs of the service user and/ or their carers.
- Be mindful that service users and carers may require additional support i.e. professional services, support groups etc and how to access these.

Junior staff (or those in training) should not lead the Duty of Candour / Being Open process, but may attend as an observer for training purposes with the explicit and informed consent of the service user and/or carer.

There should always be communication with the service user unless there are strong clinical reasons not to do so, for example if the service user is too unwell at the time. In the event of the death of a service user, the closest family member or carer should normally be communicated with. The clinical team will need to decide who this should be from their knowledge of the service user’s family circumstances.

It is essential practice to include communication with close family members or carers as well as the service user affected by a serious incident or complaint. However, the views of the service user about confidentiality and whether to involve family members should be taken into account in deciding who to contact.

The decision about who to contact must be recorded. If it is decided not to contact either the service user or carer, the reason for not contacting them must be recorded. This will form part of the incident or complaint investigation record.

Involving healthcare staff who make mistakes

Some service user safety incidents that resulted in moderate harm, severe harm or death will result from errors, due to system failures, made by healthcare staff while caring for the service user. In these circumstances the member(s) of staff involved may or may not wish to participate in the Duty of Candour / Being Open discussion with the service user and/or their carers. Every case where an error has occurred needs to be considered individually.
balancing the needs of the service user and/or their carers with those of the healthcare professional concerned. In cases where the healthcare professional who has made an error wishes to attend the discussion to apologise personally, they should feel supported by their colleagues throughout the meeting. In cases where the service user and/or their carers express a preference for the healthcare professional not to be present and if the healthcare worker is willing, a personal written apology can be handed to the service user and/or their carers during the first Duty of Candour / Being open discussion if appropriate.

7.4 Preparation for the preliminary meeting with the service user and/or their carer

Who should attend?
- The senior SHSC staff member who has been chosen to lead the Duty of Candour / Being open process
- The person taking the lead should be supported by at least one other member of staff, such as the clinical risk manager, complaints manager, nursing or medical director or member of the healthcare team treating the service user.
- Ask the service user and/or their carers who they would like to be present
- Hold a pre-meeting amongst healthcare professionals so that everyone knows the facts and understands the aims of the meeting

When should it be held?
- Within 10 days of the complaint/incident being known
- Consider the service user’s and/or their carer’s home and social circumstances
- Check they are happy with the timing
- Offer them a choice of date/times and confirm the chosen date/time in writing
- Do not cancel the meeting unless it is absolutely necessary

Where should it be held?
- Use a quiet room where you will not be distracted by work or interrupted
- Do not host the meeting near to the place where the incident occurred if this is difficult for the service user and/or their carers
- Offer to meet at the service user’s home if this is most suitable for them

What should be prepared in advance of the meeting?
- Investigate possible sources of support and counselling that you anticipate the service user and/or carer may need as a result of the incident or complaint.
- Investigate the needs of service users with special circumstances, for example, linguistic or cultural needs, and those with learning disabilities or cognitive impairment. SHSC has access to spoken language interpreters, British Sigh Language interpreters for hearing impaired service users, and Deaf-Blind Communication Support Workers. The SHSC Service User Engagement team (SUMEU) should be able to help you organise this

How should you approach the service user and/or their carers?
- Speak to the service user and/or their carers as you would want someone in the same situation to communicate with you or your own family

Duty of Candour and Being Open Policy and Procedure version 4 2019
Do not use jargon or acronyms: use clear, straightforward language

Consider the needs of service users with special circumstances, for example linguistic or cultural needs, people with cognitive impairment, learning disabilities and people with sensory needs.

7.5 Content of the preliminary meeting discussion

What should be discussed?

- The service user and/or their carers should be advised of the identity and role of all people attending the Duty of Candour / Being Open discussion before it takes place. This allows them the opportunity to state their own preferences about which healthcare staff should be present.
- All incidents should be acknowledged within 10 days of the incident being known.
- There should be an expression of genuine sympathy, regret and an immediate apology for the harm that has occurred.
- All communication should be truthful, timely, clear and confidential.
- The facts that are known are agreed by the multidisciplinary team. Where there is disagreement, communication about these events should be deferred until after the investigation has been completed. The service user and/or their carers should be informed that an investigation is being carried out and more information will become available as it progresses.
- It should be made clear to the service user and/or their carers that new facts may emerge as the complaints/incident investigation proceeds.
- The service user’s and/or carer’s understanding of what happened should be taken into consideration, as well as any questions they may have.
- There should be consideration and formal noting of the service user’s and/or carer’s views and concerns, and demonstration that these are being heard and taken seriously.
- Appropriate language and terminology should be used when speaking to service users and/or their carers. For example, using the terms ‘service user safety incident’ or ‘adverse event’ may be at best meaningless and at worst insulting to a service user and/or their carers. If a service user’s and/or their carer’s first language is not English, it is also important to consider their language needs – if they would like the Duty of Candour / Being open discussion conducted another language this should be arranged.
- An explanation should be given about what will happen next in terms of the long term treatment plan and incident findings.
- Information on likely short and long term effects of the incident (if known) should be shared. The latter may have to be delayed to a subsequent meeting when the situation becomes clearer.
- An offer of practical and emotional support should be made to the service user and/or their carers. This may involve getting additional help from third party professional support, such as charities and voluntary organisations as well as offering more direct assistance. Information about the service user and the incident should not normally be disclosed to third parties without consent.
It should be recognised that service users and/or their carers may be anxious, angry and frustrated even when the Duty of Candour / Being Open discussion is conducted appropriately.

Contact details for the healthcare professional leading the Duty of Candour / Being Open process should be given to the service user and/or carer.

It is essential that the following does not occur:

- Speculation;
- Attribution of blame;
- Denial of responsibility;
- Provision of conflicting information from different individuals.

The initial Duty of Candour / Being Open discussion is the first part of an ongoing communication process. Many of the points raised here should be expanded on in subsequent meetings with the service user and/or their carers.

**What should be documented?**

The following should be documented and passed to the Clinical Risk Manager or Complaints Manager (as appropriate) once the Duty of Candour / Being Open meeting is complete:

- The time, place, date, as well as the name and relationships of all attendees
- The plan for providing further information to the service user and/or their relative / carers
- Offers of assistance and the service user’s and/or their relative / carer’s response
- Questions raised by the family and/or carers or their representatives, and the answers given
- Plans for follow-up as discussed
- Progress notes relating to the clinical situation and an accurate summary of all the points explained to the service user and/or their relative / carers
- Copies of letters sent to the GP for service user safety incidents not occurring within primary care
- Copies of any statements taken in relation to the service user safety incident or complaint
- A copy of the incident report or complaint letter. Full minutes of the Duty of Candour / Being Open discussion meeting, which should be signed and dated by the Chair and all members of the panel present, should be shared with the service user and/or their relative / carer

Clarify in writing the information given; reiterate key points, record action points and assign responsibilities and deadlines

**7.6 Follow up meetings with service users and/or carers**

The Duty of Candour and Being Open is not a one-off event and regular follow up meetings should be arranged by the investigation lead to ensure that staff, the service user or service user and/or relative / carers are kept updated

- Clarify in writing the information given, reiterate key points, record action points and assign responsibilities and deadlines

Duty of Candour and Being Open Policy and Procedure version 4 2019
o The service user’s notes should contain a complete, accurate record of the discussion(s) including the date and time of each entry, what the service user and / or their carers have been told and a summary of agreed action points

o Maintain a dialogue by addressing any new concerns, share new information once available and provide information on counseling, as appropriate

o Try to include the service user and carer in generating solutions to any problems identified through the investigation.

o Consideration should be given to the timing of meeting, based on both the service user’s health and personal circumstances.

o Consideration should be given to the location of the meeting e.g. the service user’s home.

o Feedback should be given on progress to date and information provided on the investigation process.

o There should be no speculation or attribution of blame. Similarly, the healthcare professional communicating the incident must not criticise or comment on matters outside their own experience.

o The service user and/or their carers should be offered an opportunity to discuss the situation with another relevant professional where appropriate.

o Service users are entitled to expect that they will continue to receive all usual treatment and continue to be treated with dignity, respect and compassion. If a service user expresses a preference for their healthcare needs to be taken over by another team, the appropriate arrangements should be made for them to receive treatment elsewhere.

o A written record of the discussion should be kept and shared with the service user and/or their carers (see 7.5 for details of documentation recommended).

o All queries should be responded to appropriately.

o If completing the process at this point, the service user and / or their carers should be asked if they are satisfied with the investigation and a note of this made in the service user’s records.

o The service user should be provided with contact details so that if further issues arise later there is a conduit back to the relevant healthcare professionals or an agreed substitute.

o If completing the process the service user and/or their family should have received a written document outlining the findings of the investigation and this should include a written apology for the harm caused.

7.7 Completing the Process

Communication with the service user and/or their carers
After completion of the complaint/incident investigation, feedback should take the form most acceptable to the service user. Whatever method is used, the communication should include:

o The chronology of clinical and other relevant facts;

o Details of the service user’s and/or their carer’s concerns and complaints;

o A repeated written apology for the harm suffered and any shortcomings in the delivery of care that led to the service user safety incident;

o A summary of the factors that contributed to the incident;
Information on what has been learned and what will be done to avoid recurrence of the incident and how these improvements will be monitored.

It is expected that in most cases there will be a complete discussion of the findings of the investigation and analysis. In some cases information may be withheld or restricted, for example, where communicating information will adversely affect the health of the service user; where investigations are pending coronial processes; or where specific legal requirements preclude disclosure for specific purposes. In these cases the service user will be informed of the reasons for the restrictions.

**Continuity of care**

When a service user has been harmed during the course of treatment and requires further therapeutic management or rehabilitation, they should be informed, in an accessible way, of the ongoing clinical management plan. This may be encompassed in discharge planning processes addressed to designated individuals such as the referring GP when the service user safety incident has not occurred in primary care.

Service users and / or their carers should be reassured that they will continue to be treated according to their clinical needs even in circumstances where there is a dispute between them and the healthcare team. They should also be informed that they have the right to continue their treatment elsewhere if they have lost confidence in the healthcare team involved in the service user safety incident.

**Communication with the GP and other community care service providers for service user safety incidents not occurring in primary care**

Wherever possible, it is advisable to send a brief communication to the service user’s GP, before discharge, describing what happened.

When the service user leaves the care of the Trust, a discharge letter should also be forwarded to the GP or appropriate community care service. It should contain summary details of:

- The nature of the service user safety incident and the continuing care and treatment
- The current condition of the service user
- Key investigations that have been carried out to establish the service user’s clinical condition
- Recent results
- Prognosis.

It may be valuable to consider including the GP in one of the follow-up discussions either at discharge or at a later stage.

**Monitoring and compliance**

Any recommendations for systems improvements and changes implemented should be monitored for effectiveness in preventing a recurrence. The investigation report will include recommendations and an action plan together with lead roles for implementing any changes agreed and timescales. Progress on the action plan will be followed up by the senior leadership team of the Network concerned and the Trusts Service User Safety Group. Continuing feedback on progress on action plans to the service user and / or carer should be agreed as part of the action plan, in response to what the service user and/or carer wants to know.

Duty of Candour and Being Open Policy and Procedure version 4 2019
Communication of changes to staff
Effective communication with staff is a vital step in ensuring that recommended changes are fully implemented and monitored. It will also facilitate the move towards increased awareness of service user safety issues and the value of the Duty of Candour and being open.

8. Dissemination, storage and archiving

This policy will be posted on the Sheffield Health and Social Care NHS Foundation Trust intranet website and available to all staff within 7 days of its ratification. There will be a link to the policy on the homepage of the intranet website.

A communication to staff informing them of this new policy will be sent via the appropriate communication systems. In addition Clinical, Service and Support Directors will be instructed to ensure that all teams and areas are made aware of this policy and how to apply it.

A web link or copy will be sent to any members of staff that investigate an incident or a complaint by the risk management or complaints team.

The Integrated Governance team will keep a paper and an electronic version of the previous guidance for archive purposes. Please contact them if a copy is needed.

9. Training and other resource implications for this policy

All staff should be made aware of the Duty of Candour and Being Open policy. This will be done through the Trust’s usual communication systems when a policy has been developed / reviewed. New staff will be made aware of the policy through induction processes.

Staff who are responsible for incident, complaint and claims management can receive advice and support on this policy through the Trust’s Head of Integrated Governance, Clinical Risk Manager and the Complaints and Litigation Lead.

10. Audit, monitoring and review

This policy must also be compliant with the Risk Management standards. The implementation of this policy and its effectiveness will be monitored by the Head of Integrated Governance, on behalf of the Quality Assurance Committee.

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<tr>
<th>Risk Management Standards - Monitoring Compliance Template</th>
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<tbody>
<tr>
<td>Minimum Requirement</td>
</tr>
</tbody>
</table>

Duty of Candour and Being Open Policy and Procedure version 4 2019
This policy will be reviewed in 3 years time. Further audit, monitoring and review will be agreed at that point.

11. Implementation plan

<table>
<thead>
<tr>
<th>Action / Task</th>
<th>Responsible Person</th>
<th>Deadline</th>
<th>Progress update</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dissemination, storage and archiving</td>
<td>Post on Trust intranet</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>‘All SHSC staff’ email alert</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>OMG email alert to directors</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Team managers to ensure all staff have access to latest version of this policy, and the previous guidance is removed and destroyed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Training and development</td>
<td>Amend induction programme for all staff and for new managers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Training for Duty of Candour and Being Open discussion leads</td>
<td>Training for Duty of Candour and Being Open discussion leads</td>
<td></td>
<td></td>
</tr>
<tr>
<td>New roles and responsibilities</td>
<td>Clinical audit programme to include audit of implementation of this policy</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

12. Links to Other Policies

Duty of Candour and Being Open Policy and Procedure version 4 2019
This policy should be read in conjunction with SHSC Complaints Procedure and Claims Policy and SHSC Incident Management Policy.

13. Contact details

<table>
<thead>
<tr>
<th>Title</th>
<th>Name</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deputy Chief Executive</td>
<td>Clive Clarke</td>
<td></td>
<td><a href="mailto:clive.clarke@shsc.nhs.uk">clive.clarke@shsc.nhs.uk</a></td>
</tr>
<tr>
<td>Head of Integrated Governance</td>
<td>Tania Baxter</td>
<td>27163279</td>
<td><a href="mailto:tania.baxter@shsc.nhs.uk">tania.baxter@shsc.nhs.uk</a></td>
</tr>
<tr>
<td>Complaints and Litigation Lead</td>
<td>Wendy Hedland</td>
<td>2718956</td>
<td><a href="mailto:wendy.hedland@shsc.nhs.uk">wendy.hedland@shsc.nhs.uk</a></td>
</tr>
<tr>
<td>Clinical Risk Manager</td>
<td>Vin Lewin</td>
<td>2716379</td>
<td><a href="mailto:vin.lewin@shsc.nhs.uk">vin.lewin@shsc.nhs.uk</a></td>
</tr>
</tbody>
</table>

14. References

1. NHSLA (2010)
   *Risk management Standards for Mental Health and Learning Disability Trusts*
   [www.nhsla.com/publications](http://www.nhsla.com/publications) (click on risk management link)

   ‘Being Open’ – saying sorry when things go wrong; communicating patient safety incidents with patients and carers
   NPSA London

3. NHSLA guidance 2014 ‘The Duty of Candour’ Guidance
## Appendix A  Equality impact assessment form

<table>
<thead>
<tr>
<th></th>
<th>Negative Impact - It could potentially Disadvantage</th>
<th>Positive Impact - It could potentially Advantage</th>
<th>Reason / Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RACE</strong></td>
<td>Yes</td>
<td></td>
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</tr>
<tr>
<td><strong>GENDER</strong></td>
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<td></td>
<td></td>
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<tr>
<td><strong>DISABILITY</strong></td>
<td>Yes</td>
<td></td>
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<tr>
<td><strong>SEXUAL ORIENTATION</strong></td>
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<tr>
<td><strong>AGE</strong></td>
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<td></td>
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<tr>
<td><strong>RELIGION OR BELIEF</strong></td>
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</table>

The Disability Discrimination Act 1995 defines disability as ‘a physical or mental impairment which has a substantial and long-term effect on a person’s ability to carry out normal day-to-day activities’.

The policy may have an impact on RACE and DISABILITY, as different format or explanation of content would need to be provided and further explanations and support to understand the policy.

This policy has no impact with relation to gender, sexual orientation, age, or religion or belief.
If you have identified that there may be a negative impact for any of the groups above, is the negative impact…

INTENDED? YES [ ] NO [✓]

LEGAL? YES [ ] NO [✓] Don’t know [ ]

(I.e. does it breach antidiscrimination legislation either directly or indirectly?)

Level of Impact

……… HIGH [ ]

……… MEDIUM [ ]

……… LOW [✓]

Complete a full Impact Assessment

Complete a full Impact Assessment

Consider areas 1 – 3 below

1. Can the low negative impact be removed?

Yes, by the provision of appropriate translations and supporting material for people with languages other than English as their first language, sensory impairment or learning disabilities.

If you have not identified a negative impact …..

2. Can any Positive impact be improved?

n/a
3. If there is no evidence that the policy promotes equality and equal opportunity or improves relations with any of the above groups, could the policy be developed or changed so that it does?

n/a

*Having considered the assessment, is any specific action required - Please outline this using the pro forma action plan below*  
(The lead for the policy is responsible for putting mechanisms in place to ensure that the proposed action is undertaken)  
None required

STAGE 1 COMPLETED BY …………………………………………………...

SIGNATURE …………………………………………………………………

Stage 1 EQIA received by Service User Engagement and Equality Teams ………………………
Stage 1 outcome agreed.

Signed …………………………………………………………………
(Head of Service User Engagement and Equality Teams)

Stage 1 Outcome needs review (Details)

Returned to lead (Date) …………………………………………………

Signed …………………………………………………………………

If a full EQIA is required the stage 1 assessment form should be retained and a completed EQIA report submitted to the relevant governance group for agreement by the chair. The chair will forward the completed reports to the Service user Experience and Equality team for publication.
Appendix B - Human Rights Act Assessment Form and Flowchart

You need to be confident that no aspect of this policy breaches a persons Human Rights. You can assume that if a policy is directly based on a law or national policy it will not therefore breach Human Rights.

If the policy or any procedures in the policy, are based on a local decision which impact on individuals, then you will need to make sure their human rights are not breached. To do this, you will need to refer to the more detailed guidance that is available on the SHSC web site [http://www.sct.nhs.uk/humanrights-273.asp](http://www.sct.nhs.uk/humanrights-273.asp) (relevant sections numbers are referenced in grey boxes on diagram) and work through the flow chart on the next page.

1. **Is your policy based on and in line with the current law (including caselaw) or policy?**
   - [✓] Yes. No further action needed.
   - [□] No. Work through the flow diagram over the page and then answer questions 2 and 3 below.

2. **On completion of flow diagram – is further action needed?**
   - [□] No, no further action needed.
   - [□] Yes, go to question 3

3. **Complete the table below to provide details of the actions required**

<table>
<thead>
<tr>
<th>Action required</th>
<th>By what date</th>
<th>Responsible Person</th>
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<tbody>
<tr>
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</tbody>
</table>
Human Rights Assessment Flow Chart

Complete text answers in boxes 1.1 – 1.3 and highlight your path through the flowchart by filling the YES/NO boxes red (do this by clicking on the YES/NO text boxes and then from the Format menu on the toolbar, choose ‘Format Text Box’ and choose red from the Fill colour option).

Once the flowchart is completed, return to the previous page to complete the Human Rights Act Assessment Form.

1.1 What is the policy/decision title? ................................................................. 1

1.2 What is the objective of the policy/decision? .................................................. 1

1.3 Who will be affected by the policy/decision? .................................................. 1

Will the policy/decision engage anyone’s Convention rights? 2.1 NO

YES

Will the policy/decision result in the restriction of a right? 2.2 NO

YES

Is the right an absolute right? 3.1 YES

NO

Is the right a limited right? 3.2 NO

YES

Will the right be limited only to the extent set out in the relevant Article of the Convention? 3.3

YES

Policy/decision is likely to be human rights compliant

BUT

Get legal advice

Regardless of the answers to these questions, once human rights are being interfered with in a restrictive manner you should obtain legal advice. You should always seek legal advice if your policy is likely to discriminate against anyone in the exercise of a convention right.

Flowchart exit

There is no need to continue with this checklist. However,
- Be alert to any possibility that your policy may discriminate against anyone in the exercise of a Convention right
- Legal advice may still be necessary – if in any doubt, contact your lawyer
- Things may change, and you may need to reassess the situation

4 The right is a qualified right

1) Is there a legal basis for the restriction? AND
2) Does the restriction have a legitimate aim? AND
3) Is the restriction necessary in a democratic society? AND
4) Are you sure you are not using a sledgehammer to crack a nut?

Policy/decision is not likely to be human rights compliant

Access to legal advice MUST be authorised by the relevant Executive Director or Associate Director for policies (this will usually be the Chief Nurse). For further advice on access to legal advice, please contact the Complaints and Litigation Lead.
Appendix C - Development and consultation process

The Director of Quality led the development of this updated policy. A draft was circulated to the individuals below for comments in May 2015.

- Head of Integrated Governance
- Risk Management team
- Head’s of Patient Engagement, Equality Teams
- Professional and Practice development Lead Nurse
Our Commitment

Being Open with our Service Users and Carers

Our Commitment

Staff work hard to deliver the highest standards of healthcare to all service users at Sheffield Health and Social Care NHS Foundation Trust. We provide safe and effective care to many thousands of people every year but sometimes, despite our best efforts, things can and do go wrong.

If a service user is harmed as a result of a mistake or error in their care, we believe that they, their family or those who care for them, should receive an apology, be kept fully informed as to what has happened, have their questions answered and know what is being done in response. This is something that we call Being open and we make a commitment to our service users to:

• acknowledgement of the incident;
• apologise for the harm caused;
• explain, openly and honestly, what has gone wrong;
• describe what we are doing in response to the mistake;
• offer support and counselling services that might be able to help;
• provide the name of a person to speak to;
• give updates on the results of any investigation.

Kevan Taylor

Duty of Candour and Being Open Policy and Procedure version 4 2019
Appendix E

The Ten Principles of Being Open

1. Principle of acknowledgement
   All service user safety incidents should be acknowledged and reported as soon as they are identified. In cases where the service user and/or their carers inform healthcare staff when something has happened, their concerns must be taken seriously and should be treated with compassion and understanding by all staff. Denial of a person’s concerns will make future open and honest communication more difficult.

2. Principle of truthfulness, timeliness and clarity of communication
   Information about a service user safety incident must be given in a truthful and open manner by an appropriately nominated person. Communication should also be timely informing the service user and/or their carers what has happened as soon as is practicable, based solely on the facts known at that time. Explain that new information may emerge as an incident investigation takes place and that they will be kept up to date. Service users and/or their carers should receive clear, unambiguous information and be given a single point of contact for any questions or requests they may have.

3. Principle of apology
   Service users and/or their carers should receive a sincere expression of sorrow or regret for the harm that has resulted from a service user safety incident. This should be in the form of an appropriately worded agreed manner of apology, as early as possible. Verbal apologies are essential because they allow face to face contact. A written apology, which clearly states the organisation is sorry for the suffering and distress resulting from the incident, must also be given. Both verbal and written apologies should be given. Saying sorry is not an admission of liability and it is the right thing to do.

4. Principle of recognising service user and carer expectations
   Service users and/or their carers can reasonably expect to be fully informed of the issues surrounding a service user safety incident, and its consequences, in a face to face meeting with representatives from the Trust. They should be treated sympathetically, with respect and consideration. Confidentiality must be maintained at all times. Service users and/or their carers should also be provided with support in a manner to meet their needs. This may involve an independent advocate or an interpreter. Information on the Service user Engagement Service and other relevant support groups should be given as soon as possible.

5. Principle of professional support
   The Trust must create an environment in which all staff are encouraged to report service user safety incidents. Staff should feel supported throughout the incident investigation process; they too may have been traumatised by the incident. To ensure a robust and consistent approach to incident investigation the NHS has developed an Incident Decision Tree (ICT). Where there is reason for the Trust to believe a member of staff has committed a punitive or criminal act, the organisation should take steps to preserve it’s position and advise the member(s) of staff at an early stage to enable them to obtain separate legal advice and/or representation. Staff should be encouraged to seek support from relevant professional bodies.

Duty of Candour and Being Open Policy and Procedure version 4 2019
6. Principle of risk management and systems improvement
Root cause analysis (RCA) or similar techniques should be used to uncover the underlying causes of a service user safety incident. Investigation should focus on improving systems of care, which will be reviewed for their effectiveness.

7. Principles of multi-disciplinary responsibility
The Duty of Candour and Being Open policy applies to all staff who have roles in direct and indirect service user care. Most healthcare provision involves multi-disciplinary teams and communication with service users and/or their carers following an incident that led to harm should reflect this. This will ensure that the Duty of Candour and Being Open process is consistent with the philosophy that incidents usually result from system failures and rarely from the actions of an individual. To ensure multidisciplinary involvement in the process, it is important to identify clinical, nursing and managerial leaders who will champion it. Both senior managers and senior clinicians must participate in the incident investigation and clinical risk management.

8. Principles of clinical governance
Being Open requires the support of service user safety and quality improvement through clinical governance frameworks, in which service user safety incidents are investigated and analysed, to find out what can be done to prevent their recurrence. It also involves a system of accountability through the chief executive to the board to ensure these changes are implemented and their effectiveness reviewed. These findings should be disseminated to staff so they can learn from service user safety incidents. Audits should be developed to monitor the implementation and effects of changes in practice following a service user safety incident.

9. Principle of confidentiality
Details of a service user safety incident should at all times be considered confidential. The consent of the individual concerned should be sought prior to disclosing information beyond the clinicians involved in treating the service user. Where this is not practicable or an individual refuses consent to the disclosure, disclosure may still be lawful if justified in the public interest or where those investigating the incident have statutory powers for obtaining information. Communications with parties outside of the clinical team should be anonymous when used for the purposes of wider learning (Information for the police or the coroner should be discussed with the appropriate corporate lead). It is good practice to inform the service user and/or their carers about who will be involved in the investigation before it takes place, and give them the opportunity to raise any objections and be involved.

10. Principle of continuity of care
Service users are entitled to expect they will continue to receive all usual treatment and continue to be treated with respect and compassion. If a service user expresses a preference for their healthcare needs to be taken over by another team, the appropriate arrangements should be made for them to receive treatment elsewhere.
Saying sorry meaningfully when things go wrong is vital for everyone involved in an incident, including the patient, their family, carers, and the staff that care for them.
Saying sorry is:
always the right thing to do
not an admission of liability
acknowledges that something could have gone better
the first step to learning from what happened and
preventing it recurring

Why?
Not only is it a moral and right thing to do - it is also a statutory, regulatory, and professional requirement. It can also support learning and improve patient safety.

When?
As soon as possible after you become aware something has gone wrong you should seek out the patient and or their family and say sorry and acknowledge what has happened and tell them that you will find out more. Reassure them that you will keep them informed.

Who?
Everyone can say sorry, but you may need to be supported to do so. You may need the backing of more senior people and staff may need training but it should not stop you from simply saying sorry. As part of an initial apology it is best practice to provide the patient and their family with a key contact wherever possible.

What if there is a formal complaint or claim?
The Compensation Act 2006 states; ‘An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty’. (source: Compensation Act 2006 – Chapter 29 page 3)

In fact, delayed or poor communication makes it more likely that the patient will seek information in a different way such as complaining or taking legal action. The existence of a formal complaint or claim should never prevent or delay you saying sorry.

How?
The way you say sorry is just as important as saying it. An apology should demonstrate sincere regret that something has gone wrong and this includes recognised complications referred to in the consent process. It should be confidential and tailored to the individual patient’s needs.

Where possible you should say sorry in person and involve the right members of the healthcare team. It should be heartfelt, sincere, explain what you know so far and what you will do to find out more.

It is the starting point of a longer conversation; as over time this will lead to sharing information about what went wrong, what you will do differently in the future. It is vital to avoid acronyms and jargon in all communications.
You may also need to say sorry in writing where significant harm has been caused or in response to a written complaint. An example of this could be:

“I wish to assure you that I am deeply sorry for the poor care you have been given and that we are all truly committed to learning from what happened. I apologise unreservedly for the distress this has caused you and your family”

What about the Duty of Candour?

The statutory Duty of Candour requires all NHS staff to act in an open and transparent way. Regulations governing the duty set out the specific steps healthcare professionals must follow if there has been an unintended or unexpected event which has caused moderate or severe harm to the patient.

These steps include informing people about the incident, providing reasonable support, truthful information and an apology. Saying sorry forms an integral part of this process. Process should never stand in the way of providing a full explanation when something goes wrong.

Don’t say

✓ I’m sorry you feel like that
✓ We’re sorry if you’re offended
✓ I’m sorry you took it that way
✓ We’re sorry, but...

Do say

✓ I’m sorry X happened
✓ We’re truly sorry for the distress caused
✓ I’m sorry, we have learned that...
“We have never, and will never, refuse cover on a claim because an apology has been given.”

Helen Vernon, Chief Executive, NHS Resolution

For more information

Nursing and Midwifery Council & General Medical Council joint guidance on openness and honesty when things go wrong
www.gmc-uk.org/guidance/ethical_guidance/27233.asp

Reports and consultations on complaint handling (Parliamentary and Health Service Ombudsman)
www.ombudsman.org.uk

AvMA (Action against Medical Accidents) Duty of Candour leaflet
www.avma.org.uk/policy-campaigns/duty-of-candour/duty-of-candour-leaflet

Care Quality Commission - Regulation 20: Duty of Candour
www.cqc.org.uk/content/regulation-20-duty-candour

The NHS Constitution

Patients: “you have the right to an open and transparent relationship with the organisation providing your care. You must be told about any safety incident relating to your care which in the opinion of a healthcare professional, has caused or could still cause significant harm or death. You must be given the facts, an apology, and any reasonable support you need”.

Staff: “you should aim to be open with patients... if anything goes wrong; welcoming and listening to feedback and addressing concerns promptly and in the spirit of cooperation.”

If you want to get in touch
safetyandlearningenquiries@resolution.nhs.uk

Published June 2017 www.resolution.nhs.uk