



# Guide to Duty of Candour

All providers of health and social care services who are registered with the Care Quality Commission (CQC) will be required to comply with a statutory duty of candour with effect from April 2015. The Duty of Candour is to be open and honest when untoward events occur.

## Keyfacts

- The current duty is contained within section 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 - see below.
- Applies to NHS Bodies (NHS Trusts, NHS Foundation Trusts and Special Health Authorities) from November 2014.
- Introduced for all other Care Quality Commission (CQC) registered persons in England including Care Homes from April 2015.
- The regulations include a more general obligation on CQC registered persons to 'act in an open and transparent way in relation to service user care and treatment'.
- CQC may refuse application for registration where providers cannot demonstrate the requirements of the Regulation will be met.
- In addition, failure to comply may also result in the imposition of fines or other penalties.

## The duty under the Health and Social care Act 2008 (Regulated Activities) (Amendment) Regulations 2015

Section 20 of the Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2015 requires that when a notifiable incident occurs during the provision of a regulated activity, registered persons must notify the relevant person, and;

- Provide an account of all the facts known at time of notification, true to their best knowledge.
- Advise about other relevant enquiries.
- Include an apology (defined as an expression of sorrow or regret).

- Make a written record of the account and keep it securely.
- The notification should be conducted in person by a representative of the service provider followed thereafter by a written notification.
- This should be sent as soon as reasonably practicable after the event.

## What is a notifiable incident?

A **notifiable incident** is defined as any unintended/unexpected incident that occurred in respect of service user during the provision of a regulated activity that, in the reasonable opinion of a health care professional

- a) 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
  - An impairment of the sensory, motor or intellectual functions of the service user which has lasted, or is likely to last, for a continuous period of an least 28 days
  - Changes to the structure of the service user's body
  - The service user experiencing prolonged pain or prolonged psychological harm, or
  - The shortening of the life expectancy of the service user; or
- b) Requires treatment by a health care professional in order to prevent
  - The death of a service user, or
  - Any injury to the service user which, if left untreated, would lead to one or more of the outcomes mentioned in sub-paragraph (a)



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## What should the notification include?

Notifications should include;

- Notification the incident has occurred.
- An apology – this is different to an admission of liability. Whilst it is appropriate to express sympathy or regret, the apology **should not** include any admissions of fault.
- What further enquiries will be taking place – if an internal investigation, who will be interviewed and whether external input will be obtained and when enquiries might be completed.
- A factual account of the incident – it is important that the account is purely factual and should avoid expressing an opinion as to the cause of the incident or admitting any blame.
- Confirmation of when an update will be provided – the further notification should include an apology and details of the outcome of any further investigations.

Please ensure that you notify Ansvar Insurance of any **notifiable events** without delay.

If you have any queries or for advice, contact our claims team:

**0345 606 0431**  
[ansvarclaims@ansvar.co.uk](mailto:ansvarclaims@ansvar.co.uk)

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## What practical steps can you take?

Key preliminary steps should be taken now to establish a framework to support compliance as follows:

- Prepare guidance documents for staff on steps to be taken when a notifiable incident occurs.
- Prepare a template notification letter.
- Consider preparing policy documents setting out the company's commitment to openness and candour.
- Staff training to support the new guidance and/or policies.
- Development and communication of the notification process, including to whom the incident should be reported and the mechanism.
- Identify those who will be in a position to provide support to the service user to ensure they are involved and kept updated as the investigation progresses.

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