

Version: 1a FOI Status: Public	Duty of Candour for Direct Care Policy Derbyshire County Council - Adult Social Care	Originally Issued: March 2020 V1a Issued: June 2022 Review Due: June 2024 Author: Quality and Compliance
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Duty of Candour for Direct Care Policy Derbyshire County Council Adult Social Care

Contents

Introduction.....	2
Aims	2
What is a Notifiable Safety Incident?	2
What should you do if a Notifiable Safety Incident occurs?	3
Appendix 1: Duty of Candour policy CQC guide to Applications and Notifications	6
Appendix 2 Duty of Candour Template Letter 1	8
Appendix 3 Duty of Candour template letter 2.....	9
Author History.....	10

Version: 1a FOI Status: Public	Duty of Candour for Direct Care Policy Derbyshire County Council - Adult Social Care	Originally Issued: March 2020 V1a Issued: June 2022 Review Due: June 2024 Author: Quality and Compliance
-----------------------------------	--	---

Introduction

Following the Francis Inquiry into Mid Staffordshire NHS Foundation Trust, a statutory 'Duty of Candour' was introduced for all health and care providers.

Regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 imposes a duty upon providers carrying out regulated activity to act in an open and transparent manner at all times. The regulation sets out specific requirements for when things go wrong. The Duty of Candour obligation is triggered when a '**notifiable safety incident**' occurs. The definition of notifiable safety incident is defined in the regulations and is detailed below.

In broad terms the Care Quality Commission has provided guidance that our Duty of Candour obligations are triggered when an unintended or unexpected incident occurs during the provision of care and the staff involved have made a mistake or not done something they should have done.

Aims

This policy provides guidance on the statutory Duty of Candour requirements to all staff working within Derbyshire County Council's regulated services.

The aim is to improve the quality, consistency and speed of communication with clients/families and carers when a 'notifiable safety incident' occurs.

The intention is to help ensure that all employees are able to identify a 'notifiable safety incident' and to take the appropriate action following such an incident.

What is a Notifiable Safety Incident?

For the purposes of Regulation 20 a notifiable safety incident is defined in the following terms;

*'Any unintended or unexpected incident that occurred in respect of a service user during the provision of regulated activity that, in **the reasonable opinion of a health care professional***

a) *appears to have resulted in-*

i) *the death of a 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,*

ii) *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 at least 28 days,*

Version: 1a FOI Status: Public	Duty of Candour for Direct Care Policy Derbyshire County Council - Adult Social Care	Originally Issued: March 2020 V1a Issued: June 2022 Review Due: June 2024 Author: Quality and Compliance
-----------------------------------	--	---

iii) changes to the structure of the service user's body, the service user experiencing prolonged pain or prolonged psychological harm, (pain/psychological harm lasting or likely to last 28 days or more) or

iv) the shortening of the life expectancy of the service user; or

b) requires treatment by a health care professional in order to prevent-

i) the death of the service user, or

ii) any injury to the service user which, if left untreated, would lead to one or more of the outcomes listed at paragraph a above'

What should you do if a Notifiable Safety Incident occurs?

All staff must report what they consider to be a notifiable safety incident immediately to the registered manager of the service. Where a registered service manager or their nominated deputy considers that a 'notifiable safety incident' has, or may have occurred, it is their responsibility to take the following steps as soon as reasonably practicable after they become aware of such an incident:

- inform the service manager and group manager of the incident - the group manager will complete an internal 'notifiable incident form'
- complete the 'client incident and action record' workflow on the Mosaic system
- notify the Care Quality Commission (CQC) that a service user has suffered a serious injury in accordance with Regulation 18 of the Care Quality Commission (Registration) Regulations 2009 - this notification **must** be copied to the central Quality and Compliance (Q&C) team at; ASCHDCCQC.Correspondence@derbyshire.gov.uk
- please see the process for making notifications to the CQC at [Appendix 1](#)
- notify the CQC of a death (if the person has died) under Regulation 16 of the Care Quality Commission (Registration) Regulations 2009
- notify the relevant person of the incident - this means speaking to the client directly if this is possible and appropriate, or to a person acting lawfully on their behalf if the client has died or they do not have the required capacity - this will usually be a family member or an advocate if the client does not have any family
- the notification must be in person in the first instance and then followed up in writing

Version: 1a FOI Status: Public	Duty of Candour for Direct Care Policy Derbyshire County Council - Adult Social Care	Originally Issued: March 2020 V1a Issued: June 2022 Review Due: June 2024 Author: Quality and Compliance
-----------------------------------	--	---

The initial notification must:

- be given in person by the registered person or one or more of their representatives
- provide an account which is true and includes all the facts known at the date of notification
- advise whether further enquiries into the incident are considered to be necessary and what they are
- include an apology - please note this is not an admission of guilt but rather a sincere expression of sorrow or regret that something has gone wrong
- a case note should be made to record this initial notification The follow up notification must:
 - be completed in writing - please see suggested templates at Appendix 2 for an outline - these templates are for guidance only and should be modified accordingly depending upon the circumstances
 - be checked and approved by the central Quality and Compliance (Q&C) team before they go out
 - detail the information provided at the time of the initial notification, which would have taken place in person, in accordance with the guidance above
 - provide an account which is true and includes all the facts known at the time of writing
 - provide details of any further enquiries which have been undertaken and the results of those enquiries; and
 - include an apology - please note this is not an admission of guilt but rather a sincere expression of sorrow or regret that something has gone wrong
 - this letter should be sent within 10 days of the notifiable safety incident occurring

Please note that where the client/family/advocate cannot be contacted in person or declines to speak to the registered manager, then the notification requirements do not apply but a record should be kept of the attempts to make contact.

Reasonable support should be provided to the client and their family when you notify them of the incident.

Please be aware that if any person attempts to prevent you acting in accordance with the Duty of Candour obligation this should be escalated immediately to your line manager or refer to the council's ['Whistle Blowing Confidential Reporting Code'](#) for alternative options.

The CQC has produced guidance to providers of social care with respect to the

Version: 1a FOI Status: Public	Duty of Candour for Direct Care Policy Derbyshire County Council - Adult Social Care	Originally Issued: March 2020 V1a Issued: June 2022 Review Due: June 2024 Author: Quality and Compliance
-----------------------------------	--	---

Duty of Candour obligations available [here](#).

Version: 1a FOI Status: Public	Duty of Candour for Direct Care Policy Derbyshire County Council - Adult Social Care	Originally Issued: March 2020 V1a Issued: June 2022 Review Due: June 2024 Author: Quality and Compliance
-----------------------------------	--	---

Appendix 1: Duty of Candour policy CQC guide to Applications and Notifications

Derbyshire County Council Notifications to the Care Quality Commission

Notification title	Responsibility for completing each notification
Changes to statement of purpose [r.12 2009]	Q&C team
Absence of a registered manager for 28 days or more [r.14 2009]	Q&C team - service manager must notify the Q&C team using the email address below as soon as they are aware of such an absence or when they are aware such an absence is planned.
Return of a registered manager after an absence of 28 days or more [r. 14 2009]	Q&C team - service manager must notify Q&C team using the email address below as soon as they are aware of the return of the registered manager.
All changes affecting the provider or registered manager [r.15 2009]	Q&C team - service manager must notify Q&C team using the email address below as soon as they are aware of the return of the registered manager. (To include name changes and where a registered manager ceases to act).
Death of a person using the service [r.16 2009]	Registered manager to send without delay - <u>must be copied to the Q&C team to be logged</u>
Incidence of abuse/allegation of abuse [r.18 2009]	Registered manager to send without delay - <u>this must be copied to the Q&C team to be logged.</u>
Application to deprive a person of their liberty when granted [r.18 2009]	Registered manager to send without delay - <u>this must be copied to the Q&C team to be logged.</u>
Events that stop a service running safely and properly (including insufficient number of suitably qualified and experienced staff [r18 2009]	Registered manager to send without delay - <u>this must be copied to the Q&C team to be logged.</u>

Version: 1a FOI Status: Public	Duty of Candour for Direct Care Policy Derbyshire County Council - Adult Social Care	Originally Issued: March 2020 V1a Issued: June 2022 Review Due: June 2024 Author: Quality and Compliance
-----------------------------------	--	---

Incident reported to or investigated by the police [r18 2009]	<i>Registered manager to send without delay - <u>this must be copied to the Q&C team to be logged</u></i>
Serious injury to a person using the service [r 18 2009]	<i>Registered manager to send without delay - <u>this must be copied to the Q&C team to be logged</u></i>
Applications to register all unit managers with CQC [r.19 2014]	<i>Q&C team - service manager must notify Q&C using the email address below as soon as a registered manager is newly appointed to a service.</i>

All notifications *must* be copied to the address below:

ASCHDCCQC.correspondence@derbyshire.gov.uk

Checking Service offered by the Quality and Compliance team

The central Quality and Compliance team have an important role in logging and monitoring all incidents notified to the CQC. This enables central oversight of these incidents which is why notifications must be copied to the email address above. This process will also ensure that any issues with the quality of notifications are addressed in good time.

If you have any questions about the content of the notification or would like it to be checked, the Q&C team can offer this support during office hours: 9.00 - 5.00 Monday - Friday.

Pre Inspection Reviews

All pre inspection reviews should be sent to the central Quality and Compliance team before they are sent to the CQC. This will highlight any central developments which do not appear clear at a local level and ensure that all relevant information is included.

Inadequate or Requires Improvement

Where a care home is inspected by the CQC and assessed as 'requires improvement' or 'inadequate', the service manager working within the central Quality and Compliance team will work with the unit manager and service manager to jointly agree the action plan before it is returned to the CQC.

Version: 1a FOI Status: Public	Duty of Candour for Direct Care Policy Derbyshire County Council - Adult Social Care	Originally Issued: March 2020 V1a Issued: June 2022 Review Due: June 2024 Author: Quality and Compliance
-----------------------------------	--	---

Appendix 2 Duty of Candour Template Letter 1

[Name
Address -
Street
Town
County
Postcode]

Dear [Mr/Mrs/Miss/Ms Surname]

I write following our conversation on *[add date]*. Thank you for taking the time to talk with me regarding *[add incident - an example would be your father's fall on 23rd June and subsequent fractured hip]*.

I would like to express my sincere apologies that this event occurred while [add client's name] was in our care and want to assure you that we will be investigating this incident to understand how this happened, and whether there is anything that we could do differently in future to stop it happening again.

As a provider we are committed to being open when events such as this happen and I will write to you again once the investigation has been completed with further details.

Once you have received our investigation findings please do contact me if you want to discuss the incident further.

In the meantime, should you have any questions please don't hesitate to contact me on *[add number and email address]*.

Yours sincerely

[Add name]

Version: 1a FOI Status: Public	Duty of Candour for Direct Care Policy Derbyshire County Council - Adult Social Care	Originally Issued: March 2020 V1a Issued: June 2022 Review Due: June 2024 Author: Quality and Compliance
-----------------------------------	--	---

Appendix 3 Duty of Candour template letter 2

[Name
Street
Town
County
Postcode]

Dear *[Mr/Mrs/Miss/Ms Surname]*

I write following our conversation on *[add date]*. Thank you for taking the time to talk with me regarding *[add incident - an example would be your father's fall on 23rd June and subsequent fractured hip]*.

I would like to express my sincere apologies that this event occurred while *[add client's name]* was in our care. We have investigated this incident in order to understand how this happened.

[Add in a paragraph about the mistake/ omission that took place. A couple of examples are as follows;

Unfortunately our investigation revealed that your mother was discharged from hospital with the wrong medication. Unfortunately this was incorrectly added to the MAR sheet by a member of staff which resulted in your mother mistakenly receiving an additional dose of medication. In order to reduce the chance of this happening again the medication policy has been reviewed and revised and the staff member responsible for the omission has been booked on medication training.

Or;

As you are aware, your mother experienced a fall and subsequently suffered a bleed on her brain. After investigating I have found that your mother required bed rails in accordance with the risk assessment completed upon her admission and that bed rails were not fitted as they should have been. I can confirm that as a result of this incidentadd in the steps taken.

If you have any questions or wish to discuss the incident further please don't hesitate to contact me on *[add number and email address]*.

Yours sincerely

[Add name]

Version: 1a FOI Status: Public	Duty of Candour for Direct Care Policy Derbyshire County Council - Adult Social Care	Originally Issued: March 2020 V1a Issued: June 2022 Review Due: June 2024 Author: Quality and Compliance
-----------------------------------	--	---

Author History

Approval and Authorisation History

Authored by Quality and Compliance	March 2020
Approved by Senior Management Team	March 2020

Change History

Version 1	Quality and Compliance	March 2020	New document
Version 1a	Quality and Compliance	June 2022	Reviewed no changes