

This policy:

- Applies to all employees, volunteers, agency workers and those on placement (referred to as “people”) who work in Service Delivery.
- Has been adapted from the Scottish Government’s Organisational Guidance on Duty of Candour dated March 2018
- Is in compliance with the No Life Half Lived Strategy: *“To be effective and accountable in all that we do.”*

In line with our commitment to equal opportunities, this policy can be made available in a variety of formats, including large print, translated into another language or other media. Reasonable adjustments will also be made where required to assist individuals who have a disability.

We will endeavour to develop fair and consistent policies, procedures and practices to support our aims, values and objectives.

1. Introduction and Statement of Intent

1.1 This policy applies to organisations that provide a health service, care service, or social work service to which the duty of candour applies is referred to in the relevant legislation as a “responsible person”:

- a) a Health Board constituted under section 2(1) of the National Health Service (Scotland) Act 1978 (the 1978 Act);
- b) a person (other than an individual) who has entered into a contract, agreement or arrangement with a Health Board to provide a health service;
- c) the Common Services Agency for the Scottish Health Service constituted under section 10(1) of the 1978 Act;
- d) a person (other than an individual) providing an independent healthcare service mentioned in section 10F(1) of the 1978 Act;
- e) a local authority;
- f) a person (other than an individual) who provides a care service;
- g) an individual who provides a care service and who employs, or has otherwise made arrangements with, other persons to assist with the provision of that service (except childminders or unless the assistance in providing that service is merely incidental to the carrying out of other activities);
- h) a person (other than an individual) who provides a social work service.

1.2 CHSS falls within category b) above. We believe in openness and honesty in supporting those providing, receiving and/or experiencing treatment and care. We do this through trust and effective communication when things have gone wrong.

1.3 CHSS is required to protect a 'relevant person' who has been harmed during the incident, or where that person has died, or is, in the opinion of the responsible person, lacking in capacity or otherwise unable to make decisions about the service provided, a person acting on behalf of that person.

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1.4 This policy demonstrates:

- Our people driven approach to service delivery and explains what we are required by law to follow when there has been an unintended or unexpected incident that results in death or harm (or additional treatment is required to prevent injury that would result in death or harm).
- Our responsibility for developing safer systems.
- Our commitment for staff engaging better in improving services.
- Greater trust in people who use our services.

1.5 We will:

- tell those affected that an unintended or unexpected incident has occurred;
- apologise;
- involve them in meetings about the incident;
- review what happened with a view to identifying areas for improvement;
- learn (taking account of the views of relevant persons);
- ensure that support is in place for their employees, volunteers and for others who may also be affected by unintended or unexpected incidents;
- set out in an annual report the way that the this policy has been followed for all cases that we have identified.

1.6 There are already a number of professional duties of candour such as those required by the Scottish Social Services Council, the Nursing and Midwifery Council, the General Medical Council, the General Dental Council, and the General Optical Council. As an employer, we expect our people to abide by this policy which goes beyond our Code of Conduct and Safeguarding Policy.

1.7 This policy forms part of CHSS's safeguarding policies and does not form part of CHSS's Complaints Policy

2. Leadership and Management

2.1 Leaders and managers within CHSS are required to ensure that the implementation of this policy forms a key part of learning and integrated into existing governance frameworks, processes and procedures.

3. General Principles

3.1 We will activate the duty of candour policy as soon as reasonably practicable after becoming aware that:

- an unintended or unexpected incident occurred in the provision of a service provided by CHSS as the responsible person;
- in the reasonable opinion of a registered health professional not involved in the incident:
 - that incident appears to have resulted in or could result in any of the outcomes mentioned below at 3.4 – 2.6; and
 - that outcome relates directly to the incident rather than to the natural course of the person's illness or underlying condition.

3.2 The procedure start date is the date that CHSS receives confirmation from a registered health professional that, in their reasonable opinion, an unintended or unexpected incident appears to have resulted in, or could result in an outcome listed above and that relates directly to the incident rather than to the natural course of the relevant person's illness or underlying condition.

3.3 Where the duty of candour procedure start date is later than one month after the date on which the incident occurred, an explanation of the reason for this has to be provided to the relevant person.

3.4 The relevant outcomes are as follows:

- The death of the person.
- Permanent lessening of bodily, sensory, motor, physiologic or intellectual functions (including removal of the wrong limb or organ or brain damage) ("severe harm").

3.5 Harm which is not severe harm but which results in one or more of the following criterion:

- an increase in the person's treatment;
- changes to the structure of the person's body;
- the shortening of the life expectancy of the person;
- an impairment of the sensory, motor or intellectual functions of the person which has lasted, or is likely to last, for a continuous period of at least 28 days;
- the person experiencing pain or psychological harm which has been, or is likely to be, experienced by the person for a continuous period of at least 28 days.

3.6 The person requires treatment by a registered health professional in order to prevent:

- the death of the person;
- any injury to the person which, if left untreated, would lead to death or severe injury.

4. Notification

- 4.1 The relevant person should be notified as soon as reasonably practicable but it should be considered good practice to notify the relevant person within 10 working days of the procedure start date.
- 4.2 This notification can be by various methods including telephone, face to face or by letter. It is important to remember that where a duty of candour procedure start date is more than a month after the incident, CHSS must provide the relevant person with an explanation of why this is.
- 4.3 Before having the conversation at the point of notification, CHSS will consider:
- Who from CHSS is already in contact with the relevant person?
 - What discussions or information exchange has already taken place?
 - What is the relevant person's current understanding of the incident and organisational response to this?
 - Where the conversation takes place?
 - Who should be part of, and who should lead that conversation?
 - What support should be available to the relevant person during the conversation and afterwards?
 - Who will be the single point of contact following the discussion with the relevant person?
- 4.4 The notification will include:
- an account of the incident to the extent that CHSS is aware of the facts at the date the notification is provided; and
 - an explanation of the actions that CHSS will take as part of the procedure;
 - in the case where the procedure start date is later than one month after the date on which the incident occurred, an explanation of the reason for the delay in starting the procedure.

5. Communication with relevant person

- 4.1 We will take reasonable steps to find out the relevant person's preferred method of communication. They must also take reasonable steps to ensure that communication with the relevant person is in a manner that they can understand.
- 4.2 It is recognised that in some instances communication channels may not exist or preferences are unknown. Establishing contact by telephone in the first instance might be necessary to figure out what method of communication to use, and to begin dialogue on what steps might need to be taken in following the duty of candour procedure.
- 4.3 If CHSS is unable to contact the relevant person or the relevant person does not wish to speak with a representative of CHSS, the attempts made to contact them need to be included as part of the CHSS's written record of following the duty of candour procedure.

- 4.4 CHSS will not provide information where relevant persons have indicated that they do not wish to receive it.
- 4.5 CHSS is not required to disclose any information that would prejudice any criminal investigation or prosecution or contravene any restriction on disclosure arising as a result of an enactment or rule of law.
- 4.6 We are mindful of their general obligations to act in accordance with the European Convention of Human Rights, and any other relevant laws relating to personal information.

5. What are the implications if a claim for compensation is made once the decision to follow the duty of candour procedure is made?

- 5.1 Whilst CHSS cannot prevent the relevant person from making a claim, we will suggest to relevant persons that they may wish to wait until the duty of candour procedure has concluded, when their case will have been investigated; they will have received an apology; the facts will have been established and any actions to improve the quality of care and/or learning will have been identified.
- 5.2 If a relevant person mentions that they are considering making a claim, the duty of candour procedure should continue. If a relevant person makes a claim (i.e. CHSS receives formal notification of commencement of legal proceedings), then some elements of the duty of candour procedure may need to be paused until the legal process reaches a conclusion. For example, internal reviews could still proceed and organisations should still try to identify any potential improvement and learning actions.

6. Apology

- 6.1 Under all circumstances, we expect our employees and volunteers to apologise. An 'apology' means a statement of sorrow or regret in respect of the unintended or unexpected incident. The Act sets out that 'an apology' or other step taken in accordance with the duty of candour procedure does not of itself amount to an admission of negligence or a breach of a statutory duty.
- 6.2 In addition to any apology provided at the time of the incident, as part of the duty of candour procedure CHSS must offer the relevant person a written apology (this can be by electronic communication if that is the relevant person's preferred means of communication) in respect of the incident. CHSS must provide a written apology if the relevant person wishes it.
- 6.3 The written apology should be personal and be provided at an appropriate time during the duty of candour procedure, taking account of the facts and circumstances in relation to the particular incident.
- 6.4 This should take account of the circumstances relating to the relevant person and, wherever possible, the known personal meaning or impact of the unexpected or unintended incident.

6.5 There may still be misconceptions and misunderstanding that the provision of an apology equates to an admission of liability and that organisations should never offer apologies for this reason.

7. Meeting

7.1 CHSS must invite the relevant person to attend a meeting and give them the opportunity to ask questions in advance. CHSS must take reasonable steps to ensure that the meeting is accessible to the relevant person, having regard to their needs. For example, linguistic needs or reasonable adjustments that might need to be made for someone who has a disability. In some circumstances it will be necessary to have an interpreter present, an advocate and/or someone the relevant person chooses to support them.

7.2 The meeting must include:

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

7.3 Following some unexpected or unintended incidents there may be several review processes operating in parallel. This can be confusing for people.

7.4 To try to lessen this confusion, meetings with relevant persons must include details of other procedures which are being followed including their differing scope and focus.

7.5 Where we are concerned, for example, that an unintended or unexpected incident was contributed to by factors influencing the capability of an employee or volunteer, a separate process will be put in place to identify whether an employee or volunteer may benefit from support and/or consider matters not related to organisational review and learning.

7.6 After the meeting the relevant person must be provided with:

- a note of the meeting;
- contact details of an individual member of staff acting on behalf of CHSS who the relevant person may contact in respect of the procedure.

7.7 If the relevant person does not wish to, or is unable to attend the meeting, CHSS must still provide them with the information set out above (other than a note of the meeting) if the relevant person wishes it.

8. Where more than one organisation needs to be involved in the duty of candour procedure

- 8.1 The duty of candour procedure is the legal responsibility of CHSS who provided a health service, care service or social work service where the incident occurred. Other health and social care providers may have been involved in the provision of care and services, but they are not responsible persons (organisations) in respect of that incident.
- 8.2 It is often the case that a range of organisations are involved in the episode of treatment or care where the unexpected or unintended incident occurred. Although they are not responsible persons in terms of the legislation, they may need to become involved in providing information as part of a review or in providing support for relevant persons coping with the personal impact of death or harm arising from the unintended or unexpected incidents. In rare circumstances, several responsible persons may each decide to activate the duty of candour procedure for multiple incidents. In such circumstances, responsible persons should seek to communicate with each other, emphasising co-operation and ensuring a co-ordinated approach in their communications with the relevant person.
- 8.3 Where more than one organisation needs to be involved in the duty of candour review, all parties are expected to co-operate fully throughout the duty of candour procedure and share lessons learned and necessary actions identified by the procedure.
- 8.4 Where this is the case, the relevant person must be informed as part of the notification process, that CHSS where the incident occurred is the responsible person, as defined by the legislation, who will carry out the procedure.

9. The review

- 9.1 CHSS will carry out a review of the circumstances which they consider led or contributed to the unintended or unexpected incident. The legislation does not specify the manner in which the review is undertaken, but it is likely that this will be one of a range of review processes that are already undertaken such as an adverse event review, a significant case review of the sort undertaken by child, adult and public protection committees or a morbidity and mortality review.
- 9.2 The review will involve clinical and care professionals with the relevant subject matter expertise, as appropriate.
- 9.3 The review will include unintended or unexpected incidents that have resulted in death or harm require that a systems emphasis is adopted.
- 9.4 Where the review is not completed within three months of the procedure start date, CHSS must provide the relevant person with an explanation of the reason for the delay in completing the review.
- 9.5 In carrying out the review, CHSS will seek the views of the relevant person and take account of any views expressed. This will be best implemented through the development of a supportive relationship with the relevant person and arrangements that ensure review processes consider the views of the relevant

person and are able to demonstrate the way in which these views (which are likely to reflect what matters most) have been taken account of.

9.6 CHSS will prepare a written report of the review, which will include:

- a description of the manner in which the review was carried out;
- a statement of any actions to be taken by CHSS for the purpose of improving the quality of service it provides and sharing learning with other persons or organisations in order to support continuous improvement in the quality of health, care or social work services; and
- a list of the actions taken for the purpose of the procedure in respect of the incident and the date each action took place.

9.7 This provides organisations with an opportunity to demonstrate that the views of relevant persons have been considered and that a review has been conducted that has focused on systems analysis that takes account of best practice in review and investigation of human factors.

9.8 The legal requirement to include details of the dates when each element of the duty of candour procedure took place is included to provide an overview of the process within an organisation from the point that they decide to activate the duty of candour procedure to the point the review is concluded.

9.9 Where possible, written reports on reviews should be written in a manner that minimises the need for extensive redaction.

9.10 CHSS will offer to send the relevant person:

- a copy of the written report of the review;
- details of any further information about actions taken for the purpose of improving the quality of service provided by CHSS or other health, care or social work services; and
- consider details of any services or support which may be able to provide assistance or support the relevant person, taking into account their needs.

9.11 Review reports will include information on the actions that CHSS will take to make improvements in systems and processes influence the quality of care delivery. The actions taken to share learning with other organisations (such as those who might have similar organisational processes to the ones that formed the basis of the review) should be outlined in the written review report.

10. Records

10.1 We will keep a written record for each incident to which the duty of candour procedure is applied, including a copy of every document or piece of correspondence relating to the application of the duty of candour procedure to the incident.

10.2 The written record should be retained by CHSS in accordance with its People Policy on Confidentiality & Data Protection and GDPR Data Retention Policy.

11. Training and support

- 12.1 CHSS will ensure that all employees and volunteers who carry out the procedure on its behalf are aware of the duty of candour procedure through the People Development Group.
- 12.2 An E-Learning resource has been produced by NHS Education for Scotland, The Scottish Social Services Council, The Care Inspectorate and Healthcare Improvement Scotland. Employees and volunteers within the Service Delivery Department are required to complete the module which takes no longer than an hour. The recommended website is the [Scottish Social Services Council](#).
- 12.3 CHSS will provide relevant persons with details of needs-based services or support. CHSS will consider the relevance of services and support such as counselling, bereavement support and independent advocacy.
- 12.4 Through meetings and discussion with relevant persons, CHSS will determine the impact of the unintended or unexpected event on their health and wellbeing. This will assist with identification of their needs and the way in which services or support might provide them with assistance.
- 12.5 CHSS will provide any of employee or volunteer involved in an incident with details of any services or support of which CHSS is aware which may be able to provide assistance or support to any such employee or volunteer, taking into account the circumstances relating to the incident; and the employee or volunteer's needs. This may take the form of debrief or direct support.

12. Responsibilities

- 13.1 We expect our leaders and managers to ensure that the implementation of the duty of candour procedure forms a key part of the learning systems within CHSS and that the necessary integration and alignment with organisational processes and procedures has taken place.

13. Reporting

- 13.1 The Act sets out that a responsible person that provides a health, care, or social work service during a first year must prepare an annual report, as soon as reasonably practicable after the end of that first year.
- 13.2 The report will be submitted to the Staff Governance Committee and will include:
- information about the number and nature of incidents to which the duty of candour procedure has applied in relation to a health service, a care service or a social work service provided by the responsible person;
 - an assessment of the extent to which the responsible person carried out the duty of candour;
 - information about the responsible person's policies and procedures in relation to the duty of candour, including information about procedures for identifying and reporting incidents, and support available to staff and to persons affected by incidents;
 - information about any changes to the responsible person's policies and

- procedures as a result of incidents to which the duty of candour has applied;
- such other information as the responsible person thinks fit.

13.3 The report will:

- not mention the name of any individual, or contain any information that could identify any individual; and
- be published in a manner that is publicly accessible, ie CHSS's website.

13.4 When CHSS has published a report, we will notify the Scottish Ministers to dutyofcandour@gov.scot.

13.5 Scottish Ministers may, for the purpose of monitoring compliance with the duty of candour provisions, serve a notice on CHSS, requiring the charity to provide information about any of the matters listed in the report through a notice and may publish a report on CHSS's compliance.

14. Monitoring and Review

14.1 Where the Scottish Ministers have served a notice on CHSS, the responsible person will advise the Head of Human Resources & Organisational Development to include in the next Data Pack report to the Staff Governance Committee.

14.2 The policy will be reviewed every 3 years or earlier if deemed appropriate. In the event that this policy is not reviewed within the above timescale, the latest approved policy will continue to apply.

