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# **Duty of Candour Policy**

**(Communicating with patients and/or their family following a Patient Safety Incident)**

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# 1 Introduction

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## 1.1 Summary

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Staff within Tees, Esk and Wear Valley NHS Foundation Trust work hard to deliver the highest standards of healthcare to all patients who use our services. The Trust provides safe and effective care to many thousands of people every year but sometimes, despite our best efforts, things can and do not go as expected. The Trust makes a commitment to all people using our services that if you are harmed because of any unintended or unexpected incident that you will be told as soon as is reasonably practicable that a notifiable incident under the duty of candour regulations has occurred.

Even if something does not qualify as a notifiable safety incident, there is always an overarching duty of candour to be open and transparent with people using our services.

The [Patient Safety Incident Response Framework \(PSIRF\) 2022](#), sets out the standards and guidance for greater engagement with those affected by a patient safety incident:

- To ensure they are treated with compassion, able to be part of any investigation, be fully informed about the steps taken to understand what happened and why
- To receive a written and truthful account of what has happened, and where errors have been made that have resulted in harm, a written apology.
- To offer support to the patient and / or their family and provide details of a person as a point of contact and also provide regular updates of the investigation and provide full details in person and in writing of the findings.

Please refer to [section 8](#) for further details regarding information sharing.

## 1.2 Definition

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Candour is about being open, honest, and transparent with patients and/ or their family in a compassionate and respectful way if something goes wrong with their treatment or care that causes or has the potential to cause harm and/or distress.

A statutory duty of candour was brought into law in 2014 for NHS Trusts and 2015 for all other providers and is now seen as a crucial, underpinning aspect of a safe, open and transparent culture. It is so fundamentally linked to concepts of openness and transparency that often the policies and procedures related to it have come to be known by staff by other names, for example, “Being Open”, “Saying Sorry”, and “Just Culture”.

Overseen by the Care Quality Commission (CQC), it compliments and strengthens the existing professional and contractual duty of candour requirements set out below, but in addition is enforceable by law.

The CQC state "*The duty of candour is a crucial part of a positive, open, and safe culture. People using any type of health or social care service have a right to be informed about all elements of their care and treatment - and all providers have a responsibility to be open and honest with those in their care*" (CQC March 2021)

### 1.2.1 Statutory responsibility

Since 2015, where it was introduced in response to the Francis Inquiry at the Mid-Staffordshire NHS Foundation Trust, the Care Quality Commission (CQC) has made Duty of Candour a **statutory responsibility**. The formal part of the Duty of Candour is: Fundamental Standard Regulation 20: Duty of Candour (Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulation 2015).

The Duty of Candour [Regulation 20: Duty of candour - Care Quality Commission \(cqc.org.uk\)](https://www.cqc.org.uk) process applies to any unintended **OR** unexpected **notifiable safety incident** that could have or did lead to harm for anyone to who we provide care and treatment to.

A notifiable safety incident must meet all 3 of the following criteria:

1. It must have been unintended or unexpected.
2. It must have occurred during the provision of a **regulated activity** (something that relates to the care and treatment that the Trust provides)
3. In the reasonable opinion of a healthcare professional, already has, or might, **result in death, or severe or moderate harm** (see 4.2) to the person receiving care (definitions of harm are detailed below). This element varies slightly depending on the type of provider.

If any of these three criteria are not met, it is not a notifiable safety incident (but remember that the overarching duty of candour, to be open and transparent, always applies). To decide if the statutory duty of candour applies to an incident, see [Duty of Candour flowchart section 4.1](#)

### 1.2.2 Professional responsibility

All Healthcare Professionals have a **professional responsibility** to uphold the Duty of Candour and be honest with patients and involve them and their family when things go wrong. This is described by the Nursing and Midwifery Council (NMC) and General Medical Council (GMC) as the Professional Duty of Candour, and forms part of a joint statement from eight regulators of healthcare professionals in the UK.

For incidents where **no or low harm** (see 4.2) has occurred, staff should offer an apology and explanation of what has happened at the time the incident occurs in line with their professional duty of candour.

### 1.2.3 Contractual responsibility

Duty of Candour is a contractual obligation that requires NHS provider organisations to implement and measure the principles of being open.

The Duty of Candour, whether contractual, statutory, or professional, rests on the same fundamental principle: being open, honest, and transparent with patients in your care. Tees Esk and Wear Valleys NHS Foundation Trust (TEWV) fully supports this as a prerequisite to improving patient safety and the quality-of-service, user, and carer experience.



**Duty of Candour is a process rather than a one-off event.**



Being open and honest relies on staff and the rigorous reporting of patient safety incidents. The Trust supports a positive reporting culture and being open and honest with patients in the most compassionate way when an incident occurs

## 1.3 Our Journey To Change

This policy is critical to the delivery of [Our Journey To Change OJTC](#) and our ambition to co-create safe and personalised care that improves the lives of people with mental health needs, a learning disability or autism. It helps us deliver our three strategic goals as follows:

- This policy supports the trust to co- create a great experience for all patients, carers and families from its diverse population by supporting patients and their families/carers to cope better with the after-effects of a patient safety incident by:
  - **Being open, respectful and compassionate in a timely way following an incident.** This is known to help those affected feel supported and reduce additional harm such as lack of trust or feelings that duty of care has been removed (PSIRF 2022)
  - **Engaging with those affected by a patient safety incident.** This improves our understanding of what happened, and potentially how to prevent a similar incident in future. Everyone will experience the same incident in different way, no one truth should be prioritised over others.
  - **Listening.** The opportunity to be listened to is also part of restoring trust and repairing relationships between organisations and staff, patients, and families.

- 
- **Saying sorry when things have gone wrong.** Getting an apology right sets the tone for everything that follows.
  
  - This policy supports the trust to co-create a great experience for our colleagues by:
    - Providing guidance and support for staff on what to do when things go wrong during care and treatment the Trust is providing.
    - Promoting an open and honest culture so staff feel safe to talk about and learn from patient safety incidents.
    - Supporting staff to cope better with the after-effects of a patient safety incident by being open and compassionate in a timely way following an incident.
  
  - This policy supports the trust to be a great partner by:
    - Setting out how our staff will adhere to professional codes and statutory duties of candour expected by our regulators.
    - Setting out expectations that we will work with partners such as the police, Local Authority, bereavement services, other agencies as well as via independent advocacy services to support and signpost families following an incident.

## 2 Why we need this policy

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This policy informs all Trust staff of their roles and responsibilities relating to the Duty of Candour; to be open, honest, and transparent with patients, carers and /or families and giving an apology should something go wrong in the course of the care and treatment we provide.

This policy, as well as informing staff of their role in relation to Duty of Candour informs service users, relatives, and carers of what they can expect from the professionals involved if something goes wrong with the care and treatment we provided.

Engaging and involving those affected about what happened and discussing patient safety incidents promptly, fully, and compassionately can help those affected to cope better with the after-effects.

This policy aims to provide assurance of the Trust's commitment to improving patient safety and continuous quality improvement and aims to complement other existing trust policies, and practices that are in place with a key focus on the promotion of a restorative just culture.

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## 2.1 Purpose

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The purpose of this policy is:

- To set out the Trust's expectation for all staff to be honest and transparent with patients in their care if things go wrong.

## 2.2 Objectives

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The core objectives of this policy are to ensure that:

- All Trust staff are aware of their responsibilities for both **professional** and **statutory** Duty of Candour if something goes wrong while providing the patient's care and/or treatment.
- All clinicians are aware of and follow the guidance of their professional bodies. Openness and honesty towards patients are supported and actively encouraged by many professional bodies including:-
  - Medical Defence Union (MDU)
    - [Duty of Candour at a glance](#)
  - Nursing and Midwifery Council (NMC)
    - [Openness and honesty when things go wrong: The Professional Duty of Candour \(Updated February 2022\)](#)
  - General Medical Council (GMC)
    - [Being open and honest with patients in your care, and those close to them, when things go wrong](#)
- All Trust staff know how to communicate effectively when things go wrong and feel supported in apologising and explaining to patients, their families, and carers.
- Service users/patients and their family or carers are notified if something goes wrong with the care and treatment we provide as soon as reasonably practicable.
- An apology is provided, 'saying sorry' in a way that is genuine and meaningful and is made in person unless the patient (family or carer) request otherwise.
- All communication/activity or interaction related to Duty of Candour is correctly and accurately recorded in a case note within the patients electronic care records and the patient and/or their family receive written notification.



- Policy implementation is effective, consistently applied, monitored, and reported, providing assurance internally, including to the Trust Board and externally in line with contractual and regulatory requirements.

### 3 Scope

#### 3.1 Who this policy applies to

- This policy always applies to all Trust staff, at all times. We all have a responsibility for being open, honest, and transparent with service users, their families, and carers.



The Trust requires all employees to be open and honest about being involved in accidents, incidents, near misses or errors.

#### 3.2 Roles and responsibilities

This policy informs all Trust staff of their role and responsibility regarding openness, honesty, and transparency if something goes wrong with a patient's care or treatment.

Role	Responsibility
Trust Board	<ul style="list-style-type: none"> <li>• Responsible for promoting a culture of openness to improve patient safety and the quality of healthcare systems within the Trust and that the contractual requirement of the policy is adhered to.</li> </ul>
Chief Executive	<ul style="list-style-type: none"> <li>• Is accountable to the Trust Board and ultimately responsible that procedures and processes are in place to implement the policy.</li> <li>• Responsible for demonstrating the Trust commitment to Duty of Candour principles and standards and ensuring organisational systems are in place for implementation of the Duty of Candour in response to a patient safety incident.</li> </ul>
Chief Nurse	<ul style="list-style-type: none"> <li>• Is the identified Board lead for implementation of the Patient Safety Incident Response Framework (PSIRF) and the Duty of Candour.</li> <li>• Is responsible for the implementation of the policy, ensuring suitable training and awareness programmes are in place and that assurance processes are effective.</li> </ul>

	<ul style="list-style-type: none"> <li>To promote the professional and statutory duty of candour principles and policy.</li> </ul>
Managing Directors	<ul style="list-style-type: none"> <li>Are responsible for ensuring that Care Groups comply with the requirements of this policy and that effective processes are in place for monitoring and assurance purposes.</li> </ul>
Medical Director	<ul style="list-style-type: none"> <li>Caldicott Guardian responsibilities.</li> <li>To promote the professional and statutory duty of candour principles and policy</li> </ul>
Care Group Directors, Clinical Directors and General Management Tier staff	<ul style="list-style-type: none"> <li>To fulfil their duty to be open and honest with the patients in their care and or those close to them if something goes wrong.</li> <li>To ensure the Duty of Candour policy is implemented within their directorates.</li> <li>Responsibility to foster a culture of openness and ensure all staff are supported to follow the principles of Duty of Candour in being open, honest, and transparent.</li> <li>To promote the Duty of Candour Policy: Communicating with patients and/or their family following a Patient Safety Incident and review processes through care group governance forums.</li> <li>To ensure appropriate guidance and support is available to clinical staff and managers regarding Duty of Candour.</li> </ul>
Associate Director of Patient Safety	<ul style="list-style-type: none"> <li>Is responsible for coordinating the overall management, investigation and learning from notifiable safety incidents.</li> <li>To ensure Serious Incidents are managed in a consistently open and honest way.</li> <li>To ensure appropriate guidance, support and advice is available to clinical staff and managers regarding Duty of Candour.</li> <li>Completing regular retrospective programme of checks to confirm Duty of Candour data is complete and accurate in Trust electronic patient records and risk management systems.</li> </ul>
Associate Director of Quality Governance, compliance, and quality data	<ul style="list-style-type: none"> <li>Will ensure there is compliance of the Duty of Candour Policy through: <ul style="list-style-type: none"> <li>Seeking evidence of a robust Duty of Candour process.</li> <li>Seeking assurance that the policy is consistently applied across the Trust.</li> <li>Appropriately escalating concerns regarding the Duty of Candour process.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>Processing information consistently and precisely and presenting it in a timely, relevant, and meaningful way in reports.</li> </ul>
Ward and Team Managers	<ul style="list-style-type: none"> <li>For the Team/Ward Manager or their delegated deputy to make the decision as to whether it is a notifiable safety incident, and if so, ensure the most appropriate registered healthcare professional fulfils the requirements of Duty of Candour.</li> <li>To ensure that any serious incident is escalated to the Patient Safety Department and through operational services via General Managers.</li> <li>To ensure a risk incident form has been fully and accurately completed, including the Duty of Candour section for the incident and the same full and accurate details are recorded in the patient's electronic care record through a standardised check.</li> </ul>
All Trust Employees	<ul style="list-style-type: none"> <li>Have a responsibility to acknowledge and report any patient safety event and to take appropriate advice from that point.</li> <li>To promote a culture of openness, honest and sound communication with patients and their families or carers</li> <li>Clinical staff have a responsibility to act within their professional codes.</li> </ul>

## 4 Duty of Candour

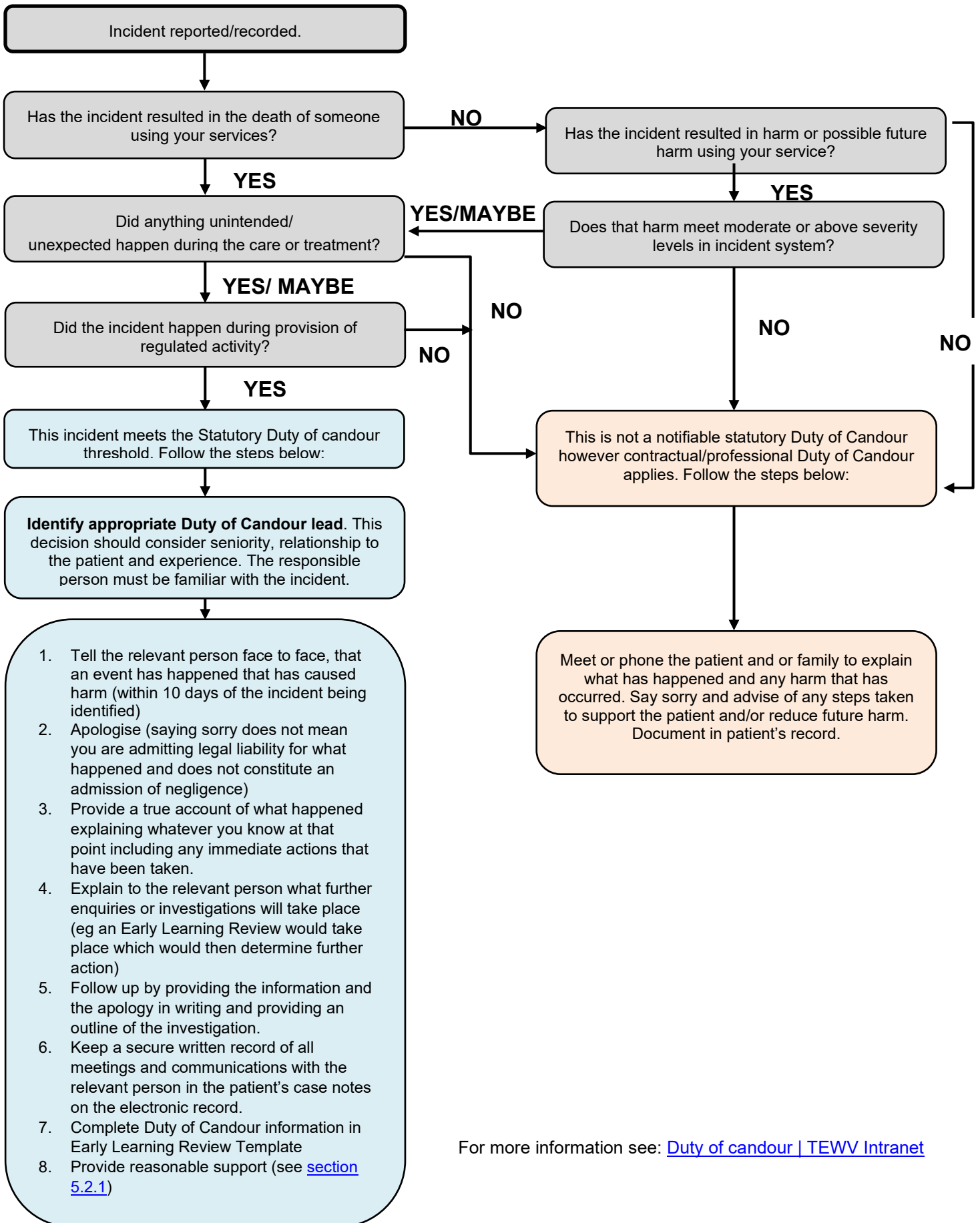
As a Trust we must act in an open, honest, and transparent way with service users and or relevant persons in relation to care and treatment provided whilst carrying out a regulated activity. A regulated activity means the care and treatment we provide.

**The Statutory Duty of Candour** [Regulation 20: Duty of candour - Care Quality Commission \(cqc.org.uk\)](#) process applies to any unintended **OR** unexpected **notifiable safety incident** that could have or did lead to harm for anyone to who we provide care and treatment to.

### 4.1 Duty of Candour process

The flow chart below supports decision making as to whether a statutory duty of candour applies. Your approach must be adapted to meet the circumstances of each incident and the individuals affected. Some steps may need to be repeated and the process may not be as linear as implied. For example, some people will have different communication requirements; those in distress may need more regular contact and more detailed guidance to aid understanding and retention of information. (Please see over page).

### Duty of Candour Flowchart



For more information see: [Duty of candour | TEVV Intranet](#)

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## 4.2 Grading of patient safety incidents to determine level of response

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### 4.2.1 Log an incident

The incident must be reported via the Trusts incident reporting system and include key details related to the Duty of Candour.

### 4.2.2 No harm/near miss

A safety incident that had the potential to cause harm but was prevented resulting in no harm, loss, or damage. Incidents resulting in no harm require reporting on the Trusts electronic risk management/reporting system but are **not** notifiable safety incidents. Discussion with patients, carers and families will be agreed by the multidisciplinary team considering what is in the best interest of the patient.

### 4.2.3 Low Harm

This is a safety incident that has resulted in a patient suffering minimal harm requiring a period of additional observation or minor treatment. Incidents resulting in low harm require reporting on the Trusts electronic risk management/reporting system but are not notifiable safety incidents. Communication should take the form of an open discussion between the multidisciplinary team and the patient, their family, and carers.

### 4.2.4 Moderate Harm

A safety incident that has resulted in short term harm to a patient that has required additional treatment in an acute hospital e.g., stitches or parvolex treatment or could include psychological harm. Incidents resulting in moderate harm should be considered for Duty of Candour by the multidisciplinary team involved. An early learning review may be requested which will be reviewed at the relevant care group governance forum where Duty of Candour will be assured. Moderate Harm incidents will also be discussed with the service and relevant others in the daily patient safety team huddle where Duty of Candour will be supported and assured.

### 4.2.5 Severe Harm

A safety incident resulting in permanent or long-term harm caused to a patient. Incidents resulting in severe harm are reported as Serious Incidents and reviewed by the Patient Safety Team. Clinical services are required to apply the principles of Duty of Candour including an initial duty of candour condolence letter.

The Patient Safety Team will investigate the incident and present a final Serious Incident review report to a Directors Assurance Panel. Where Duty of Candour applies, a final apology letter will be sent from the Chief Nurse to the relevant person within 10 working days. This decision will be made at the panel.

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#### 4.2.6 Unexpected Death

A safety incident resulting in the unexpected death of a patient where the death relates to the incident rather than the natural course of an illness or underlying condition. These incidents are reported and reviewed as Serious Incidents by the Patient Safety Team. Clinical services are required to apply the principles of Duty of Candour including an initial condolence letter. The Patient Safety Team will present a final report to Directors Assurance Panel and where Duty of Candour applies a final apology letter will be sent from the Chief Nurse to the relevant person within 10 working days. This decision will be made at the panel.

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### 4.3 Engagement and Involvement with families (Duty of Candour lead)

Immediately, or as soon as is reasonably practicable after a notifiable safety incident is identified, an appropriate responsible Duty of Candour lead should be identified to lead communication. This decision should consider seniority, relationship to the patient and experience and expertise in the type of patient safety incident that has occurred.

Engagement and involvement need to be tailored to the particular circumstances of the incident and to each individual affected, so preparation for initial conversations with those involved is crucial. The responsible person must be familiar with the facts of the incident to date and know who they are talking about (the patient's name) and who they are talking to (e.g., patient, next of kin, staff member).

The initial point of contact from the organisation may not be the same as the person who subsequently maintains contact throughout the engagement process. Ensure those affected know who their point of contact is and that this is documented in the patient record. At the end of the initial contact it needs to be agreed when the next contact will be, how contact will be made and who will make it. Any promised contact must be delivered.

A duty of candour checklist and overview of the four steps to engagement as part of a patient safety response for Duty of Candour leads and managers can be seen at [appendix 4](#) and [appendix 5](#).

The Duty of Candour lead must:

#### 4.3.1 Notify the relevant person

Notify the relevant person that the incident has occurred (no later than 10 days after the incident being identified (which complies with the NHS Standard Contract) or as soon as possible if there has been a gap between the incident and identification) to provide an apology and say sorry for what has happened, fully explain what is known at the time along with information about any likely long- and short-term effects.

#### 4.3.2 Do not delay

It is important not to delay giving a meaningful apology for any reason as delays are likely to increase the patients, their families and their carers sense of anxiety, anger, or frustration.

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### 4.3.3 The notification

The notification given must:

- i. Be given in person by the appropriate person and include a true account of what happened which, to the best of the registered persons knowledge is true, with all facts that the registered person knows about the incident at that time (this should take into account Section 10 regarding patient confidentiality).
  
- ii. Advise the relevant person if there is to be any further action and/or investigation/review because of the incident.
  
- iii. Give an apology and say, 'I am sorry for what happened.' From the start, simple straightforward expressions of sorrow and regret can and should be made for the harm the person has suffered, even if the incident is still being investigated. Advise what will happen next in terms of the patient's care and treatment (offer an appropriate remedy to put the matter right, if this is possible and or practical and emotional support) and agree next steps for keeping the person informed and updated with information which emerges and with the progress of any investigation.
  
- iv. Record all communication with the relevant person within the case note section of the patient's electronic care record.

### 4.3.4 Follow up with a written notification

Follow up with a written notification as soon as is practically possible to the relevant person containing:

Please see [appendix 3](#) for guidance.

- i. The information provided verbally
  
- ii. Details of any enquiries to be made and the results of these enquiries will be shared when available
  
- iii. A sincere apology

### 4.3.5 Keep good records

Every communication should be documented, even when attempts to make contact are unsuccessful, and what was discussed recorded. Records should contain:

- date and time of all contacts, including any meetings
- method of contact (e.g. telephone, email)
- who was present during the contact
- purpose of contact and any information exchanged



- 
- details of who initiated the contact
  - all unsuccessful attempts to contact those affected or their representatives
  - all contacts with those affected that were refused or declined, and any reasons given

If a patient has died, the agreed registered healthcare professional must send a letter of condolence letter to the next of kin or named family contact. Please see [appendix 3](#) for guidance.

## 5 Saying sorry

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Saying sorry is **always** the right thing to do. It should be clearly understood that saying sorry does not mean that you are admitting legal liability for what has happened and does not constitute an admission of negligence but should be a genuine apology about something that has gone wrong.

It is natural and desirable for those involved in treatment that produces an adverse result, for whatever reason, to express sorrow or regret at the outcome. This is reinforced and supported by **NHS Resolution** who **advise that saying sorry is the right thing to do**. [Watch Alan's story - Saying sorry - NHS Resolution](#)

### 5.1 Saying sorry to the patient

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The way you say sorry is just as important as saying it. When saying sorry you will be expected to:

- Speak to the patient (relevant person) in person in a place and at a time when they are best able to understand and retain the information and has someone with them who can support them
- Give the patient (relevant person) the information they want or need to know in a way that they can understand and avoid jargon
- Consider the patient (relevant person) may find receiving the information distressing and to carry this out in a considerate way, respecting their right to privacy and dignity
- Say "I am sorry" rather than a general expression of regret about the incident on the organisations behalf





In line with Regulation 20: Duty of Candour is an apology, an expression of sorrow or regret made in respect of a notifiable safety incident.

**Good Practice** is to say:

- I'm sorry 'X' happened
- We're deeply sorry for the distress caused
- I'm sorry, we have learned that 'X' happened

## 5.2 Saying sorry to the family and or carers

If something has gone wrong that caused a patient's death or such severe harm that the patient is unlikely to regain consciousness or capacity, the healthcare professional must be open and honest with those close to the patient, in the most compassionate way possible.

Time will need to be taken to convey the information in a respectful and sensitive way with the opportunity for the family to ask questions at the time and afterwards.

The wishes and plans of the deceased must also be considered if they are known (see section 9).

### 5.2.1 Provide reasonable support

Support needs may stem from people being involved in the patient safety response and/or be pre-existing. Ensure reasonable adjustments are made if the patient and /or family require additional support such as those people with a learning disability, autism, dementia, neurological conditions, or those people who may have difficulty with sight or hearing. This should include an offer to access to assistance with understanding what is being said, e.g., through interpreting services, non-verbal communication aids, written information, Braille, as appropriate.

The following should be considered:

- **Does this person need support?** People may not be aware that they need support, even if the incident was particularly traumatic. It may be helpful to tell someone about the support options available, and then give them the time and space to decide if they need such support. Offer the option of direct emotional support during the notifications, for example from a family member, a friend, a care professional, or a trained advocate.
- **If so, what type of support?** Support needs can manifest in different ways. They can be emotional, practical, or psychological. You should try and prompt people to think about the

different types of support they may need. Consider access to any necessary treatment or care to recover from or minimise the harm caused where appropriate.

• **What support resources can you share?** Based on conversations with the individuals affected, you should offer resources or discuss what other organisations can offer but leave the individuals to decide which would be most appropriate for them.

Useful resources may include:

- Details of specialist independent sources of practice advice and support or emotional support or counselling
- Information about available independent/impartial advocacy and support services, their local Healthwatch and other relevant support groups, for example Cruse Bereavement Care, to help them deal with the outcome of the incident. This will support the patient and /or families (particularly the latter if there is a death of a patient)
- Support to make a complaint if the person wishes to complain.
- Offer a single point of contact for any questions or requests they have.

Where a death has occurred, the Trust has a Family Liaison Officer who can also provide dedicated support and advice to bereaved relatives and can be contacted via the Patient Safety Team.

## 6 Continuity of Care

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Patients are entitled to expect that they will continue to receive all usual treatment and continue to be treated with respect and compassion. If a patient expresses a preference for their healthcare needs to be taken over by another team following a patient safety event or near miss, the appropriate arrangements should be considered where possible for them to receive treatment elsewhere.

## 7 Supporting staff

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Engaging with families and staff affected by a patient safety incident is demanding and the challenges of the role should be recognised. Communicating a notifiable safety incident may lead to an angry or distressed reaction from patients, carers, or others. Staff should be supported to manage and compassionately respond to such circumstances, this may include direct line management support, peer support and clinical supervision. Out of hours support is available through the on-call manager. Alternative sources of advice, support and opportunities to 'buddy' are available through general managers and the patient safety or patient experience team, complaints, and PALs team.

Following a patient safety event, staff may experience significant emotional responses that greatly impact on their own health and their future ability to work. There are a range of support services you can consider on the Health and Well-being, staff well-being section on the intranet. The employee support service provides support to staff who are experiencing issues that affect their health and/or wellbeing.

[Link to Health and Wellbeing : Mental Wellbeing](#)

## 8 Information Sharing

Under the [Patient Safety Incident Response Framework \(PSIRF\)](#) there will be greater engagement with those affected by an incident, including patients, families and staff. The principles of sharing information should give full consideration of, and respect for, the patient, their families and other relevant people's privacy and confidentiality.

There may be occasional circumstances where a clinical team following the identification of a serious incident do not feel that they can make contact with a patient's family and or carer(s), owing to their obligations relating to patient confidentiality and/or the patients consent status

**Example:** In the case of an unexpected death of a patient whereby the deceased had expressly stated that they did not want any information shared with others regarding their care or even their contact with mental health services.

In this instance the clinical team should discuss the matter in an MDT forum and clearly document that Duty of Candour has been considered along with the rationale for their decision not to make contact with a family or carer(s). This guidance around documenting consideration of Duty of Candour will also apply to a review of the incident and will be applicable throughout the course of any serious incident investigation.

Advice can be sought from the Trust's information governance manager or the Caldicott Guardian on an individual case basis.



It is important to remember that Confidentiality does not die with the patient, any specific requests the patient made when alive have to be respected in death.

## 10 Communication with other Trust staff, health and social care teams, external organisations, and agencies

Consideration will be given to contacting other Trust teams and staff members; the GP; Police, and other services or agencies involved in providing care to the individual, as these services may be able to offer support to the service user and/or their carers at a difficult time. It may be necessary to include these services in any investigation. It may also be appropriate to share the outcomes and learning of an investigation if the information is relevant to the continuing safe delivery of care, treatment, and support. The Information Governance Department can provide advice in relation to confidentiality/data protection concerns, in partnership with the Caldicott Guardian.

## 11 Definitions

Please see [section 1.2](#) for definitions.

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## 12 Related documents

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This document should be read in conjunction with the following:

- [Trust Incident reporting and serious incident policy](#)
- [Trust Organisational Risk management policy](#)
- [Trust Complaints Policy](#)
- [Trust Claims Management Policy](#)
- [Trust Freedom to Speak Up Procedure](#)
- [Trust Safeguarding Adults Policy](#)
- [Trust Safeguarding Children Policy](#)
- [Trust Mental Capacity Act 2005 Policy](#)
- [Trust Interpreting and translation guidance](#)
- [Trust Interpreting and Translation Policy](#)
- [Trust Independent mental health advocacy \(IMHA\) procedure](#)

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## 13 How this policy will be implemented

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- This policy will be published on the Trust's intranet and external website.
- Line managers will disseminate this policy to all Trust employees through a line management briefing.
- Trust PSIRF Training (includes Duty of Candour)
- There is a [section on the intranet](#) that staff can access for supporting resources and the animation video defining Duty of Candour requirements
- Resources are also available from NHS Improvement and NHS Resolution (see references section)
- An information leaflet outlining the principles of Duty of Candour has gone out to all staff and is also now given out in the welcome pack for new starters.
- Staff support for those involved with Duty of Candour conversations will need support from their peers, colleagues and managers and should form part of their appraisals, development, and de-briefing where appropriate.

## 13.1 Implementation action plan

There is a supporting implementation action plan. A key aspect of this will be with regard to the planned training delivery.

Activity	Expected outcome	Timescale	Responsibility	Means of verification/ measurement
Develop Training and development approach to Duty of Candour aligned to cohere with other linked programmes e.g., breaking bad news, managing difficult situations, psychological Safety	Will review the Trust TNA with regard to Duty of Candour and maximise opportunities to include in existing programmes e.g., Datix training, serious incidents, InPhase implementation and breaking bad news training etc. This is partially implemented – will form part of the InPhase training that is currently being developed and future training on incident reporting. Will be kept under continuous review to ensure the Trust optimises education and training opportunities.	01/08/23 - Started.  <b>Updated Trust TNA to be completed by end of December 2023.</b>	Associate Director of Patient Safety / Associate Director of Training and Development	Updated Trust TNA

## 13.2 Training needs analysis

Staff/Professional Group	Type of Training	Duration	Frequency of Training
All new staff	Duty of candour information is included in the staff welcome booklet	As part of Trust induction	On joining the Trust

## 14 How the implementation of this policy will be monitored

The policy, processes and procedures will be monitored and audited, and assurance will be provided by the InPhase reporting systems once these go live. This is currently monitored via Serious Incident Reporting processes.

This policy may also be subject to Internal Audit.

### 14.1 Monitoring

All incidents will be reviewed by the staff member finally approving the incident and moderated up or down to ensure that the statutory requirements of duty of candour is fulfilled for all incidents that have caused moderate harm and above.

Once the incident has been finally approved, the service will complete an early learning review template (72-hour review) including the Duty of Candour section for all moderate and above incidents and return to the patient safety team who will quality assure this.

Duty of Candour compliance is included in Serious Incident reports and monthly updates provided to Care Groups who are responsible for following up and implementing any outstanding actions.

Compliance with Duty of Candour requirements are taken through Care Group Boards monthly for assurance of statutory requirements being completed.

Compliance with Duty of Candour requirements are reported monthly to the Trust Quality Assurance Committee.

Number	Auditable Standard/Key Performance Indicators	Frequency/Method/Person Responsible	Where results and any Associate Action Plan will be reported to, implemented and monitored; (this will usually be via the relevant Governance Group).
1	All staff that receive InPhase training will include Duty of Candour	By 30 November 2023 Using a variety of media including intranet, teams, webinars, awareness sessions etc Patient Safety Team	Executive Quality Assurance and improvement group

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## 15 References

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CQC Regulation 20: Duty of Candour (updated June 2022)

[Filter Icon \(cqc.org.uk\)](#)

[The fundamental standards - Care Quality Commission \(cqc.org.uk\)](#)

[Openness and honesty when things go wrong: the professional duty of candour \(gmc-uk.org\)](#)

Patient Safety Incident response Framework [NHS England » Patient Safety Incident Response Framework and supporting guidance](#)

PSIRF supporting guidance: Engaging and involving patients, families and staff following a patient safety incident [NHS England » Patient Safety Incident Response Framework and supporting guidance](#)

- National Patient Safety Agency. (2009). Being Open: Saying sorry when things go wrong
- National Health Service Resolution. (June 2017). Saying Sorry: saying sorry meaningfully when things go wrong is vital for everyone involved in an incident

Duty of Candour: Regulation 20 Health and Social Care Act 2008 (regulated Activities) Regulations 2014

[Filter Icon \(cqc.org.uk\)](#)

Allied Health Professionals:

[Understanding the Duty of Candour- new resources available for you | \(hcpc-uk.org\)](#)

[Duty of Candour \(professionalstandards.org.uk\)](#)

NMC and GMC Duty of Candour Guidance: Openness and honesty when things go wrong

[NMC and GMC refresh duty of candour guidance - The Nursing and Midwifery Council](#)

[The professional duty of candour - ethical guidance - GMC \(gmc-uk.org\)](#)

NHS Resolution resources (March 2022)

[Duty of candour animation - NHS Resolution](#)

[You Are Not Alone - PTC Podcast | Royal College of Psychiatrists \(rcpsych.ac.uk\)](#)

## 16 Document control (external)

To be recorded on the policy register by Policy Coordinator

Date of approval	20 September 2023
Next review date	20 September 2026
This document replaces	v1.2
This document was approved by	Executive Quality Assurance and Improvement Group (EQAIG)
This document was approved	29 August 2023
This document was ratified by	Management Group
This document was ratified	20 September 2023
An equality analysis was completed on this policy on	July 2023
Document type	Public
FOI Clause (Private documents only)	N/A

### Change record

Version	Date	Amendment details	Status
1	02 Nov 2016	New document	Withdrawn
1.1	21 Apr 2017	Amended in line with AuditOne recommendations to strengthen Moderate Harm.	Withdrawn
1.2	26 Feb 2020	Policy review with minor amendments to job titles and contact details. (Please note the publication of this version was delayed in error and was actually published on 18 February 2021 and not in Feb 2020.)	Withdrawn



2	20 Sept 2023	<p>Full review and updates Amendments in line with Duty of Candour external review by NECS. Audit One recommendations and engagement and involvement guidance, PSIRF (2022) replacing 'Being Open'</p> <p>Note: Implementation action plan, Training needs analysis and Monitoring sections updated after approving meeting of EQAIG 29 Aug 2023 to clarify and reflect current work. This has been updated by the Deputy Chief Nurse and the Associate Director of Quality Governance, Compliance and Quality Data prior to ratification.</p>	Ratified
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## Appendix 1 - Equality Analysis Screening Form

Please note: The Equality Analysis Policy and Equality Analysis Guidance can be found on the policy pages of the intranet

Section 1	Scope
Name of service area/directorate/department	Corporate
Title	Duty of Candour
Type	Policy
Geographical area covered	Trustwide
Aims and objectives	<p>The purpose of this policy is to set out the Trust's expectation for all staff to be honest and transparent with patients in their care if things go wrong.</p> <p>The core objectives of this policy are to ensure that:</p> <ul style="list-style-type: none"> <li>• All Trust staff are aware of their responsibilities in Duty of Candour if something goes wrong while providing the patient's care and/or treatment</li> <li>• All clinicians are aware of and follow the guidance of their professional bodies. Openness and honesty towards patients are supported and actively encouraged by many professional bodies including MDU, GMC, NMC</li> <li>• All Trust staff know how to communicate effectively when things go wrong and feel supported in apologising and explaining to patients, their families, and carers</li> <li>• Service users/patients and their family or carers are notified if something goes wrong with the care and treatment we provide as soon as reasonably practicable</li> </ul>

	<ul style="list-style-type: none"> <li>• An apology is provided, ‘saying sorry’ in a way that is genuine and meaningful and is made in person unless the patient (family or carer) request otherwise</li> <li>• All communication/activity or interaction related to Duty of Candour is correctly and accurately recorded in a case note within the patient’s electronic care records and the patient and/or their family receive written notification.</li> <li>• Policy implementation is effective, consistently applied, monitored, and reported, providing assurance internally, including to the Trust Board and externally in line with contractual and regulatory requirements.</li> </ul>
Start date of Equality Analysis Screening	May 2023
End date of Equality Analysis Screening	July 2023

Section 2	Impacts
Who does the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan benefit?	All staff in the Trust working in clinical services, especially Doctors, Registered Nurses, and Allied Health Professionals.
Will the Policy, Service, Function, Strategy, Code of practice, Guidance, Project or Business plan impact negatively on any of the protected characteristic groups?	<ul style="list-style-type: none"> <li>• <b>Race</b> (including Gypsy and Traveller) <b>NO</b></li> <li>• <b>Disability</b> (includes physical, learning, mental health, sensory and medical disabilities) <b>NO</b></li> <li>• <b>Sex</b> (Men, women and gender neutral etc.) <b>NO</b></li> <li>• <b>Gender reassignment</b> (Transgender and gender identity) <b>NO</b></li> <li>• <b>Sexual Orientation</b> (Lesbian, Gay, Bisexual and Heterosexual etc.) <b>NO</b></li> <li>• <b>Age</b> (includes, young people, older people – people of all ages) <b>NO</b></li> <li>• <b>Religion or Belief</b> (includes faith groups, atheism and philosophical beliefs) <b>NO</b></li> <li>• <b>Pregnancy and Maternity</b> (includes pregnancy, women who are breastfeeding and women on maternity leave) <b>NO</b></li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Marriage and Civil Partnership</b> (includes opposite and same sex couples who are married or civil partners) <b>NO</b></li> <li>• <b>Armed Forces</b> (includes serving armed forces personnel, reservists, veterans and their families) <b>NO</b></li> </ul>
Describe any negative impacts	
Describe any positive impacts	it will ensure every patient involved in any kind of patient safety incident is treated according to our Trust values of Respect, Compassion and Responsibility. This policy sets out the Trust's expectation for all staff to be honest and transparent with patients in their care if things go wrong.

<b>Section 3</b>	<b>Research and involvement</b>
What sources of information have you considered? (e.g. legislation, codes of practice, best practice, nice guidelines, CQC reports or feedback etc.)	See References section
Have you engaged or consulted with service users, carers, staff and other stakeholders including people from the protected groups?	Partially, engaged with staff.
If you answered Yes above, describe the engagement and involvement that has taken place	NECS was commissioned to hold a series of engagement events with clinical staff groups to inform the development of the policy. Furthermore this is based on national guidance that has been developed full national consultation of patients, carers, families and NHS staff.
If you answered No above, describe future plans that you may have to engage and involve people from different groups	The Trust will continue to seek feed back from patient, carer and family feedback.

Section 4	Training needs
As part of this equality analysis have any training needs/service needs been identified?	No
Describe any training needs for Trust staff	Workshops on Duty of Candour were held around the Trust when Regulation 20: Duty of Candour was first launched. Engagement workshops were held with a number of clinical and staff groups by NECS to inform the development of the draft policy. Information on Duty of Candour is now available on a dedicated Trust intranet page. Updates are communicated via the Trust Patient Safety Bulletin and ongoing support is provided by the Patient Safety Team. Training needs will be incorporated into PSIRF and other incident management training as well as included in staff welcome to the Trust.
Describe any training needs for patients	n/a
Describe any training needs for contractors or other outside agencies	n/a

**Check the information you have provided and ensure additional evidence can be provided if asked**

## Appendix 2 – Approval checklist

To be completed by lead and attached to any document which guides practice when submitted to the appropriate committee/group for consideration and approval.

	Title of document being reviewed:	Yes / No / Not applicable	Comments
<b>1.</b>	<b>Title</b>		
	Is the title clear and unambiguous?	Y	
	Is it clear whether the document is a guideline, policy, protocol or standard?	Y	
<b>2.</b>	<b>Rationale</b>		
	Are reasons for development of the document stated?	Y	
<b>3.</b>	<b>Development Process</b>		
	Are people involved in the development identified?	Y	
	Has relevant expertise has been sought/used?	Y	
	Is there evidence of consultation with stakeholders and users?	Y	
	Have any related documents or documents that are impacted by this change been identified and updated?	n/a	
<b>4.</b>	<b>Content</b>		
	Is the objective of the document clear?	Y	
	Is the target population clear and unambiguous?	Y	
	Are the intended outcomes described?	Y	
	Are the statements clear and unambiguous?	Y	
<b>5.</b>	<b>Evidence Base</b>		
	Is the type of evidence to support the document identified explicitly?	Y	
	Are key references cited?	Y	
	Are supporting documents referenced?	Y	
<b>6.</b>	<b>Training</b>		
	Have training needs been considered?	Y	
	Are training needs included in the document?	y	
<b>7.</b>	<b>Implementation and monitoring</b>		

	Title of document being reviewed:	Yes / No / Not applicable	Comments
	Does the document identify how it will be implemented and monitored?	y	
<b>8.</b>	<b>Equality analysis</b>		
	Has an equality analysis been completed for the document?	Y	
	Have Equality and Diversity reviewed and approved the equality analysis?	y	26 May 2023
<b>9.</b>	<b>Approval</b>		
	Does the document identify which committee/group will approve it?	y	
<b>10.</b>	<b>Publication</b>		
	Has the policy been reviewed for harm?	Y	No harm
	Does the document identify whether it is private or public?	Y	public
	If private, does the document identify which clause of the Freedom of Information Act 2000 applies?	n/a	

## Appendix 3 – Duty of Candour (notifiable incident) letter guidance

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Before the first duty of candour written letter (notification), the identified duty of candour lead will have apologised verbally, informed the relevant person that an investigation is underway and:

- Established the channels of communication on a regular basis, making it clear that all communication will be recorded, shared, and stored as part of the investigation/review process and the duty of candour requirement.
- Given the approximate time for completion of the investigation/review and the process for sharing relevant information when the report is complete.
- Agreed and shared the contact details of the person that will liaise with the relevant person and at what intervals to update on progress.

The purpose of this letter is to say sorry to the relevant person in writing (a duty of candour requirement) and put in writing what has been verbally notified and agreed. For this reason, the letter should be written by the person who has spoken to the patient or their family where possible. Where this isn't possible, the staff member writing the letter must know all of the relevant details in order to personalise the letter in a way that is compassionate and meaningful to the person receiving it.

Begin the letter with a heartfelt apology

In the event of a patient's death:

e.g. Firstly, I hope that you will accept my sincere condolences with the loss of your (insert relationship of the person receiving to the deceased)

In the case of moderate or severe harm:

e.g. Firstly, I would like to take this opportunity to express my sincere apologies that (please include a brief description of the incident, event or harm that has occurred) and has been previously discussed....

Please describe that as an NHS trust we are committed to being open and honest with families.

Please include details of the type or level of investigation that will take place and why we are doing this

e.g. With this in mind, we are conducting an investigation/review (describe type of review) regarding (insert patients name or recipients relationship to the patient) care and treatment from the Trust. This is to help us better understand what happened during his/her/their care and to see if there is anything we could have done differently.

e.g. We are undertaking an early learning review into the incident to try to understand exactly what happened and to find out whether there is something that we could do differently in future to prevent this from happening to anyone else.

Please detail who is undertaking the investigation if known and when this can be expected (timescales for completion).



If the incident is being investigated as a Trust Serious Incident you may wish to include the following: You will shortly be receiving a letter from our patient safety department, which will detail the process of this investigation and provide you with a contact in order for you to raise any questions that you would like to be addressed as part of our investigation.

Please detail any actions that may have already been taken to improve the care and services we provide.

Please detail any actions that you have taken to provide support or reiterate an offer of support.

Please reiterate in writing any arrangements you may have made to meet with the patient and/or family carer or an offer to meet in the future and include contact details.

End the letter with an apology

Yours sincerely

## Appendix 4 - Duty of Candour Checklist

Action/s required following the identification of an incident	Completed (insert date)
<p>Assess the key actions required to provide Duty of Candour.</p> <ol style="list-style-type: none"> <li>Risk incident form completed and General manager informed</li> <li>Decision made as to whether a statutory Duty of Candour applies (a notifiable incident having considered the Duty of Candour flow chart and level of harm)</li> <li>Agree who (a registered Healthcare Professional will provide Duty of Candour communication and what support is required for that member of staff?)</li> <li>Consider the circumstances of the patient and/or family (this is potentially a time of great stress and anxiety) What support is required for the patient and/or family when the Duty of Candour is initially provided?</li> </ol>	
<p>Contact has been made with the patients and/or family, to offer an immediate apology and also offer a face-to-face meeting.</p>	
<p>If the relevant person(s) cannot be contacted or doesn't want to be involved, this has been recorded in the electronic care records?</p>	
<p>Written notification provided to explain facts known at the time and what will happen next i.e., a review of the care and treatment and that they can be involved in the review, summary of the face-to-face meeting (within 10 days of the identification of the incident).</p>	
<p>Incident recorded in notes along with actions taken for Duty of Candour, including any failed attempts to contact the relevant person or where the relevant person has declined communication in electronic patient care records and update the incident (currently Datix) <b>This is classed a formal record for Duty of Candour.</b></p>	
<p>Duty of Candour letters saved on PARIS (CITO) in letters and record in case notes on Electronic Patient Record System.  Copy of the letter to Patient Safety Inbox <a href="mailto:Tewv.patientsafety@nhs.net">Tewv.patientsafety@nhs.net</a></p>	

Condolence letter sent to the relevant person from the appropriate registered healthcare professional that knew the patient and a copy saved on Electronic Patient Record System	
Involved staff have participated in a de-brief session feel supported psychologically	
Standard check of the above actions has been completed to ensure all Duty of Candour steps have been implemented.	

## Appendix 5 - Four steps of engagement

