The Duty of Candour: Guidance for Team Managers and RCA Chairs

April 2015

Introduction

The Duty of Candour formalises the requirement for Trusts to be open and honest with service users when the care they have received is not up to the expected standard. It has its origins in the Mid Staffordshire Inquiry and a number of assumptions evident within it probably arise as a result. These can make it difficult to apply within the mental health context. Serious incidents in mental health settings may arise as a result of an error or from poor standards of care, but equally they may arise even when the investigation subsequently finds that the standard of care has been good (for example, when the incident reported is an episode of serious self-harm or suspected suicide).

Requirements of the Duty of Candour

The Duty of Candour is a two-stage approach which is now embedded in the NHS Contract and the CQC Regulations. It applies to all incidents resulting in moderate or serious harm* to a person who is under the care of the Trust at the time of the incident. The requirements for the first stage of the Duty of Candour emerge from two sources (see table below) and in the event of such an incident the Trust is expected to ensure that the following actions are undertaken:

*The Trust is seeking clarification about whether 'moderate or serious harm' equates to the grading of incidents as 'orange' and 'red' - or not.

Requirement	**Timescale for action**	**Source**
Stage 1*		
Notify the appropriate person (i.e. the person affected) that the incident has happened	As soon as possible, but within 10 days at the latest	NHS Contract
Offer an apology	As soon as possible, but within 10 days at the latest	NHS Contract
Explain as much as is known at the time about what happened	As soon as possible, but within 10 days at the latest	NHS Contract

Offer to put the above in writing	As soon as possible, but within 10 days at the latest	NHS Contract
Tell the appropriate person what investigation will be carried out	Not defined	CQC
Stage 2		
Feedback the findings of the investigation to the appropriate person	Within 10 days of the investigation being concluded	NHS Contract

* The Trust's record of whether the first stage (i.e. pre-RCA investigation) of the Duty of Candour has been met is the RCA report.

In addition to the requirements set out by the NHS Contract and the CQC, AWP also aspires to apply the same standards to:

- Incidents where the person affected by the incident is a family member or a member of the public (see Guidance on Working with Families after a Homicide) or where the person affected is a member of staff (e.g. following an assault)

- Incidents involving ex-service users and people referred to the service, but not yet seen, unless there is good reason not to do so

AWP is committed to being open and honest with service users. The primary reason for this is, and always will be, that it is a cornerstone of good practice. Additionally, however, there are a number of penalties that commissioners can impose if the Duty of Candour (as outlined in the requirements above) is not met. These include:

- A significant financial penalty (currently set at £10,000)
- A requirement for the Chief Executive to write to the person affected by the incident and apologise for the failure to meet the Duty of Candour
- A requirement for the Trust to publish details of this failure on it's public-facing website

These penalties affect the Trust's reputation and the confidence of the commissioners and the CQC, as well as having a financial impact.

It is, therefore, critical that the Trust:

- Strives to meet the Duty of Candour in all cases
- Is able to clearly demonstrate that it has met the Duty of Candour when this is the case
- Does not wrongly record that it has not met the Duty of Candour when it has, in fact, done so
- Is able to clearly articulate what issues prevented it from meeting the Duty of Candour if it was unable to do so

The introduction of this duty has led to a number of questions about how it can and should be implemented within our service and this guidance is intended to address these.

Guidance notes

- The Trust aspires to implement the Duty of Candour in some circumstances where there is no requirement to do so as part of the NHS Contract. Advice on managing these situations is included within the guidance below.
- For the purposes of this guidance 'service user death' means any death that the Trust is investigating through an RCA (e.g. a death that the Trust is treating as a suspected suicide). This does **not** include deaths from natural causes/accidental overdoses/etc).
- Good practice would be to speak to families (wherever appropriate) and send a letter of condolence whenever a service user dies, regardless of whether an RCA is being commissioned and regardless of the requirements of the Duty of Candour.

1. **Is the 'appropriate' person to contact the service user or their family/carer (to whom does the Trust have a Duty of Candour)?**

Guidance for Team Managers	**Guidance for RCA chairs**
The relevant person is the person who was affected by the patient safety incident (i.e. the service user). If the service user is deceased or does not have capacity, then the Trust's Duty of Candour is to the service user's family/next of kin. Service users may not have capacity because of their mental health problems or because of very significant physical health problems. In some cases, they may lack of capacity in the short term, but are expected to recover and regain capacity quickly (e.g. following treatment for an overdose in ITU), whereas in other cases they may not be expected to regain capacity as they are not expected to survive (e.g. following an attempted hanging). Service users may have close family relationships with people who are in regular contact with them and who are fully involved in the planning of their care. Equally service users may have stipulated that the team should not communicate with the family about their care. Any decision about how to implement the Duty of Candour with the family of a service user, therefore, needs to take account of:	Be clear about who the 'relevant' person is in the RCA report. The Trust would want the team to offer support to the family wherever possible following an incident in which a service user was seriously harmed but, unless the service user has died or is unlikely to regain capacity, the Duty of Candour is to them and not their family. If the service user is alive, record any support offered to the family, but recognise that this is over and above the requirements of the Duty of Candour. If the family have not been contacted because the service user had previously requested that no contact should be made, then be clear about this in the report. If there is a sound clinical reason why the implementation of the Duty of Candour has been delayed (e.g. the person affected was too unwell to be contacted), then be clear about this in the report and note whether the team implemented the Duty of Candour within 10 days of the person being well enough for them to do so. If a decision is made not to implement some or all of the requirements of the Duty of Candour because of the risk that this may adversely affect the service user's mental health, then

• Whether the service user is likely to recover/regain capacity following the incident • Whether the service user is happy for us to share information with the family • How involved the family are in their care • How much the family already know about their health problems and treatment At one extreme, if a service user ligatures on the ward and is not expected to survive the team should immediately seek out and talk to their family about the incident itself, although it would be wise to seek advice before discussing the service user's care more broadly if the service user has not previously consented to this. At the other extreme, if a service user overdoses at home, is receiving ITU treatment and is expected to recover, the team should contact any family/carer involved in their care and offer them support, while waiting for the service user to be physically well enough for the Duty of Candour to be implemented directly with them. In exceptional cases it may be that the service user is physically well enough to be contacted, but there are concerns about the impact of implementing the Duty of Candour on their mental health. In these cases, guidance should always be sought outside of the immediate team caring for the person (e.g. with the Delivery Unit triumvirate and/or the Patient Safety Systems Team) before proceeding. The service user's mental health should never be put at risk in order to meet the Duty of Candour, but equally the threshold for this 'exclusion' must remain high.	note this in the report and record how this decision was reached and who made it. As well as noting how the team met the Duty of Candour, the RCA report should note the support offered to the service user (or their family) and any changes made to the care plan after the incident occurred (e.g. any interventions aimed at helping them cope; team member's attendance at the funeral; etc.) The following wording may be used or adapted to describe this: "The service user has continued to be supported by services following the incident; the risk assessment has been updated and there has had a review of the care plan/ the risk management plan. Following the incident, contact was made with him/her on xx/xx/xxxx and there have been a number of contacts subsequently as part of the plan for her care."

Teams should not feel constrained by the Duty of Candour – they should continue to offer any appropriate and supportive interventions to the service user and their family following an incident; review the plan of care if necessary or ask if they may attend the funeral if appropriate. Given the complexity of these issues, teams should always seek advice from the Delivery Unit triumvirate and the Patient Safety Systems Team if in any doubt about what to do, who to talk to and how much information to share.	

2. What if the person affected is a member of staff?

Guidance for Team Managers	**Guidance for RCA chairs**
If the person affected by the incident is a member of staff (e.g. following an assault) then the Trust would wish to apply the principles of the Duty of Candour to them, although this is not a requirement of the NHS Contract or the CQC. The team manager should follow normal good practice in terms of ensuring the welfare of staff following an assault and involving Health and Safety/Local Security Management input if needed. The member of staff should always be involved in the RCA process unless they are too unwell to participate and the	If the person affected by the incident is a member of staff, do record any support offered to them (and their family, if appropriate) but recognise that this is over and above the requirements of the Duty of Candour. We are not required to offer an apology for the incident or an explanation of what happened to a service user who assaulted a member of staff. It may be appropriate to seek input to the investigation from the

arrangements for this should be managed sensitively (e.g. interviewing the member of staff separately or offering support to attend the RCA meeting, if needed) The team should take the following approach with the service user: • Consider whether to report the incident to the police – and discuss with the Local Security Management Specialist • Update the risk assessment • Seek information from the service user which may aid the review of care and/or the RCA process • Review the service user's care plan and risk management plan in the light of the incident • Offer any interventions indicated by this review of care to the service user • Offer support to the family if appropriate and with the service user's consent • Consider whether to inform the service user about the RCA investigation (this must be a clinical team decision as it may be counter-therapeutic in some cases) • Consider whether it would be helpful or clinically indicated to involve the service user directly in the RCA	service user, but **only** if their clinical team agree that this is clinically appropriate and **only** if this does not adversely affect any police investigation.

3. **What if the person affected by the incident is a family member or a member of the public (e.g. in the event of a serious assault or a homicide)?**

Guidance for Team Managers	Guidance for RCA chairs
In the event of a serious assault or homicide the team must seek advice before contacting any of the parties involved as this may impact on any police investigation of the incident. Advice is available from the Patient Safety Systems Team.	The impact of any police investigation on the ability of the team to fulfil the Duty of Candour should be recognised in the report. Advice on how to articulate this is available from the Patient Safety Systems Team.

4. What is meant by offering an apology?

Guidance for Team Managers	Guidance for RCA chairs
If it is immediately clear that the incident involved an error by staff (e.g. harm as a result of a medication error), then an apology for the error should always be given. In many cases it will not be immediately clear if the incident was the result of an error or poor practice by staff. In these cases the team should express regret for what happened and the impact this had. Teams should bear in mind that the risk of an error or poor practice leading to the incident is much higher when the service user was under our immediate care at the time the incident happened (i.e. if they were an inpatient) simply because the more directly involved we were at the time, the more	If an apology for an error was made, record this in the RCA report, and note who made the apology and the date this happened. If condolences were expressed verbally and/or in writing following the death of a service user, then note this and the date(s) this took place. For other incidents, the following form of words may be used or adapted: “This harm to the service user was self-inflicted and no error or omission by staff is felt to have contributed to this. The team have expressed regret about the incident in their subsequent discussions with the service user and his/her family, but an apology is not appropriate if no error or omission occurred”

opportunity there is for something to have gone wrong. In the event of the death of a current service user, the team should **always** seek to speak to the family to offer condolences **and** send a letter of condolence. This would then constitute an apology in terms of the Duty of Candour.	

5. What if the person was not under the care of the Trust at the time of the incident*?

*This situation would only occur if the person died or was charged with homicide - as other incidents involving people referred to or discharged from the service would not be classed as patient safety incidents and would not be subject to an RCA.)

Guidance for Team Managers	**Guidance for RCA chairs**
In the case of alleged homicides the team should seek advice before proceeding (see question 3 above). The Trust expects teams to contact the family of people referred to or discharged from services in the event of their death unless there is a good reason not to do so. The team should consider speaking to the family and sending a letter of condolence following the death of an ex-service user or a person referred to the service, but not yet taken on. If the team have had recent contact with the family, this poses few problems and would always be encouraged. It can be difficult, however, if the Trust were informed of the death some months after it happened (for example, by the Coroner); if there has been no previous contact between the team and the family or if	The Duty of Candour only applies to incidents involving current service users. The issues relating to incidents where there is an alleged homicide are addressed above (see question 3). In the event of the death of someone referred to or discharged from the service (i.e. someone who is not a current service user), the RCA report should note any contact with the family, but also note that this is over and above the requirements of the Duty of Candour.

it is not clear whether the family knew that the service user had been referred. In these cases advice should be sought from the Delivery Unit triumvirate or the Patient Safety Systems team. Although it may be difficult to contact the service user's family in these circumstances, the team should bear in mind that they are likely to meet the family at the inquest and this is more difficult if no contact has been made previously.	

6. How should the Duty of Candour be implemented in incidents of serious self-harm and in AWOLs (where the service user was responsible for the incident)?

Guidance for Team Managers	**Guidance for RCA chairs**
The team should: • Express regret that the incident happened • Update the risk assessment • Seek information from the service user which may aid the review of care and/or the RCA process • Review the service user's care plan and risk management plan in the light of the incident • Offer any interventions indicated by this review of care to the service user • Offer support to the family if appropriate and with the service user's consent • Consider whether to inform the service user about the	For self-harm incidents, the following form of words may be used or adapted: "This harm to the service user was self-inflicted and no error or omission by staff is felt to have contributed to this. There is, therefore, no requirement to implement the Duty of Candour in this case: - The team are not required to inform the service user or his/her family of the occurrence of this incident as they were already aware of this at the point when the team were notified. - The team have not been in a position to explain what happened to the service user or his/her family

RCA investigation (this must be a clinical team decision as it may be counter-therapeutic in some cases) • Consider whether it would be helpful or clinically indicated to involve the service user directly in the RCA	- The team have expressed regret about the incident in their subsequent discussions with the service user and his/her family, but an apology is not appropriate if no error or omission occurred" OR For AWOL incidents "As this was an AWOL incident it was not appropriate for the Trust to notify the service user that the incident occurred. The team met with the service user following the incident (on xx/xx/xx); offered them support and subsequently reviewed their care plan as follows…. When they went missing, the team contacted the family to notify them on xx/xx/xx; expressed regret that this had happened and involved them in the process of seeking the service user's return and offered them support as follows…. "

7. What if the team do not have contact details for the family/next of kin*?

*For unexpected deaths only – in other incidents the Duty of Candour will be to the service user.

Guidance for Team Managers	**Guidance for RCA chairs**
Teams should routinely explore with service users who they should contact in the event of an emergency – even if the person does not identify a carer and/or does not want the team	If the service user has become alienated from their family and it has not been possible for anyone (including the Coroner) to establish who they are) then this should be noted.

to routinely have contact with their family. The team should ask something like 'who would you want is to call if you were hit by a bus on your way to an appointment with us?' If, despite this, the team do not have contact details for the family of a deceased service user, then they must make all reasonable efforts to establish these promptly (e.g. contacting the GP or the Coroner – who will always have been in touch with any family identified by the police). The Coroner's office may be willing to pass the team's contact details to the family so that they can make contact if they wish.	If the team do not have contact details on file and are unable to establish how to contact the family before the RCA is completed, despite reasonable efforts to obtain these details, then this should be noted. All attempts to establish the contact details retrospectively should be noted in the RCA report. In the event that the team have to establish the family's contact details after the incident, then the 10 day period for contacting the family should start from when they have these details. Teams have to attempt to contact families in the event of the death of a service user, but cannot be expected to do so if they do not have contact details. If they do not have these, this may be a significant concern, but it does not mean that the Duty of Candour has not been met. Any omission in recording contact details which impacts on the team's ability to fulfil the Duty of Candour should be recorded in the RCA, but this should be as a 'lesson learned', rather than as a failure to meet the Duty of Candour. A recommendation for the team, the Delivery Unit or the Trust should then be made. The following form of words may be used or adapted to explain this: "The team met the Duty of Candour in that the Team Manager made significant efforts to contact the family to offer condolences and to talk about what happened, albeit unsuccessfully. (*List efforts made to make contact*). This incident does, however, highlight a significant issue in terms of the team's 'preparedness' to be able to meet the Duty of Candour, as it did not have up to date contact details recorded

	for the service user. This has been noted as a lesson learned and a recommendation has been made to address this"

8. The family state that they do not wish to be contacted*?

*For unexpected deaths only – in other incidents the Duty of Candour will be to the service user and we are likely to have ongoing involvement with them

Guidance for Team Managers	**Guidance for RCA chairs**
Teams have to offer an apology/condolences and offer to explain what is known about what happened, but the family may not want to engage in this conversation at all or may not be able to engage in this conversation shortly after their bereavement (either for psychological or practical reasons). Teams should discuss and agree (with input from the Delivery Unit Triumvirate or the Patient Safety Team) whether to: • Accept the family's wishes at face value • Approach the family again at a later date (when they may be ready and willing to engage or when the immediate rush to organise a funeral has passed) • Offer an alternative approach (particularly if the family are angry with specific individuals or with the team as a whole)	The report should note if the family decline contact from the team; if alternatives have been considered (if appropriate) and if the team have considered whether to make further approaches to the family. If the family have made a complaint, then this will be investigated by the RCA chair who will then approach the family directly as part of this.

9. Who should make contact of multiple agencies are involved*?

*For unexpected deaths only – in other incidents the Duty of Candour will be to the service user and we are likely to have ongoing involvement with them

Guidance for Team Managers	Guidance for RCA chairs
In some cases, service user users may have been involved with multiple agencies and agreement should be reached early on about which agency will be the primary contact for the family. This will normally be the agency which is leading on the RCA investigation. The AWP team should always offer condolences; explore if the family need any support from them and respond to any questions they have, but duplicate efforts to engage with them if another agency is taking the lead role will probably be unhelpful. Families should not be burdened by returning calls to multiple agencies when they are newly bereaved and making funeral arrangements, for example.	The RCA report should reflect any contact made by AWP and note any agreement that another agency will take the lead role. The Trust should not be considered to have failed to meet the Duty of Candour if another agency has agreed to take the lead role.