



1986-2016: Celebrating 30 years working in the community



## Agenda 6.1

<b>Policy on:</b>	<b>CO22 Duty of Candour Procedure</b>
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<b>Compliant with Regulatory Standards</b>	N/A
<b>Compliant with Charter standards :</b>	N/A
<b>Guidance and Legislation</b>	Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016. Duty of Candour Procedure (Scotland) Regulations 2018.
<b>Compliant with Tenant Participation Strategy :</b>	Not required
<b>Compliant with Equal Opportunities :</b>	Not required
<b>Equality Impact Assessment</b>	Not required
<b>Freedom of Information</b>	Policy takes account of FOI
<b>GDPR</b>	n/a
<b>Compliant with Annual Assurance :</b>	Yes
<b>Linked Policies and Strategies</b>	Nil

<b>Date of Approval :</b>	<b>23<sup>rd</sup> April 2020</b>
<b>Policy Review Date :</b>	<b>23<sup>rd</sup> April 2023</b>

<b>Responsible Officer :</b>	Director of Customer Services
<b>Version History</b>	V1 Approved : Date

## **1. INTRODUCTION**

As a housing support provider, Barrhead Housing Association has a legal requirement to comply with the organisational duty of candour provisions of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (The Act) and The Duty of Candour Procedure (Scotland) Regulations 2018. Organisations providing health services, care services and social work services in Scotland are required by law to follow The Duty of Candour Procedure 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).

The purpose of this policy is to set out when the duty of candour procedure must be activated and to clarify staff responsibilities for complying with the law.

## **2. GUIDANCE**

The Scottish Government published Organisational Duty of Candour guidance in March 2018. This outlines the issues which organisations will want to consider at each point in the procedure; suggest best practice; and provides a checklist of the steps to be taken to fulfil the duty.

## **3. FOCUS OF DUTY OF CANDOUR LEGISLATION**

The focus of the duty of candour legislation is to ensure that organisations 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; and learn (taking account of the views of relevant persons). Organisations must ensure that support is in place for their employees and for others who may also be affected by unintended or unexpected incidents.

## **4. RESPONSIBLE PERSON**

Every organisation covered by the duty of candour legislation is regarded as a "responsible person" with the definition as set out in section 25 of the Act. This means that the new Duty applies to organisations and not individuals.

The responsible person has responsibility for:

- Carrying out the procedure;
- undertaking any training required by regulations;
- providing training, supervision and support to any person carrying out any part of the procedure as required by regulations;
- reporting annually on the duty.

## 5. INCIDENTS WHICH ACTIVATE THE DUTY OF CANDOUR PROCEDURE

The duty of candour procedure must be carried out by the responsible person as soon as practicable after becoming aware that an individual who has received a health, social care or social work service has been the subject of an unintended or unexpected incident, and in the reasonable opinion of a registered health professional has resulted in or could result in:

- The death of the person;
- a permanent lessening of bodily, sensory, motor, physiologic or intellectual functions;
- 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;
- the person requiring treatment by a registered health professional in order to prevent:
  - the death of the person; or
  - any injury to the person which, if left untreated, would lead to one or more of the outcomes mentioned above.

**Where an unintended or unexpected incident occurs, the Association's legal advisers and insurers will be notified without delay.**

## 6. THE DUTY OF CANDOUR PROCEDURE

The 'duty of candour' procedure details the actions to be taken by the Association in accordance with regulations made by the Scottish Government. The regulations detail the specific actions and recording of information required by staff when carrying out each stage of the procedure.

The key stages of the procedure include:

- (a) to notify the person affected (or family/relative where appropriate);
- (b) to provide an apology;
- (c) to carry out a review into the circumstances leading to the incident;
- (d) to offer and arrange a meeting with the person affected and/or their family, where appropriate;
- (e) to provide the person affected with an account of the incident;
- (f) to provide information about further steps taken;

(g) to make available, or provide information about, support to persons affected by the incident;

(h) to prepare and publish an annual report on the duty of candour, setting out the way that the procedure has been followed for all the cases that have been identified.

## **7. RELEVANT PERSON**

A 'relevant person' is the 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. This is set out in section 22(3) of the Act.

## **8. VIEW OF A REGISTERED HEALTH PROFESSIONAL**

In the event that an incident occurs, the Association will require to source a registered health professional, who must give their view on the incident and its relationship to the occurrence of death or harm and pre-existing illnesses or underlying conditions. The Association must ensure that the registered health professional is **not** someone who was involved in the incident. However, registered health professionals with an existing involvement with the relevant person should be contacted where possible.

This means that the final decision by the Association about whether to activate the duty of candour procedure for a particular incident will be informed by the views of a health professional who has not been personally involved.

In the first instance, the Customer Services Manager or the Director of Customer Services will compile the following core information to the registered health professional:

- Details of the incident- what was the incident?
- The outcome of the incident
- The illnesses and underlying condition the person has/had – where known.

When a registered health professional has agreed to provide the Association with their view, this should cover the following:

- Based on the background information provided, does it appear that this incident resulted in or could result in the death or harm described?
- Does the natural course of the person's illness or underlying condition directly relate to the death or harm described?

Health services will be contacted to provide assistance in identifying a registered health professional who would be able to provide the required view in such circumstances.

Where we experience difficulties in identifying a registered health professional, advice will be sought from Healthcare Improvement Scotland or the Care Inspectorate.

Although it is likely that the Association will already have a view on whether the procedure should be activated, the views of the registered health professional not involved with the incident form an important further step in the duty of candour procedure.

## **9. PROCEDURE TIMESCALES**

The procedure start date is the date that the Association 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 in section 5 of the procedure and that relates directly to the incident rather than to the natural course of the relevant person's illness or underlying condition.

If the registered health professional thinks that it is unlikely that harm will occur, then the duty of candour procedure need not be activated for that incident.

### **Notification**

The duty of candour legislation states that 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.

This notification can be by various methods including telephone, face to face or by letter. The person will be notified by the Customer Services Manager or the Director of Customer Services. Where a duty of candour procedure start date is more than a month after the incident, the organisation must provide the relevant person with an explanation of why this is.

The Director of Customer Services will generally be the single point of contact following the discussion with the relevant person.

The notification must include:

- an account of the incident to the extent that the organisation is aware of the facts at the date the notification is provided; and
- an explanation of the actions that the organisation 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.

The Association will consider the support needs of relevant persons at the earliest possible opportunity and while following the duty of candour procedure.

The Association must take reasonable steps to find out the relevant person's preferred method of communication and ensure that communication with the relevant person is in a manner that they can understand.

If staff are unable to contact the relevant person or the relevant person does not wish to speak with a representative of the Association, the attempts made to contact them need to be included in our written record following the duty of candour procedure.

The Association need not provide information where relevant persons have indicated that they do not wish to receive it. The Regulations do not permit or require the Association to disclose any information that would prejudice any criminal investigation or prosecution or contravene any restriction on disclosure arising by virtue of an enactment or rule of law.

## **10. GENERAL DATA PROTECTION REGULATIONS**

The Association will treat the person's personal data in line with our obligations under the current data protection regulations and our own Privacy Policy. Information regarding how customers' data will be used and the basis for processing their data is provided in our GDPR Fair Processing Notice.

## **11. CLAIMS FOR COMPENSATION**

In circumstances where a person makes a claim for compensation, it will be the Association's policy to suggest that the person waits until the duty of candour procedure has concluded. By this point, 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.

If a relevant person mentions that they are considering making a claim, the duty of candour procedure should continue.

If a relevant person does make a claim and the Association 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 the Association should still try to identify any potential improvement and learning actions.

## **12. APOLOGY**

In addition to any apology provided at the time of the incident, as part of the duty of candour procedure the Association 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. The Association must provide a written apology if the relevant person wishes it.

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. 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.

Section 23(1) of the Act states that "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."

Staff will obtain further guidance on making an apology as part of the duty of candour procedure and the form this might take.

In all circumstances, advice will be sought from the Association's solicitors.

## **13. MEETINGS**

The Association must invite the relevant person to attend a meeting and give him/her the opportunity to ask questions in advance. The Association must take reasonable steps to ensure that the meeting is accessible to the relevant person, having regard to his/her 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, an advocate and/or someone the relevant person chooses to support them present.

After the meeting the relevant person must be provided with:

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

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.

Where this is the case, the relevant person must be informed as part of the notification process, that the organisation where the incident occurred is the responsible person, as defined by the legislation, who will carry out the procedure.

#### **14. REVIEW**

The Association must carry out a review of the circumstances which we 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 by health professionals such as an adverse event review or significant case review of the sort undertaken by child, adult and public protection committees.

Best practice requires that reviews involve clinical and care professionals with the relevant subject matter expertise, as appropriate. The Association will refer to appropriate best practice guidance and protocols in such circumstances.

##### **Timescale**

Where the review is not completed within three months of the procedure start date, the Association must provide the relevant person with an explanation of the reason for the delay in completing the review.

#### **15. WRITTEN REPORT**

The Association must prepare a written report of the review, which must include:

- a description of the manner in which the review was carried out;
- a statement of any actions to be taken by the Association 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.



The Association must 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 the organisation or other health, care or social work services; and
- details of any services or support which may be able to provide assistance or support the relevant person, taking into account their needs.

### **Records**

The Association must 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. The written record should be retained by the Association in accordance with our relevant local policies and procedures.

## **16. REPORTING & MONITORING**

The Act requires the Association to prepare an annual report, as soon as reasonably practicable after the end of that financial year. The report content must comply with the Duty of Candour guidance.

The Association must publish its report in a manner which is publically accessible, for instance on our website.

### **Care Inspectorate**

When our report has been published, we must notify the Care Inspectorate. The Care Inspectorate will ask for information about whether or not care services have published their duty of candour report in the first set of Annual Returns following the end of the financial year after which the report must be published.

## **17. STAFF TRAINING & SUPPORT**

The Association will ensure that all housing support staff receive appropriate training, including E-Learning, on the duty of candour procedure. This training will be included within the induction process for new staff.

The Association will provide any staff member involved in an incident with details of appropriate services or support which may be able to provide assistance or support, taking into account the circumstances relating to the incident; and the employee's needs. This may take the form of debriefing, counselling or direct support.

## **18. STAFF RESPONSIBILITIES**

The Director of Customer Services will have responsibility for ensuring that housing support staff receive appropriate training on the Duty of Candour procedure, and for arranging support for staff who may also be affected by unintended or unexpected incidents.

The Customer Services Manager will be responsible for notifying the Care Inspectorate of the publication of our report, and for the completion of relevant returns to the Care Inspectorate.

The Customer Services Manager will prepare the annual report on the duty of candour where no cases have been identified, however the Chief Executive or Director of Customer Services will be responsible for preparing the annual report where cases have been identified.

Due to the serious nature of incidents which activate the Duty of Candour procedure, the Director of Customer Services will generally implement the procedure, and report to the Chief Executive as necessary.

## **19. EQUALITY & DIVERSITY**

The Association will ensure that our Equality and Diversity Policy is applied fully, fairly and consistently across the Association, as an integral part of business planning processes and the services we provide. It recognises that all people are different and aims to ensure that we treat each individual with dignity and respect. To achieve the aims of our overall strategy we will take action to address discrimination experienced by particular groups, as well as action to promote and achieve diversity in employment, governance and service delivery.

## **20. CONSULTATION**

The Senior Management Team have been consulted on the drafting of these procedures.

Sheltered housing tenants will be notified of the Association's legal requirement to comply with the Duty of Candour procedures.

## **21. MONITORING AND REVIEW**

This Policy will be subject to regular review and will be reviewed at least every three years.

