

Guide: Duty of Candour

Duty of Candour will apply to care providers regulated by the Care Quality Commission (CQC) from 1st April 2015. This is subject to final approval from Parliament and follows the same legislation which came into effect for healthcare providers in November 2014. The Duty of Candour could have serious implications for every healthcare and care provider. As such we have created this brief guide to help you understand how to meet this duty for the good of those in your care, while at the same time minimising the risks that might present themselves to your business, organisation or personnel.

What is Duty of Candour?

As its name suggests, the Duty of Candour has been created in order to ensure both openness and transparency when any notifiable safety incident has occurred. Therefore **from 1st April 2015, you and everyone who works for you will have to follow a clear procedure in the event of a notifiable incident**, part of which involves offering a verbal and written apology.

Whilst it is appropriate to express sympathy or regret, it is important to note that the apology should not include any admission of fault as this is at odds with the Act. An apology is not meant to be an admission of liability but you do need to consider your message carefully to ensure you do not prejudice your position from an insurance perspective. This is discussed later in this guide under 'The Duty of Candour and your insurance policy'.

What is a notifiable incident?

A notifiable incident is any unintended or unexpected incident which occurs when a service user is being treated or cared for and that could result or appears to have resulted in the death, severe harm, moderate harm or prolonged psychological harm of a service user.

Using a hospital as an example, surgical or medication errors will often lead to clear cases of serious harm, when notifiable incidents will be quite easy to recognise. However, there may be other providers where the care provision is much wider ranging so what constitutes a notifiable incident may be less clear cut.

To aid accurate identification of such incidents, the **Duty of Candour describes the following unintentional and unexpected scenarios as notifiable incidents** when any patient or service user is being treated or otherwise cared for:

- **Death:** whether immediate or potentially arising as a result of the notifiable incident
- **Severe Harm:** defined as a permanent lessening of bodily, sensory, motor, psychological or intellectual functions, including brain damage and removal of the wrong organ or limb
- **Moderate Harm:** defined as harm that leads to significant but not permanent harm or a moderate increase in treatment such as hospital admission or a return to surgery
- **Prolonged Psychological Harm:** defined as psychological harm that a patient has experienced, or is likely to experience, for a continuous period of at least 28 days

What steps do I need to take?

In the event of a notifiable incident, the **Duty of Candour requires that you should notify the service user or their representative as soon as reasonably practicable**, by means of oral notification by a senior person with relevant experience and expertise: Reasonably practicable means within ten working days of the incident occurring.

Points to remember for oral notification:

During the oral notification, the person giving it must:

- Ensure that the service user or their representative understands what has gone wrong
- Give an account that is true to the best of the organisation's knowledge
- Clearly state what further enquiries into the incident will now take place
- Apologise, expressing sorrow or regret, yet without admitting fault or liability
- Keep a written record of this conversation

Points to remember for written notification:

The oral notification must then be followed by a written notification, which must:

- Repeat the information, and apology, given in the oral notification
- Include the results of any further enquiries
- Inform the recipient of your continuing duty to keep the service user or their representative informed, in writing, of any further enquiries and investigations, should they wish to receive it

You should also ensure that copies of this and any further correspondence or documentation are retained.

What are the consequences of non-compliance?

Failure to comply with the Act is a criminal offence and punishable by a fine of £2,500. The CQC may also refuse or revoke registration where providers cannot demonstrate compliance with the requirements.

What steps should you take next?

- Prepare guidance and provide training for all staff on what constitutes a notifiable incident and what steps should be taken when one occurs
- Prepare a notification letter template
- Consider preparing procedural documents that set out the organisation's commitment to openness and candour

Linking with your existing reporting procedures

CQC guidance states that the duty to make a candour notification is required where the degree of harm resulting from an incident is not yet clear but may fall into the above mentioned categories.

This wording reflects the Regulations, where a notifiable safety incident is described as including incidents which could result in the requisite level of harm. Therefore when drafting new or amending existing policies and procedures, and when considering incidents which might result in delayed onset harm, care providers should err on the side of caution and treat the Duty of Candour as having been triggered if any one of the levels of harm described is even a possible outcome.

The Duty of Candour and your insurance policy

When things do go wrong, explaining what has happened, what you will do about it and expressing sympathy or regret in a timely manner is key. Poor communication, or a perception that you are not being open and honest, can only aggravate the situation.

Saying sorry is not an admission of legal liability. You do however need to be careful how you frame your apology. You should:

- Stick to the facts known at the time. Do not stray into opinion.
- Provide a step by step explanation of what has happened.
- Keep the language and tone conciliatory and measured. Don't use unnecessary or emotive language.
- Be clear and unambiguous.
- Be careful that different members of staff do not provide different accounts.
- Think about how you would hear / read what is being communicated – if it is not clear, try again.
- If an investigation is appropriate, undertake one.
- Keep the family updated of the progress of any investigation.
- Communicate any new facts to the family

Always consider whether you need to notify Markel of the incident that you are apologising for. If you consider the circumstances surrounding the incident are likely to give rise to a claim then you need to notify Markel immediately. It is good practice to notify Markel before you issue an apology so that we can assist you with this.

If, as a result, you receive any communication or allegation which might give rise to a loss then you need to notify Markel immediately.

We are here to help

If you are unsure about whether you need to notify Markel contact your broker or the Markel claims team for further guidance.

0845 351 2600

claimsuk@markelintl.com

Remember, we are there to work with you and support you through the process.

www.markelinternational.com/uk

These notes are intended to be for guidance only and do not supersede or negate any of the policy terms and conditions. Policyholders must refer to the actual policy issued for the binding terms, conditions and exclusions of cover.

