The duty of candour

The legal duty to be open and honest when things go wrong: what it means for patients and their families

Care Quality Commission

Endorsed by the Care Quality Commission (CQC), the independent regulator responsible for monitoring compliance with the duty of candour

The duty of candour is a statutory (legal) duty to be open and honest with patients (or 'service users'), or their families, when something goes wrong that appears to have caused or could lead to significant harm in the future. It applies to all health and social care organisations registered with the regulator, the Care Quality Commission (CQC) in England.

This leaflet explains what to expect if such an incident occurs and what to do if you think your healthcare provider has not complied with the duty of candour.

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The **charity** for **patient safety** and **justice**

AvMA is the charity for patient safety and justice. We provide specialist advice and support to people when things go wrong in healthcare and campaign to improve patient safety and justice.

For advice and information visit
www.avma.org.uk

Or call our helpline
10am-3.30pm Monday-Friday
(03 calls cost no more than calls to geographic numbers (01 or 02) and must be included in inclusive minutes or there can be a cost per minute)
0345 123 2352

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Registered charity in England & Wales (299123) and Scotland (SCO39683)

What kind of incidents are covered by the duty of candour?

The regulations for registration with the CQC place an overarching responsibility on health and social care organisations to be open and transparent.

The regulations for NHS bodies define a 'notifiable safety incident' as 'an unintended or unexpected incident... that could result in, or appears to have resulted in the death of a service user... or severe or moderate harm or prolonged psychological harm to the service user'.

In other words, the organisation must tell you about any incident where the care or treatment may have gone wrong and appears to have caused significant harm, or has the potential to result in significant harm in the future.

The regulations for GPs, dentists, private healthcare and adult social care are slightly different – see "What you need to know" on page 3.

What can you expect when you are told about an incident?

You should be informed about what happened as fully as possible and in a sensitive way, in person. This should happen as soon as reasonably practical after the incident is known about and should include an apology. This should also be followed up with a written account and apology.

You should be informed about what will happen next, for example what safety measures will be taken or any enquiries or investigation that will be carried out.

You should be told about where you can get support, such as counselling if appropriate, or independent advice (for example from AvMA on page 3).

You should be kept informed about any investigation and its outcome.

What about older incidents?

The duty of candour regulations came into force in November 2014 for NHS bodies and April 2015 for all other organisations.

If the incident occurred before the regulations came into force, the CQC may not be able to take formal regulatory action or prosecute over a breach of the duty. However, they will take account of how organisations follow the spirit of the duty currently.

The regulations apply from the point that it is apparent that the incident is a 'notifiable safety incident' even if it is only realised later (for example, through a complaint investigation) that it met the definition of a 'notifiable safety incident'.

What if the organisation has not complied with the duty of candour?

If any organisation registered with the CQC fails to comply with the duty of candour, they could face regulatory action and, in the most serious or persistent cases, criminal prosecution.

If you think the organisation is in breach of the duty of candour, it is usually best to raise it with them first. This can either be with the health professional with whom you have most contact, or by making a formal complaint.

You can contact AvMA for support. We will explain the procedures to you and offer specialist independent advice.

If you want us to, we can put you in contact with the CQC to let them know that there has been a breach of the duty of candour. You can also contact the CQC directly (see page 3 for details).

The CQC is not able to investigate every breach of the duty of candour and it is unlikely to take formal regulatory action or prosecute unless the breach is serious or widespread. However, it will use feedback it receives to inform its monitoring and inspection of registered providers.

What you need to know

- The duty covers any incident that appears to have caused, or has the potential to cause, significant harm*
- Organisations don't legally have to tell you about incidents that cause a 'low level of harm' (e.g. minor or short-term harm) or 'near misses' but it is good practice to be open and to learn from all incidents
- There does not need to be certainty that an incident has caused significant harm – only that it appears that it has or may do so in the future*
- Incidents will be covered if the 'reasonable opinion of a healthcare professional' would be that they did or could have caused significant harm*
- The emphasis should be on being open with you if there is any doubt

**There is currently no legal requirement for GPs, dentists, private healthcare and adult social care services to inform you about incidents which 'could' result in significant harm but haven't yet done so. There is, however, still an overarching duty for them to be open and honest.*

AvMA can help you to understand your rights and advise you on what to do next. See our contact details to get in touch.

Care Quality Commission (CQC)

CQC is the independent regulator of health and adult social care organisations in England and is responsible for monitoring compliance with standards such as the duty of candour. It has legal powers to take action against organisations who do not comply.

Tel: 03000 61 61 61
www.cqc.org.uk

You can find the full regulations themselves and the Care Quality Commission guidance for organisations on how to comply at:

www.cqc.org.uk/duty-candour

Action against Medical Accidents (AvMA)

AvMA is the charity for patient safety and justice. We provide specialist advice and support to people when things go wrong in healthcare, and we are the charity which led the campaign to bring about the duty of candour.

Helpline: 0845 123 2352
10am-3.30pm Monday-Friday
The advice is free but calls cost 0-7p per minute plus your phone company's access charge

Before contacting the helpline, please visit the help and advice section of our website for self-help information and leaflets.

www.avma.org.uk/help-advice

www.avma.org.uk/donate

Be part of the movement for better patient safety and justice

Support AvMA's work today

You can help make healthcare safer and fairer for all

Our vision is a simple: **People who suffer avoidable medical harm get the support and the outcomes they need.** This vision is underpinned by four objectives, we believe, will transform trust in the NHS and healthcare generally and significantly cut the cost – financial and human – which is incurred annually in settling legal claims as well as dealing with the human costs associated with traumatic medical injuries and death. Our four key objectives are:

- To expand the range of communities we serve and so enabling more people experiencing avoidable harm to access services from us that meet their needs
- To empower more people to secure the outcomes they need following an incident of medical harm, whilst providing caring and compassionate support
- To eliminate compounded harm following avoidable medical harm
- To have the necessary diversity of sustainable resources and capacities to deliver

Ongoing donation from as little as £5 a month could go a long way:

£5/month could provide vital advice to patients and families via our helpline

£10/month could help train a volunteer helpline advisor

£50/month could help support a family through an inquest hearing

Your help could make a real difference to patient safety in the UK

Please donate today at www.avma.org.uk/donate

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