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## Being Open and Duty of Candour Policy

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Purpose of Agreement	To provide all staff guidance on being open with patients/ families/carers and how to complete duty of candour when it is required
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The policy is a rewrite of the previous policy.

**Review Log:**

Include details of when the document was last reviewed:

Version Number	Review Date	Lead Name	Ratification Process	Notes
1	March 2021	Teresa Power	Policy Steering Group	

## SUMMARY OF POLICY

At Solent NHS Trust we believe that where an event has led to harm (of any level), patients, their families and carers should receive an explanation and apology as soon as possible after the event and that staff feel confident to apologise there and then. Within the context of this policy is referred to as Being Open. Solent are committed to being open and transparent in all cases of patient safety where harm is noted and take this responsibility very seriously. This should be the first duty of staff when supporting the person who is the subject of a patient safety event.

Communication with the person who is a subject of harm (or their next of kin in cases where they have died or lack capacity), must take place as soon as reasonably possible after the event and appropriate to the needs of the individual(s). An incident report must be completed within 24 hours, for all unexpected events resulting in a near miss or harm to support effective escalation and robust record keeping.

Staff must ensure that a prompt, genuine apology is made (using the word “sorry”), and is open and an honest discussion is held with the patient, family or carers, providing an explanation of facts known, at the time of the initial discussion.

Solent, like all NHS organisations also have a statutory Duty of Candour, which is a legal requirement that states that patients or their families/carers will be informed when a safety incident has occurred that has caused significant harm. The Statutory Duty of Candour (DoC) must always be considered for incidents which could or do result in Moderate Harm, Severe Harm, or Death (or prolonged psychological harm) as a consequence of our care provision (or omission of care). The Statute has requirements in how this duty will be enacted and all elements of the duty of candour are completed.

All discussions must be documented fully in the patient notes and for all incidents meeting the statutory Duty of Candour, an apology and explanation must be offered in writing to the patient family or carer. Where this letter is declined, it must be clearly documented in the patient records (if the patient declines) and on the incident system. If there is to be a further investigation, this is to be explained to the patient, family or carers and they must be offered the opportunity to be included in the investigation from the completion of the commissioning brief and to know the outcome and actions identified during the course of the investigation. Preferred communication methods with the patient, family or carer should be discussed and documented, including any rejection of further involvement in an investigation or information being provided to them.

On conclusion of the investigation, Solent state that reports and findings must be shared with the patient, family, or carers (within 10 days of being approved). If they do not wish to see this report, this must be documented on the incident reporting system. Should they change their mind later, the report will be made available as per the normal process. The patient, family or carer must be given a service lead contact name and details and be invited to contribute to any investigation (acknowledging that at the time of first contact this person’s name is unlikely to be known). In addition, consideration as to whether it is appropriate to refer to the Trust Family Liaison Manager needs to be made.

This policy provides information about both Solent’s commitment to ‘Being Open’ as well our Statutory Duty of Candour

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## BEING OPEN AND DUTY OF CANDOUR POLICY

### 1. INTRODUCTION & PURPOSE

- 1.1 Since the publication of the Francis Inquiry Report in 2013 many changes to health care have been made and this has had a positive and effective influence on the way we function and act, as an NHS organisation. We continue to hold a determined focus on improvement and learning from events, to better understand how we can prevent or at least minimise the impact, should this be unpreventable. To achieve this successfully, we must live by our Trust values, to be open, honest, and accountable and ensure that every person counts and that their view is heard.
- 1.2 Solent NHS Trust is fully committed to improving communication between healthcare professionals / teams and patients, families / carers. This is particularly important when a patient suffers harm because of an unintended or unexpected incident (CQC 2015). It is of importance to note that saying sorry is not an admission of liability; it is the right thing to do. Patients, families, and carers have a right to expect honesty and openness from the services that they receive care from.
- 1.3 The purpose of this policy is to provide all Trust employees with guidance to ensure that we are always open and honest in our communication with people involved in incidents, their family or carer should an event resulting in harm occur.
- 1.4 This policy sets out the standards for communicating with a patient, family or carer following a reportable Patient Safety Incident or unexpected complication and should be read in conjunction with the RK10 Incident Reporting, Investigation and Learning Policy.
- 1.5 The Policy will provide very clear guidance about:
  - The difference with Being Open and Duty of Candour
  - The timescales Duty of Candour must be completed
  - The ways in which Solent will involve people in patient safety investigations they are involved in.

### 2. SCOPE & DEFINITIONS

- 2.1 This policy applies to locum, permanent, and fixed term contract employees (including apprentices) who hold a contract of employment or engagement with the Trust, and secondees (including students), volunteers (including Associate Hospital Managers), bank staff, Non-Executive Directors and those undertaking research working within Solent NHS Trust, in line with Solent NHS Trust's Equality, Diversity and Human Rights Policy. It also applies to external contractors, agency workers, and other workers who are assigned to Solent NHS Trust.
- 2.2 Solent NHS Trust are committed to the principles of Equality and Diversity and strive to eliminate unlawful discrimination in all forms. We are steadfast in demonstrating fairness and Equal Opportunities for users of services, carers, the wider community, and our staff.
- 2.3 See Glossary section

### **3. PROCESS/REQUIREMENTS**

#### **3.1 Being Open**

- 3.1.1 Being open in the context of the policy is about Solent's duty of care to be open and transparent with patients when there is a patient safety incident.
- 3.1.2 Being open applies to our patients. Where there is lack of capacity, being open applies to the patient's family or carer.
- 3.1.3 Being Open with our patients includes the following steps:
  - 1) Communication - Nominate a person to inform the patient, family, or carer of the incident. Consider how this information may be received. On occasion it may be necessary to follow this up with a letter. A template for this letter is available on SolNet.
  - 2) Apology- Saying sorry is not an admission of guilt. Saying sorry is the right thing to do. The NHS resolution 'Saying Sorry' leaflet (2018) is available on SolNet.
  - 3) Support – consider the type of support the patient may require, from their family, Family Liaison Manager, or an advocate.
  - 4) Inform the patient of the actions that will take place because of the incident. Will there be an investigation? Has quick action prevented this from happening again?
  - 5) Feedback and Learning – if there is to be an investigation how will the patient prefer to receive feedback, face to face, on the telephone, email or via the post.
- 3.1.4 Patients with assessable information needs, will require adaptations to verbal or written communication.

#### **3.2 Statutory Duty of Candour**

- 3.2.1 Statutory duty of Candour is a regulated activity. Health and Social Care Act 2008. Regulations 2015. The regulation applies to: "any unintended or unexpected incident that occurred in respect of a service user during the provision of a regulated activity that, in the reasonable opinion of a health care professional, could result in, or appears to have resulted in:
  - (a) Death of the service user, where the death relates directly to the incident rather than to the natural course of the service user's illness or underlying condition, or
  - (b) moderate harm, severe harm, or prolonged psychological harm to the service user.
  - (c) In summary, any unexpected or unintended incident which results in unexpected death, severe harm, moderate harm, or prolonged psychological harm falls within the Statutory Duty of Candour.
- 3.2.2 Duty of Candour has two parts
  - 1) General requirement that providers act in an open and transparent way with service users.
  - 2) Formal notification process which must be followed when certain safety incidents occur, described in the regulation as 'notifiable safety incidents'.

- 3.2.3 Trusts that breach Duty of Candour can be subject to prosecution by CQC.
- 3.2.4 See appendix B for a flowchart of the application of 'Being Open' and Duty of Candour.
- 3.2.5 Incidents that are validated as moderate or above harm are subject to an Incident Review Meetings, except for pressure ulcers (these are reviewed at Pressure Ulcer panel). It is at this meeting it is determined if Duty of Candour applies. The chair following discussion with the attendees will make this decision.
- 3.2.6 During the Incident Review meeting, it will be decided who will verbally inform the patient, or if they lack capacity or are deceased the family, or carers that duty of candour applies. It will be confirmed who will write the DoC letter and the time frame will be discussed.
- 3.2.7 Before sharing the copy of the DoC letter, it must be reviewed by the Head of Quality and Professions and the Head of Quality and Safety. The principles for the verbal notification and writing this letter are available on SolNet. The letter must be attached to the Incident form on Ulysses.
- 3.2.8 The letter must contain the investigating officer's name and how they will contact the patient, family, or carer to be involved in the investigation.
- 3.2.9 The letter must include the methods of feedback following the investigation, as discussed in the initial verbal notification.
- 3.2.10 The letter will invite the patient, family, or their carer to be part of the investigation. Inviting them to ask any questions they would like included. These will be considered when the Head of Quality and Professions is developing the Investigation commissioning brief.
- 3.2.11 During the investigation the patient, family or carer will be kept updated by the investigator on the progress of the investigation, they will be kept informed of the findings and recommendations. The Investigator's role in the Investigation process is detailed in the GK10 Incident, Investigation and Learning Policy.
- 3.2.12 Details of contact with the patient, family or carers and a summary of discussions must be documented in the patient records.
- 3.2.13 In cases where the patient, family or carers do not wish to be involved in the investigation and or receive feedback, it is a requirement to document this in the patient's records and on the duty of candour fields on the incident form.
- 3.2.14 Once the investigation has been approved at the learning from Incidents and Deaths panel the full report will be shared with the patient, family or carer in the way that has been agreed. The report must be shared within 10 days.
- 3.2.15 It is the responsibility of the Head of Quality and Professions to ensure the incident form details when and who provided the duty of candour verbal notification, when the letter was sent and when the final report was shared with the patient, family or carer.
- 3.2.16 The Quality and Safety Team will monitor the completion of Duty of Candour on the Incident form. The Quality and Governance Officer will escalate to the Head of Quality and Safety when there are incomplete duty of candour fields on the incident form.

### 3.3 Special Circumstances

- 3.3.1 The approach to communicating and sharing sensitive information with the patient, family and or carers may on occasion require special circumstances that do not follow the statutory guidance. Where any modification conflicts with the statutory Duty of Candour requirements and may result in a statutory and / or contractual breach by the Trust, this must be escalated to Chief Medical Officer or Chief Nurse or their agreed deputy for prior agreement, as soon as this is recognised by the Head of Quality and Safety.

### 3.4 Patient perpetrated Homicide/Serious Criminal activity leading to harm

- 3.4.1 In the event of a patient of Solent NHS Trust being the perpetrator of a crime that leads to the death or serious harm of another person the organisation will seek to investigate any acts or omission in care that may be implicated in the crime. Solent will also seek to reach out to the family of the victim if this is feasible and does not conflict with any ongoing criminal investigation. The Being Open section of this policy will apply to the victim's family. This will be achieved with the service working closely with the Family Liaison Manager and the police. Each case will be reviewed individually, and a plan will be developed by the Service lead and agreed with the Chief Nurse.

## 4. ROLES & RESPONSIBILITIES

The Trust Board has a legal responsibility for governance of Trust policies and for ensuring that they are implemented effectively.

- 4.1 **Chief Executive Officer** has overall responsibility for the implementation of this policy, and in turn this responsibility is delegated to the Clinical Directors and local Clinical Managers within the Trust.
- 4.1.2 **Chief Nurse** -The Accountable Executive for this policy is the Chief Nurse; they are responsible for:
- The declaration of compliance for local and national reporting requirements.
  - Ensuring commissioners (and regulators where appropriate) are informed should any Duty of Candour breaches occur.
- 4.1.3 **Head of Quality and Professions** are responsible for:
- The effective implementation of this policy in their areas of responsibility.
  - The implementation of any action plans arising from review of the policy and service user feedback.
  - Identifying training needs of staff that fall within the remit of this policy
- 4.1.4 **Clinical Directors** are responsible for:
- Ensuring all staff in their service line receive training at induction and subsequently as required by this policy.
  - Ensuring where applicable, duty of candour has been met.
  - The effective implementation of the policy in their service line.

- 4.1.5 **Clinical Managers**-are responsible for:
- Advising and instructing staff on the policy requirements via local induction.
  - Arrangements and on-going communication mechanisms, such as team brief, staff meetings, supervision etc.
  - Making necessary arrangements to enable staff to attend any training in respect of this policy.
  - Making staff aware of this policy, its content and how to access the policy.
- 4.1.6 **All staff** are responsible for:
- Ensuring that Being Open and recognising the Duty of Candour occurs in daily practice where indicated.
  - That they are aware of the policy and how to implement it should it be required.

## 5. TRAINING

- 5.1 All staff are required to complete the Duty of Candour training via the Learning and Development System. Compliance is to be monitored by Service Managers and the Quality and Governance Team.
- 5.2 The Quality and Governance team also run roadshows on an 'as required' basis to update staff and improve understanding. These sessions include a variety of topics, and Duty of Candour features as part of the programme. These sessions are recorded and are available on SolNet via the Quality and Governance area.
- 5.3 Managers are advised to ensure a copy of appendix B is available for staff and in addition can be located on SolNet.

## 6. EQUALITY IMPACT ASSESSMENT AND MENTAL CAPACITY

- 6.1 Refer to Appendix A

## 7. SUCCESS CRITERIA / MONITORING EFFECTIVENESS

- 7.1 The seven service lines will review their compliance with Duty of Candour in line with their internal governance processes. The Quality and Safety team will monitor monthly and undertake an annual review.
- 7.2 Non-compliance with this policy must be reported and managed at a service level. If further issues are identified, it must be escalated as per internal governance processes and the Quality and Safety team must be informed.

## 8. REVIEW

- 8.1 This document may be reviewed at any time at the request of either staff side or management but will automatically be reviewed 3 years from initial approval and thereafter on a 3 year basis unless organisational changes, legislation, guidance or non-compliance prompt an earlier review

## 9. REFERENCES AND LINKS TO OTHER DOCUMENTS

### 9.1 Policies:

- Incident Reporting, Investigation and Learning Policy
- Learning from Deaths Policy
- Complaints Policy

### 9.2 Links to other documents:

The Francis Report (2013) <https://www.gov.uk/government/publications/report-of-the-mid-staffordshire-nhs-foundation-trust-public-inquiry>

CQC Guidance (Regulation 20) 2017 <https://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-20-duty-candour>

'Saying Sorry' NHS resolution (2018) <https://resolution.nhs.uk/resources/saying-sorry/>

## 10. GLOSSARY

Term used	Description
Care Quality Commission (CQC)	The CQC is the independent regulator for all health and social care services in England
Family Liaison Manager	Patient or Family advocate
Incident	An unplanned event, act, or omission, which causes injury to people, damage or loss to property or contributes to both.
Investigation	The act or process of investigating, careful search, or examination to discover the truth
Near Miss	An unplanned event, act, or omission, which does not cause injury or damage but has the realistic potential to do so
Openness	Enabling concerns and complaints to be raised freely without fear and questions asked to be answered
Patient Safety Incident	Any unplanned or unexpected incident which could lead to harm or one or more service users receiving NHS funded care.
Serious Incident	Incidents meeting the criteria set out in the Serious Incident Framework (NHS England 2015) or otherwise defined by the Trust.
Transparency	Allowing information about the truth about performance and outcomes to be shared with staff, patients, the public and regulators.

## Appendix A

### Equality Analysis and Equality Impact Assessment

**Equality Analysis** is a way of considering the potential impact on different groups protected from discrimination by the Equality Act 2010. It is a legal requirement that places a duty on public sector organisations (The Public Sector Equality Duty) to integrate consideration of Equality, Diversity, and Inclusion into their day-to-day business. The Equality Duty has 3 aims, it requires public bodies to have due regard to the need to:

- **eliminate unlawful discrimination**, harassment, victimisation, and other conduct prohibited by the Equality Act of 2010.
- **advance equality of opportunity** between people who share a protected characteristic and people who do not.
- **foster good relations** between people who share a protected characteristic and people who do not.

**Equality Impact Assessment (EIA)** is a tool for examining the main functions and policies of an organisation to see whether they have the potential to affect people differently. Their purpose is to identify and address existing or potential inequalities, resulting from policy and practice development. Ideally, EIAs should cover all the strands of diversity and Inclusion. It will help us better understand its functions and the way decisions are made by:

- **considering the current situation**
- **deciding the aims and intended outcomes of a function or policy**
- **considering what evidence there is to support the decision and identifying any gaps**
- **ensuring it is an informed decision**

### Equality Impact Assessment (EIA)

#### Step 1: Scoping and Identifying the Aims

Service Line / Department	Quality and Governance	
Title of Change:	Rewritten policy	
What are you completing this EIA for? (Please select):	Policy	<i>(If other please specify here)</i>
What are the main aims / objectives of the changes	Explicit explanation of the difference 'Being Open' and Duty of Candour	

#### Step 2: Assessing the Impact

Please use the drop-down feature to detail any positive or negative impacts of this document /policy on patients in the drop-down box below. If there is no impact, please select "not applicable":

Protected Characteristic	Positive Impact(s)	Negative Impact(s)	Not applicable	Action to address negative impact: <i>(e.g. adjustment to the policy)</i>
Sex			Not applicable	

Gender reassignment			Not applicable	
Disability	Yes			
Age			Not applicable	
Sexual Orientation			Not applicable	
Pregnancy and maternity			Not applicable	
Marriage and civil partnership			Not applicable	
Religion or belief			Not applicable	
Race			Not applicable	

*If you answer yes to any of the following, you MUST complete the evidence column explaining what information you have considered which has led you to reach this decision.*

Assessment Questions	Yes / No	Please document evidence / any mitigations
In consideration of your document development, did you consult with others, for example, external organisations, service users, carers, or other voluntary sector groups?)	No	Staff are advised to support patients or family/carers with their assessable information needs by considering how they can provide information in agreement with the patient or family/carers.
Have you taken into consideration any regulations, professional standards?	Yes	

### Step 3: Review, Risk and Action Plans

How would you rate the overall level of impact / risk to the organisation if no action taken?	Low	Medium	High
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
What action needs to be taken to reduce or eliminate the negative impact?			
Who will be responsible for monitoring and regular review of the document / policy?	The Head of Quality and Safety		

### Step 4: Authorisation and sign off

*I am satisfied that all available evidence has been accurately assessed for any potential impact on patients and groups with protected characteristics in the scope of this project / change / policy / procedure / practice / activity. Mitigation, where appropriate has been identified and dealt with accordingly.*

Equality Assessor:	Teresa Power	Date:	31/03/2021
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## Additional guidance

Protected characteristic	Who to Consider	Example issues to consider	Further guidance
1. <b>Disability</b>	A person has a disability if they have a physical or mental impairment which has a substantial and long-term effect on that person's ability to carry out normal day today activities. Includes mobility, sight, speech and language, mental health, HIV, multiple sclerosis, cancer	<ul style="list-style-type: none"> <li>• Accessibility</li> <li>• Communication formats (visual &amp; auditory)</li> <li>• Reasonable adjustments.</li> <li>• Vulnerable to harassment and hate crime.</li> </ul>	Further guidance can be sought from: Solent Disability Resource Group
2. <b>Sex</b>	A man or woman	<ul style="list-style-type: none"> <li>• Caring responsibilities</li> <li>• Domestic Violence</li> <li>• Equal pay</li> <li>• Under (over) representation</li> </ul>	Further guidance can be sought from: Solent HR Team
3 <b>Race</b>	Refers to an individual or group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.	<ul style="list-style-type: none"> <li>• Communication</li> <li>• Language</li> <li>• Cultural traditions</li> <li>• Customs</li> <li>• Harassment and hate crime</li> <li>• "Romany Gypsies and Irish Travellers", are protected from discrimination under the 'Race' protected characteristic</li> </ul>	Further guidance can be sought from: BAME Resource Group
4 <b>Age</b>	Refers to a person belonging to a particular age range of ages (e.g., 18-30-year olds) Equality Act legislation defines age as 18 years and above	<ul style="list-style-type: none"> <li>• Assumptions based on the age range</li> <li>• Capabilities &amp; experience</li> <li>• Access to services technology skills/knowledge</li> </ul>	Further guidance can be sought from: Solent HR Team
5 <b>Gender Reassignment</b>	"The expression of gender characteristics that are not stereotypically associated with one's sex at birth" World Professional Association Transgender Health 2011	<ul style="list-style-type: none"> <li>• Tran's people should be accommodated according to their presentation, the way they dress, the name or pronouns that they currently use.</li> </ul>	Further guidance can be sought from: Solent LGBT+ Resource Group
6 <b>Sexual Orientation</b>	Whether a person's attraction is towards their own sex, the opposite sex or both sexes.	<ul style="list-style-type: none"> <li>• Lifestyle</li> <li>• Family</li> <li>• Partners</li> <li>• Vulnerable to harassment and hate crime</li> </ul>	Further guidance can be sought from: Solent LGBT+ Resource Group
7 <b>Religion and/or belief</b>	Religion has the meaning usually given to it, but belief includes religious and philosophical beliefs, including lack of belief (e.g. Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition. (Excludes political beliefs)	<ul style="list-style-type: none"> <li>• Disrespect and lack of awareness</li> <li>• Religious significance dates/events</li> <li>• Space for worship or reflection</li> </ul>	Further guidance can be sought from: Solent Multi-Faith Resource Group Solent Chaplain
8 <b>Marriage</b>	Marriage has the same effect in relation to same sex couples as it has in relation to opposite sex couples under English law.	<ul style="list-style-type: none"> <li>• Pensions</li> <li>• Childcare</li> <li>• Flexible working</li> <li>• Adoption leave</li> </ul>	Further guidance can be sought from: Solent HR Team
9 <b>Pregnancy and Maternity</b>	Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth and is linked to maternity leave in the employment context. In non-work context, protection against maternity discrimination is for 26 weeks after giving birth.	<ul style="list-style-type: none"> <li>• Employment rights during pregnancy and post pregnancy</li> <li>• Treating a woman unfavourably because she is breastfeeding</li> <li>• Childcare responsibilities</li> <li>• Flexibility</li> </ul>	Further guidance can be sought from: Solent HR team

# Duty of Candour

## A step by step guide

Every healthcare professional has a duty to be 'open and honest' with patients or their family /carer if their care or treatment causes, or has the potential to cause, harm or distress. This is covered in our 'Being Open and Duty of Candour' policy.

This differs to Statutory 'Duty of Candour' which applies to all NHS Trusts. If an apology is deemed necessary it must be clear and empathetic with the remedy offered in writing; this process (outlined below) will be agreed and applied at a Service Manager level.

