



Duty of Candour Report 2018-2019

Duty of Candour Report for 2018-2019

All health and social care services in Scotland have a Duty of Candour. This is a legal requirement which means that when things go wrong and mistakes happen, the people affected understand what has happened, receive an apology, and that organisations learn how to improve for the future.

An important part of this duty is that we provide an annual report about the Duty of Candour in our services and schools. This short report describes how our service and schools has operated the Duty of Candour during the time between 1 April 2018 and 31 March 2019. We hope you find this report useful.

1. How many incidents happened to which the Duty of Candour applies?

In the last year, there have been no incidents to which the Duty of Candour applied.

2. Information about our policies and procedures

Where something has happened that triggers the Duty of Candour, our staff and managers report this to the Director of Services and Development who has responsibility for Duty of Candour within Capability Scotland.

The Director of Services and Development will ensure that the Duty of Candour incidents are recorded and reported as necessary and that the relevant procedures are followed in Capability Scotland Duty of Candour Policy and Procedure. This includes providing an apology, undertaking meetings and reviewing the incident in order that we can learn from experience.

All new staff learn about the Duty of Candour during their induction period and all staff are required to complete online learning annually.

We have an employee assistance scheme in place for our staff if they have been affected by a Duty of Candour incident.

As required, we have submitted this report to the Care Inspectorate but in the spirit of openness we have placed in on our website at <http://www.capability-scotland.org.uk/>

We have also attached our Duty of Candour Policy and Procedure below for information.t

Duty of Candour Policy and Procedure

(JUL18/OPS/SOP)

Originator: Improvement & Development Manager

Reviewed: Director of Services and Development

Approved by: Chief Executive

Date: 1 August 2018

Review Date: 1 August 2020

Revision History - (Change Record)		
Revision Level	Reason for Change	Effective Date
JUL18	Initial Release	1 August 2018

Duty of Candour Policy and Procedure (JUN18/OPS/SOP)

Purpose

To ensure that Capability Scotland meets the Duty of Candour requirements which are part 2 of the Health (Tobacco, Nicotine, etc. and Care) (Scotland) Act 2016 that came into effect on 1 April 2018.

Scope

To ensure that all incidents qualifying under the Duty of Candour, regarding any aspect of the services Capability Scotland provides, or other work that it undertakes, are handled in an open, honest, effective, consistent manner and are in line within the meaning of the Act.

Definitions

Definitions as highlighted in the Health (Tobacco, Nicotine, etc. and Care) (Scotland) Act 2016 and the implementing regulations include the following:

- “The Act” means the Health (Tobacco, Nicotine, etc. and Care) (Scotland) Act 2016.
- “The Regulations” mean the Duty of Candour Procedure (Scotland) Regulations 2018.
- “incident” means the unintended or unexpected incident by virtue of which section 21(2) of the Act applies to a person.
- “the procedure” means the actions set out in regulations 2 to 7 of the Duty of Candour Procedure (Scotland) Regulations 2018 (see section 4).
- “relevant person” as set out in section 22(3) of the Act, means the person who has received the care service (the Customer) and has been harmed during the incident or as a result of it 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 (parent or guardian). This is set out in section 22(3) of the Act.
- “responsible person”, as set out in section 25 of the Act, means a person (other than an individual) who provides a care service, i.e. Capability Scotland.
- “written” includes electronic communication, as defined in section 15(1) of the Electronic Communications Act 2003.

Internal References

The following internal documents are examples of other Policies and Procedures that might also be referenced and used with the Duty of Candour Policy and Procedure.

These are:

- Accident and Incident Reporting and Recording Procedure
- Child and Adult Protection Framework
- Accident and Incident Report Form AI1

- Complaints Policy and Procedure
- Whistleblowing Policy

Given the complex nature of the care, support and education Capability Scotland provides for its customers, Duty of Candour relates to a range of specific adverse events, which can be notified through incident reporting, case reviews, notifications, complaints processes or other disclosures through the Whistleblowing Policy.

External References

The following relevant documents may also be referenced. These are:

- [Health \(Tobacco, Nicotine etc and Care\) \(Scotland\) Act 2016](#)
- [The Duty of Candour Procedure \(Scotland\) Regulations 2018](#)
- [National Health and Social Care Standards. My Support, my life.](#)
- The Care Inspectorate, Section 2, Notification eForm must be used to record and inform the Care Inspectorate of a Duty of Candour incident occurring within Capability Scotland care services. The Service Manager/Operations Manager should complete this and the Improvement and Development Manager must be notified of this.

1. Incidents which activate the Duty of Candour

1.1 The Director of Services and Development and the Improvement and Development Manager will determine whether an incident qualifies as a Duty of Candour incident through the existing Accident and Incident Reporting and Recording Procedure, and will in turn request the Service Manager/Operations Manager to report the incident to the Care Inspectorate using Section 2 of the online Notification eForm.

1.2 The Duty of Candour procedure is to be carried out by Capability Scotland as soon as practicable after becoming aware that an individual who has received a care service provided by Capability Scotland has experienced an unintended or unexpected incident, and, in the reasonable opinion of the Director of Services and Development and the Improvement and Development Manager, this 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 care and support
- 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 in order to prevent
 - (i) the death of the person, or
 - (ii) any injury to the person which, if left untreated, would lead to one or more of the outcomes mentioned above.

2. Responsibilities

The following people have responsibility in ensuring that the Duty of Candour Policy and Procedure is adhered to and that reporting, investigation and review procedures are correctly followed.

2.1 The Director of Services and Development will act as the delegated person on behalf of Capability Scotland and is responsible for ensuring that:

- the Duty of Candour Policy and Procedure is carried out
- training, supervision and support are provided to any person carrying out any part of the procedure as required by the relevant regulations
- the organisation reports annually on the duty to the Care Inspectorate

In addition, the Director of Services and Development will lead and direct any Duty of Candour review processes, and act as Chair at required meetings or direct others to do so.

2.2 The Improvement and Development Manager will act as administrator and facilitate support to the Director of Services and Development in carrying out Duty of Candour review processes. They will act as liaison with Service Managers, Operation Managers, internal specialist staff and external agencies and their representatives as required.

2.3 The Service Managers and Operations Managers will undertake to ensure that, between them, the reporting of Duty of Candour incidents to the Care Inspectorate is completed using Section 2 of the relevant Notification eForm. This must be undertaken within the specified timescales of reporting incidents to the Care Inspectorate. The Director of Services and Development may also direct that the Service Manager and/or Operations Manager inform other bodies in line with the requirements for reporting purposes.

2.4 **All staff at all levels** within Capability Scotland will adhere to the Duty of Candour Policy and Procedure, and as a minimum, **all staff** will complete the [Duty of Candour E-Learning Module](#). This module will also become part of the induction process for **all new staff** across Capability Scotland. Monitoring of this is to be undertaken as part of the internal training audit process.

3. Records

3.1 The documentation, which is required for policies and procedures listed in Internal References (see Page 3), must be recorded as normal.

3.2 In addition to, and as required under Regulation 9 of The Duty of Candour Procedure (Scotland) Regulations 2018, a written record for each Duty of

Candour incident and a copy of every document and piece of correspondence relating to the application of the Duty of Candour Policy and Procedure must be kept in line with the Capability Scotland Data Register and Record Matrix.

- 3.3 Documentation will be kept following the principles of confidentiality and the GDPR Policy and Procedure and held in electronic form at: Q:\Duty Of Candour, under the relevant subfolder. This will only be accessible to authorised individuals.

4. The Procedure

- 4.1 The 'Duty of Candour Policy and Procedure' means the actions to be taken by Capability Scotland in the event of an incident, which fulfils the criteria set out in section 1.2.

The key stages of the policy and procedure are:

- notifying the person affected (customer) or relevant person (parent/guardian)
- to apologise
- to offer and arrange a meeting(s) with the person affected (customer) and/or the relevant person (parent/guardian)
- to review the circumstances leading to the incident
- to provide the person affected (customer) with an account of the incident by producing a report
- to provide information about further steps either taken or being taken as a result of the incident
- to make available and or provide information and support to people who may have been affected by the incident, including staff
- to publish an annual report on the Duty of Candour incidents for the financial year and inform the Care Inspectorate that this has been published

This is not an exhaustive list of actions.

- 4.2 The Duty of Candour legislation states that the relevant person (customer and/or parent/guardian) should be notified within 10 working days of the procedure start date.

The notification may be provided in a number of ways and is to be determined depending on the preferred method of communication of the relevant person (customer and/or parent/guardian).

Where a Duty of Candour procedure start date is more than a month after the incident, Capability Scotland will provide the relevant person (customer and/or parent/guardian) with an explanation as to why this is.

- 4.3 Before having the conversation and at the point of notification, Capability Scotland will identify:
- Who from Capability Scotland is already in contact with the relevant person (customer and/or parent/guardian)?

- What discussions or information exchange has already taken place, where and how has this been recorded?
- What is the relevant person's (customer and/or parent/guardian) current understanding of the incident and what will Capability Scotland's response be to this?
- Where the meeting and conversation is to take place and that it is both accessible and conducive to the comfort and safety of the customer?
- The meeting and conversations will be led by the Chair of the meeting and allow relevant issues to be discussed and clearly understood.
- That prior to the meeting starting, communication requirements for the relevant person (customer and/or parent/guardian) have been identified and are available during the conversation and afterwards.
- A single point of contact to be identified within Capability Scotland for the relevant person (customer and/or parent/guardian).

4.4 The notification will include an account of the incident as currently known and explain the actions that Capability Scotland will undertake as part of this procedure.

If the relevant person (customer and/or parent/guardian) does not wish to be contacted by Capability Scotland or Capability Scotland is unable to contact them, we will record this as part of the written records.

5. Apology

5.1 For the purposes of the Act, an "apology" means **a statement of sorrow or regret in respect of the unintended or unexpected incident that caused harm or death.**

It is important to remember that an apology or other step taken in accordance with the Duty of Candour Policy and Procedure **does not** of itself amount to an admission of negligence or a breach of a statutory duty. The apology rests with the responsible person (i.e. Capability Scotland). The Director of Services and Development (or their delegate) will approve the apology as the responsible person.

It is important that Capability Scotland provides a sincere open and honest apology from the outset.

5.2 The apology will be meaningful and it will:

- Acknowledge what has gone wrong and clearly describe what has gone wrong to show that Capability Scotland understands what has happened and the impact it has had/will have for the person affected.
- Accept responsibility or the responsibility of Capability Scotland for the harm done and explain why the harm happened.
- Assure the relevant person (customer and/or parent/guardian) of the steps that Capability Scotland has taken to date or what steps we will be taking to make sure the harm does not happen again (where possible) and make amends and put things right where we can.

- 5.3 The apology is to be based on the individual circumstances, it will be meaningful, and it will not leave in any doubt that Capability Scotland accepts any wrongdoing. The language to be used should be clear, plain and direct, sound natural and be sincere. The apology will not question the extent of the harm suffered or minimise the incident.

Where appropriate, the apology will be communicated in writing, (including electronic) or in the method preferred by the relevant person (customer and/or parent/guardian).

A record of the apology will be kept along with all other written information for the relevant incident.

6. Meeting

- 6.1 Capability Scotland, will invite the relevant person (customer and/or parent/guardian) to attend a meeting and give them the opportunity to ask questions in advance of the meeting.

Capability Scotland, after having taken into account the needs of the relevant person, (customer and/or parent/guardian) will take all reasonable steps to ensure that the meeting is accessible to them. For example, this might include communication needs or reasonable adjustments for physical access. In some circumstances, it will be necessary to have someone who can interact with the relevant person (customer and/or parent/guardian), e.g. a BSL or language interpreter, an advocate and/or someone the relevant person (customer and/or parent/guardian) chooses to support them.

A quiet room should be used, free from distraction where the meeting will not be interrupted. It may not be appropriate to host the meeting close to where the incident happened, or where service provision is delivered, as this could be emotionally difficult for the relevant person (customer and/or parent/guardian).

The meeting Chair and others attending the meeting will speak to the relevant person (customer and/or parent/guardian) with dignity and respect at all times.

The use of jargon will be discouraged and explanation of technical terms, if required, will be given.

- 6.2 The meeting will include:

- A verbal account of the incident.
- An explanation of any further steps that are being and/or are to be taken by Capability Scotland in order to investigate the circumstances, which it considers led to, or contributed to, the incident.
- An opportunity for the relevant person (customer and/or parent/guardian) to ask questions about the incident.
- An opportunity for the relevant person (customer and/or parent/guardian) to express their views about the incident.

- The provision of information to the relevant person (customer and/or parent/guardian) about any legal, regulatory or review procedures that are being followed in respect of the incident (in addition to the Duty of Candour procedure).

Where a number of these may be running in parallel, this will include an explanation of their differing scope and focus.

This could also include the provision of information relating to the support to staff or organisational review and learning prompted by the incident.

6.3 After the meeting, the relevant person (customer and/or parent/guardian) will be provided with:

- A note of the meeting and an agreement as to what will be included.
- The note of the meeting will be shared in good time. This might include an initial brief note of the meeting, with a more comprehensive summary to follow, as agreed with the relevant person (customer and/or parent/guardian).
- Details of the appointed single point of contact as identified by Capability Scotland.

6.4 Where an incident is complex, other organisations may be involved. In such circumstances, each of the responsible persons for the organisations involved will communicate with each other. For Capability Scotland, this will be under the direction of the Director of Services and Development. Where this is the case, the organisation where the incident took place will be the main responsible person and the relevant person (customer and/or parent/guardian) will need to be informed of this at the notification stage.

6.5 In instances where the incident occurred elsewhere, Capability Scotland may be called upon to assist or provide support to the relevant person (customer and/or parent/guardian) as directed by the Director of Services and Development.

7. Incident Review

7.1 Capability Scotland will carry out a review into the circumstances that led or contributed to the unintended or unexpected incident. The review process may be one of a combination of Policy and Procedure review processes that Capability Scotland currently uses. The Director of Services and Development will determine the appropriate review or reviews that are to be followed.

7.2 Best practice requires that the review undertaken may involve care professionals both internal and external to Capability Scotland with the relevant subject matter expertise, as appropriate, e.g. Health and Safety, Moving and Assisting, General Practitioner or other health or care professionals.

7.3 In the case where the review is not completed within three months of the procedure start date, Capability Scotland will provide the relevant person (customer and/or parent/guardian) with an explanation of the reason for the delay in completing the review.

7.4 In carrying out the review, Capability Scotland will seek the views of the relevant person (customer and/or parent/guardian) and take account of any views expressed in order to reflect what matters most to the relevant person (customer and/or parent/guardian).

7.5 Capability Scotland will prepare a written report of the review. This will include:

- A description of the manner in which the review was carried out.
- A statement of any improvement actions taken or to be taken by Capability Scotland.
- Shared learning with other people or organisations in order to support continuous improvement.
- A list of the actions taken for the purpose of the procedure in respect of the incident to mitigate as much as possible any recurrence and the date each action took place.

The report will be written in an open and transparent manner.

7.6 Capability Scotland will offer to send the relevant person (customer and/or parent/guardian):

- A copy of the written report of the review.
- Details of any further information about actions taken to improve the quality of care.
- Details of any services or support that may be able to provide assistance or support to the relevant person (customer and/or parent/guardian), taking into account their needs.

8. Reporting and Monitoring

8.1 Capability Scotland, as required by the Health (Tobacco, Nicotine, etc. and Care) (Scotland) Act 2016, will produce an Annual Report in relation to the Duty of Candour. The report will cover the financial year and be produced as soon as is practicable after the year end. The report will be published on the Capability Scotland website. Thereafter, Capability Scotland will inform the Care Inspectorate that it has done so via the first set of Annual Returns.

8.2 The report will include:

- Information on the number and nature of the incidents to which the Duty of Candour Policy and Procedure has applied.
- An assessment of the extent to which Capability Scotland carried out its responsibilities under the Duty of Candour.
- Information about Capability Scotland policies and procedures relating to the Duty of Candour.
- Information on the procedures used for identifying and reporting incidents.
- The support made available to staff and people affected by the incidents.
- Information about changes made to Capability Scotland policies and procedures because of findings from Duty of Candour incidents.

- Other such information that Capability Scotland thinks fit and of relevance.

The report will not mention individual names or contain any information that could identify an individual.

9 Training and Support

- 9.1 Capability Scotland will ensure that **all staff** involved in carrying out the procedure are aware of the Duty of Candour Policy and Procedure and understand their role and its requirements. (See 2.4).

Capability Scotland will ensure that staff requiring more detailed knowledge of the Duty of Candour policy and procedure have access to training in order to improve their understanding and knowledge and are confident with the processes.

- 9.2 In addition, Capability Scotland will ensure that the relevant person(s) (customer(s) and/or parent/guardian) is/are supported and has/have access to support that mitigates the impact of the unintended or unexpected event on their health and wellbeing. This will also apply to staff within Capability Scotland who are involved in the incident.

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