POLICY TITLE:	**Duty of Candour**
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Policy Owner:	Nicola Greenwood, Senior Investigations & Inquests Manager
Ratified by:	Colin Quick, Chief Quality Officer
Responsible signatory:	David Watts, Director of Risk Management
Outcome:	This policy: • Aims to ensure that near miss incidents, incidents and complaints are dealt with openly and honestly. • Strengthens and embeds a culture of openness and transparency across the Group. • Facilitates compliance with Regulation 20 requirements, and in the process improves the quality and consistency of communication with service users, their families and carers when notifiable safety incidents occur.
Cross Reference:	OP04 Incident Management, Reporting and Investigation OP03 Complaints OP05 Mental Capacity OP17 Advocacy OP36 Events to be Notified to the Regulatory Bodies in England OP36.1 Events to be Notified to the Regulatory Bodies in Scotland OP36.2 Events to be Notified to the Regulatory Bodies in Wales OP36.3 Events to be Notified to the Regulatory in Northern Ireland

EQUALITY AND DIVERSITY STATEMENT

Priory is committed to the fair treatment of all in line with the Equality Act 2010. An equality impact assessment has been completed on this policy to ensure that it can be implemented consistently regardless of any protected characteristics (age, disability, gender identity and expression, marriage or civil partnership, pregnancy or maternity, race, religion or beliefs, sex, sexual orientation), and all will be treated with dignity and respect.

Job titles updated throughout on 24/05/2022 following the organisational restructure.

In order to ensure that this policy is relevant and up to date, comments and suggestions for additions or amendments are sought from users of this document. To contribute towards the process of review, email LegalandComplianceHelpdesk@priorygroup.com

DUTY OF CANDOUR

CONTENTS

1 SCOPE

1.1 This policy applies to all sites and services across England, Scotland and Wales. Where there are differences between nations, this will be clearly highlighted.

2 INTRODUCTION

2.1 Following the 'Francis Enquiry' into the failings at the Mid Staffordshire NHS Foundation Trust between January 2005 and March 2009, legislation has been put in place to ensure that Healthcare providers are open and honest when things go wrong to assist in avoiding the development of a culture of secrecy and defensiveness which led to the problems that the enquiry was investigating.

2.2 Service user safety incidents, particularly those causing significant harm, or having the potential to do so, can have devastating consequences for service users and their families. They are also distressing for the professionals involved. Being open about what happened and discussing incidents promptly and compassionately is the right thing to do and it often helps reduce the impact of these events. (Incidents referred to in this policy are those that do or have the potential to cause a medium or high level of physical and prolonged psychological harm or death – refer to OP04 Incident Management, Reporting and Investigation).

2.3 Openness and honesty can not only reassure the service user, their families or colleagues that the incident has been recognised and their concerns acknowledged, but also helps to prevent such events becoming formal complaints and litigation claims that can only add to the upset and distress to all involved.

2.4 Being open involves:
- (a) Acknowledging, apologising and explaining when things go wrong
- (b) Conducting a thorough investigation into the incident
- (c) Learning from the incident and putting measures in place to stop any reoccurrence
- (d) Providing support for those involved with the physical and emotional consequences of the incident.

3 PRINCIPLES

3.1 It is our legal duty to comply with Regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 to create a culture of openness, transparency and candour.
- (a) **Openness** – enabling concerns and complaints to be raised freely without fear and questions asked to be answered.

(b) **Transparency** – allowing the truth about performance and outcomes to be shared with colleagues, service users, the public and regulators.
(c) **Candour** – any service user harmed by the provision of a healthcare service is informed of the fact and an appropriate remedy offered, regardless of whether a complaint has been made or a question asked about it, including breaches of confidentiality.

3.2 Priory is committed to embracing the following principles based on those set out by The National Patient Safety Agency in 2009 and to assist with the creation and embedding of a culture of being open:
(a) Acknowledgement
(b) Truthfulness, timeliness and clarity of communication
(c) Apology
(d) Recognising service user and carer expectations
(e) Professional support
(f) Risk management and improvement in working practices and processes
(g) Multidisciplinary responsibility
(h) Effective Corporate Governance
(i) Confidentiality.

3.3 Priory's duty of candour (being open and honest) applies to all Priory colleagues including senior management up to and including Executive Team level.

3.4 Committing to being open and honest will create an environment where service users, their families and carers and colleagues can be assured that, in the event of an incident, they will:
(a) Receive the information that they need to understand what happened
(b) Receive the reassurance that actions will be taken to help resolve any negative effects of the incident
(c) Receive the reassurance that everything possible will be done to ensure that a similar type of incident does not recur
(d) Feel supported when things go wrong.

3.5 Colleagues should understand that saying sorry is not an admission of liability. It is part of acknowledging that something untoward has happened. Service users and colleagues have a right to expect recognition and support.

3.6 An open culture recognises that competent people make mistakes and we can learn from them, but has no tolerance for unprofessional, dangerous or negligent behaviour.

4 GUIDANCE FROM REGULATORY AND PROFESSIONAL BODIES

4.1 Guidance from the regulatory bodies includes a requirement for organisations to:
(a) Analyse incidents that could have caused harm
(b) Involve service users in making decisions about their care
(c) Have an effective complaints procedure
(d) Notify the regulatory bodies of a range of incidents resulting in harm or having the potential to cause harm to a service user
(e) To reflect published research evidence and guidance issued by appropriate professional and expert bodies as to good practice in relation to care, treatment and support of service users.

4.2 The GMC, NMC, BACP and other professional bodies have placed great emphasis on the duty of candour as outlined in the following linked documents:
NMC https://www.nmc.org.uk/standards/guidance/the-professional-duty-of-candour/read-the-professional-duty-of-candour/
GMC https://www.gmc-uk.org/ethical-guidance
BACP https://www.bacp.co.uk/events-and-resources/ethics-and-standards/ethical-framework-for-the-counselling-professions/

5 EXPECTATIONS

5.1 An apology should be made as soon as possible after an incident to the service user by the most appropriate person. This is not an admission of liability, but a sincere expression of regret for what has occurred. The service user and their family can expect to be given a step by step explanation of what happened, based on the facts known at the time and as soon as practicable after the known incident, but should be within four days. (See flow chart at **Appendix 1**).

5.1.1 If an incident has resulted in the death of a service user, it is appropriate to send condolences to the family on behalf of the unit and of Priory. This will be discussed between the Divisional Director with responsibility of Quality and Senior Investigations & Inquests Manager prior to sending, as to who is the most appropriate person to send. In such circumstances it is common for the letter of condolence, which will include an expression of sorrow for their loss and details of key contacts, to be sent by the relevant divisional COO.

5.2 Information should be given to the service user in a format that they can understand and retain. It should be given considerately, respecting the service user's privacy and dignity. In the event that an incident occurs to a service user with cognitive impairment/ lack of mental capacity, the service user's nominated representative or carer will be involved in the Duty of Candour discussion, as well as the service user.

5.2.1 An apology and explanation should:

(a) Be meaningful and specific
(b) Take responsibility, not make excuses
(c) Acknowledge and validate concerns and distress
(d) Aim to reduce the trauma felt when things go wrong and offer reparation whenever possible
(e) Take into account the fact that it will be more effective when the person feels heard and understood
(f) Acknowledge the emotional and psychological consequences
(g) Outline what will be done differently in the future to prevent reoccurrences
(h) Always be documented in the service user records creating a culture of openness
(i) Ensure that the service user knows who to contact if they need further information and give details of advocacy or other support agencies if needed.

5.3 Written and face to face explanations and apologies will be given, unless the service user, their families or their representatives explicitly decline an offer of a meeting. Note that further offers of meetings should be made given that people can and do change their minds about such matters. Use **OP Letter: 46** when initially writing to the service user, their families or their representative.

5.4 The fact that the incident happened and an apology has been made is recorded in the service user records and a report made in Priory Incident Reporting system. However, full minutes of any meetings must be kept, but filed separately from the service user's records. Copies should be made available to service users and their families on request. A debriefing will also take place, and support will be given to colleagues involved if required. The Colleague Supervision system can be utilised for this process.

5.5 Service users and colleagues can expect to be kept updated if further investigation reveals more information than has been initially provided. Managers should ensure the provision of timely and accurate information.

5.6 Senior managers on site should also give consideration to discussing those incidents that caused no harm (near misses) but had the potential to cause serious harm, with service users, but need to make a local decision as to whether such a discussion should take place depending on local circumstances and what is in the best interests of the service user.

5.7 In future, under the terms and conditions of contracts with the NHS there may be financial consequences and penalties for a provider organisation that break their commitment to a culture of being open and honest.

6 COMMUNICATIONS

6.1 The terms of reference for serious incident investigations will be set and agreed by the senior managers involved, but there will be scope for the service user and or their advocate to contribute to those terms of reference if they wish to. Only appropriate contributions relevant to the incident will be considered and any issues raised outside of the reasonable scope of the investigation will be addressed separately. Where they wish to contribute, a copy of the terms of reference can be shared with the service user and/or their advocate to ensure their questions are reflected. The findings of the investigation will be shared with those involved in a planned and systematic way. It is not automatic that a copy of the whole investigation report will be provided because there may be other sensitive or confidential information present in the report. As part of this process there will be a sharing of the lessons learned and processes put in place to avoid a similar incident happening again.

6.2 The most appropriate person to communicate with the service user or their family/advocate will usually be the most senior person responsible for the service user's treatment, care or support, or someone who has expertise in the type of incident that has occurred. However, where serious incidents have occurred a discussion needs to take place as to who is the most appropriate person(s) to be involved and lead on any communication with the service user, their family/advocate.

6.2.1 NB: Please note that if there is a request for a legal advocate to be present at any meeting, this needs to be discussed with the Central Legal team

6.3 The person communicating with the service user or the family/advocate will:

(a) Ideally be known to and trusted by the service user
(b) Have good knowledge of the facts relevant to the incident either by direct involvement or having been fully appraised of the facts at that particular time.
(c) Be senior enough to have sufficient experience in relation to the type of incident and be credible to service users, their families and carers and colleagues
(d) Have excellent interpersonal skills, including being able to communicate with service users in a way they can understand, especially if the service user communicates non-verbally
(e) Be willing and able to offer a meaningful apology, reassurance and feedback to the service user or colleague
(f) Be able to maintain a medium to long term relationship with the service user and their family where possible to provide continued support and information
(g) Be culturally aware and informed about the specific needs of the service user and their family
(h) Keep his/her manager abreast of developments as a means of ensuring there is sufficient organisational knowledge of this process.

6.4 Careful consideration will need to be given regarding the emotional state of the family when deciding when would be the most appropriate time to discuss what happened. There may be an initial meeting with the Service User and their family/advocate immediately following an incident and then a further meeting to go through the findings of the investigation. This will usually be before any Coroner's Inquest, but it may be decided to wait until after the Inquest to maximise on the information available. However, this decision should be taken in communication with the deceased's family, the Senior Investigations & Inquests Manager and the Divisional Director with responsibility of Quality.

6.5 Lessons learnt from the incident and from subsequent discussions with the service user and family will be shared with colleagues to ensure that they are fully aware of the service users and family views regarding what happened.

6.6 Where an incident involves a child with 'Gillick' competency, the child will be involved as appropriate in the discussions. The opportunity for the parents to also be involved will be provided, unless the child expresses a wish for them not to be involved. Where a child does not have 'Gillick' competency, consideration needs to be given to whether the meeting is with the parents (or the person with

parental responsibility) alone, or for the child to also be present. In these instances the views of the parents should be sought.

6.7 The only circumstances in which it would be appropriate to withhold information from a service user with mental health issues or from their family is when advised to do so by the responsible clinician (usually the consultant psychiatrist), with oversight by the multidisciplinary team and relevant Medical Director, in those circumstances where it would cause adverse harm to the service user or others.

6.8 In the case of an adult service user, it is inappropriate to discuss information about an incident with a carer or relative without the express permission of the service user. Where a service user has learning difficulties, which may include difficulty in expressing their opinion verbally, an advocate, agreed in consultation with the service user, should be appointed who may be a relative or carer. The advocate should be focussed on making sure that the opinions of the service user are considered during the discussions. (See also OP05 Mental Capacity and OP17 Advocacy).

6.9 Where the service user uses a language other than English or a non-verbal language, an interpreter or translator will be used so that the opinions and wishes of the service can be expressed.

6.10 If service users or their families, advocates or carers wish to have copies of Priory policies or procedures, the information should be provided, and they should also be given support to understand the contents if they require it. Copies of policies will be printed from the Intranet to ensure that they are the current version, but if previous versions are required because of the date of the incident, assistance should be sought from the Legal & Compliance Helpdesk - LegalandComplianceHelpdesk@priorygroup.com. Copies of local procedures that were current at the time of the incident may also be provided on request.

7 RECORD KEEPING

7.1 Written records of discussions and meetings should be kept, but not as part of the service user's record.

7.2 Records will include:

(a) The time, date and place of any discussions/meetings, including the names and positions of all those present
(b) The exact content of the discussion
(c) The plan for providing further information
(d) Offers of assistance made
(e) Questions raised and answers given
(f) Plans for follow-up meetings
(g) Action points
(h) Copies of any letters sent including any minutes.

7.3 The Incident Reporting System will make reference where necessary to the Duty of Candour, for example outlining the early conversations that take place and the fact that apologies have been offered. Thereafter the Incident Reporting System will be kept updated at all times.

7.4 Colleagues should be mindful that records can be disclosed to HM Coroner and this is a further reason to ensure accuracy and objectivity.

7.5 The Duty of Candour will be monitored by both completion and exception i.e. in those instances where colleagues have not provided an acknowledgement, apology and explanation and this is brought to the attention of the Divisional Director with responsibility of Quality and the Senior Investigations & Inquests Manager. In such instances mitigating actions will be taken and a review of the circumstances undertaken with feedback given to the relevant site.

8 REFERENCES

8.1 **Legislation**
Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

8.2 **Guidance**
Care Quality Commission, Regulations 20: Duty of Candour
CQC (2021) Duty of Candour: Guidance for providers
National Patient Safety Agency (2009) Saying Sorry When Things Go Wrong – Being Open
NHS England and NHS Improvement (2019) The NHS Patient Safety Strategy

9 ASSOCIATED FORMS

9.1 OP Letter: 46 Duty of Candour Letter Template

10 EQUALITY IMPACT ASSESSMENT

10.1

How is the policy likely to affect the promotion of equality and the elimination of discrimination in each of the groups?			
Protected Characteristic (Equality Act 2021)	**Impact** Positive/ Negative/ None	**Reason/ Evidence of Impact**	**Actions Taken** (if impact assessed as Negative)
Age	None		
Disability	None		
Gender re-assignment	None		
Marriage or civil partnership	None		
Pregnancy or maternity	None		
Race	None		
Religion or beliefs	None		
Sex	None		
Sexual orientation	None		
Other, please state:			
EIA completed by:			
Name: **Role/Job Title:**	Amber Chung, Corporate Administrator		
Date completed:	28/03/2022		

11 APPENDICES

11.1 **Appendix 1** – Duty of Candour Actions Flow Chart

APPENDIX 1

Duty of Candour Actions Flow Chart