**Being Open Policy (Duty of Candour)**

Policy for ensuring that the CCG and commissioned providers communicate with individuals in an honest and open way about any mistakes that are made during the course of their treatment and care

<table>
<thead>
<tr>
<th>Reference No:</th>
<th>CIG010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Version:</td>
<td>Version 2.0</td>
</tr>
<tr>
<td>Ratified by:</td>
<td>Governing Body</td>
</tr>
<tr>
<td>Date ratified:</td>
<td>September 2015</td>
</tr>
<tr>
<td>Name of originator/author:</td>
<td>Sharon Robson, Executive Nurse</td>
</tr>
<tr>
<td>Name of responsible committee/individual:</td>
<td>Quality and Patient Experience Committee</td>
</tr>
<tr>
<td>Date issued:</td>
<td>December 2016</td>
</tr>
<tr>
<td>Review date:</td>
<td>December 2017</td>
</tr>
<tr>
<td>Target audience:</td>
<td>South West Lincolnshire CCG Staff</td>
</tr>
<tr>
<td>Distributed via:</td>
<td>Website</td>
</tr>
</tbody>
</table>
# Version Control Sheet

**Being Open Policy (Duty of Candour)**

<table>
<thead>
<tr>
<th>Version</th>
<th>Section/Para/Appendix</th>
<th>Version/Description of Amendments</th>
<th>Date</th>
<th>Author/Amended by</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>New Policy</td>
<td>27 August 2015</td>
<td>Sharon Robson</td>
</tr>
<tr>
<td>2.0</td>
<td>Review and refresh</td>
<td>Annual update</td>
<td>7\textsuperscript{th} December 2016</td>
<td>Pam Palmer</td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table of Contents

1. Background ...................................................................................................................... 4
2. Purpose and Scope of Policy ............................................................................................ 4
3. Defining the Duty of Candour ......................................................................................... 4
4. The Principle of Being Open ............................................................................................ 5
5. Implementing the Duty of Candour .................................................................................. 6
6. Recognising patient and carer expectations ................................................................... 8
7. Professional support ....................................................................................................... 8
8. Confidentiality ................................................................................................................ 9
9. When Things Go Wrong .................................................................................................. 9
10. Roles and Responsibilities .............................................................................................. 9
    10.1 CCG roles and responsibilities .................................................................................. 9
    10.2 Notification to Relevant Statutory/Other Bodies ......................................................... 10
11. Monitoring Implementation ............................................................................................. 10
12. Further Reading ............................................................................................................ 11
Appendix A - Expectations of Provider Organisations ...................................................... 12
Summary of Duty of Candour requirements ..................................................................... 17
1. Background
   1.1 The final report of the Independent Inquiry into the care provided by Mid Staffordshire NHS Foundation Trust was published in February 2013. The report called for a statutory Duty of Candour on organisations and individuals to ensure healthcare staff are required to disclose information where an episode of care has resulted in serious harm or death.
   1.2 The Duty became statute in October 2014 and the need to foster a spirit of candour and a culture of humility, openness and honesty, where staff communicate clearly and openly with patients, relatives and carer(s) is now enshrined in the NHS Constitution1.
   1.3 An organisation’s commitment to the Duty of Candour is about being open and making sure that people are told what went wrong and why, and apologising and explaining what will be done to stop it happening again.
   1.4 NHS South West Lincolnshire Clinical Commissioning Group (CCG) fully supports the Duty of Candour. We place Governance at the top of our agenda not only in the commissioning of high quality and safe care for all our commissioned services but also on ourselves internally.
   1.5 We believe that good governance fosters inward facing scrutiny, honesty and transparency and we continually strive to assure ourselves that as commissioners we are open and transparent in the business we do and that all our providers are open, honest and transparent in all contact with patients and the public.

2. Purpose and Scope of Policy
   2.1 The purpose of the policy is to detail the meaning of being open, honest and truthful in practice and give guidance for how the CCG will ensure that the principle of ‘Being Open’, the Duty of Candour is implemented and embedded in risk management and clinical governance processes for all commissioned services and internal CCG functions.
   2.2 The CCG does not directly provide clinical care. However, as a commissioner of NHS provider services including GP Services for the population of South West Lincolnshire, the CCG still has a duty of care to patients, service users and their relatives or carer(s) to promote open discussion through the commissioning and governance processes.
   2.3 The CCG manages a complaints service which on occasions may deal with a concern or complaint that will require it to be involved in a ‘Being Open’, Duty of Candour discussion with a patient/service user or their relative/carer.
   2.4 All staff and CCG members should be aware of this policy and promote the principles and procedure of ‘Being Open’ when commissioning services, working with colleagues from the commissioned services and monitoring provision of services as part of CCG Governance and Assurance requirements.
   2.5 This policy is underpinned by existing CCG policies namely; the Serious Incident Policy, Compliments, Comments & Complaints Policy and Whistleblowing Policy.

3. Defining the Duty of Candour
   3.1 Candour is defined in the Robert Francis report as: “The volunteering of all relevant information to persons who have or may have been harmed by the provision of services, whether or not the information has been requested and whether or not a complaint or a report about that provision has been made.”
   3.2 One of the key principles in the Serious Incident Policy is to be open and transparent. This reflects the NHS Being Open guidance and the NHS contractual Duty of Candour to notify anyone who has been subject to a notifiable incident.

---

3.3 From 1 April 2015, the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 20 requires all providers to meet the Duty of Candour. We have put in place the systems and processes to enable us as a commissioner to hold our provider organisations to account through open and fair challenge in our contractual and quality meetings with reporting of areas of concern through our CCG Governing Body. All staff and CCG members should be aware of this policy and promote the principles and procedure of Being Open when commissioning services, working with colleagues from the commissioned services including Independent Contractors and monitoring provision of services as part of CCG Governance and Assurance requirements.

3.4 A notifiable incident under Duty of Candour is defined as involving a level of moderate or severe harm or death as defined with reference to the National Patient Safety Agency guidance Seven Steps to Safety (2004).

3.5 The NHS standard contract sets out the contractual Duty of Candour as applied to patient safety incidents that occur during care provided in NHS funded care and that result in moderate harm, severe harm or death (using NPSA definitions) that are reported to local risk management systems. It will not apply to low/no harm incidents to avoid excessive burdens but these incidents should still be reported to the patient if appropriate.

3.6 The Duty of Candour refers to the open discussion of incidents that resulted in unintended or unexpected harm to one or more people due to a system failure or human error (whether negligent or non-negligent) and must include an appropriate apology and information relating to the incident. The needs of those affected in the incident should be at the centre of the initial response and subsequent investigation process.

4. The Principle of Being Open

4.1 It is recognised that a culture of openness is a prerequisite to improving patient safety and the quality of health care systems. Open and effective communication with patients should begin at the start of their care and continue throughout their time within the healthcare system.

4.2 Being Open when things go wrong is key to the partnership between patients and those who provide their care and discussing what happened promptly can decrease the trauma felt and help patients cope more effectively with any after-effects of a patient safety incident. Extra costs can be incurred through litigation and further treatment following patient safety incidents, but Being Open and honest can prevent such events becoming formal complaints and litigation claims.

4.3 Openness also has benefits for healthcare staff. These include satisfaction that communication with patients and/or their carer(s) has been handled in the most appropriate way; developing a good professional reputation for handling a difficult situation properly; and improving their understanding of incidents from the perspective of the patient and/or their carer(s). Openness is also beneficial for the reputation of the healthcare organisations providing and commissioning services.

4.4 As an organisation our commitment to Being Open is shown in the following ways:

- The people of South West Lincolnshire expect and deserve that as a commissioner of health services we must be honest, open and truthful in all our dealings with them. We listen to the views of patients and the public through a number of public engagement events. We share our operational plans that set out a commitment to commission healthcare services that will fulfill the needs of the people of South West Lincolnshire.
- We ensure there is public consultation on any proposals for significant service change and we ensure decisions are not made until consultation is complete.
• Our Governing Body Meetings are held in public with full papers published on the CCG website. Questions from the public are invited and responded to as part of the Governing Body Meeting.

• We are developing strong relationships with our Patient Participation Groups and Healthwatch in order to listen to what patients and public say about healthcare services. We use this information in the work we do with health and social care provider organisations to ensure the quality and safety of services.

• Public and patient involvement can be demonstrated as part of our decision making processes through a number of public engagement events and our Patient Council.

• The seven principles of public life also known as the ‘Nolan’ principles are incorporated into the CCG Constitution and all CCG staff are required to abide by these principles in their work on behalf of the CCG. Guidance and support for staff to raise concerns about patient safety and quality is provided through our whistleblowing policy which is published on the CCG intranet.

• We expect staff to be truthful in their dealings with the public especially through our complaints management process. We have a robust incident and complaints process and face to face meetings with complainants are offered as part of this process.

• We have put in place the systems and processes to ensure there is review of all sources of information about the performance and quality of organisations that provide healthcare. We have a sub-committee of the Governing Body called the Quality and Patient Experience Committee with a remit to do this. We have lay members, and Healthwatch as part of this committee.

• We have put in place systems and processes to enable us to hold our provider organisations to account for the performance and quality of services through being open and providing fair challenge in our contractual and quality meetings. We actively seek assurance following an incident which has occurred that providers have been open and honest in informing the patient/carer(s) about the incident.

• We undertake Quality Review visits to provider organisations. On these visits we use the previous National Nursing Strategy ‘Compassion in Practice’ principles known as the 6C’s (Care, Compassion, Commitment, Courage, Communication, and Competence) to ensure there is genuine engagement of staff in being open and honest and there is a professional commitment to patients having a positive experience of care, free from harm.

• We have a number of indicators to measure the quality of services in the NHS Standard Contract including specific indicators around the Duty of Candour.

• We report areas of concern and lessons learned through our governance framework to the CCG Governing Body.

• The Serious Incident Policy and Compliments, Comments & Complaints Policy include a Duty of Candour.

5. Implementing the Duty of Candour

5.1 All incidents occurring in provider organisations including GP Services in South West Lincolnshire are reported and graded in accordance with the Serious Incident Policy and the National Framework for Reporting and Learning from Serious Incidents Requiring Investigation.

5.2 The CCG will also apply the Being Open Policy to any serious incidents occurring within the CCG which cause harm to an individual e.g. a serious information governance breach.

5.3 The CCGs’ aim is to work with providers to ensure that robust risk management systems are in place that are transparent and open, which learn from mistakes and have a patient safety focused culture. Being Open is embedded within each
provider’s Incident Reporting procedures and this is actively monitored by the CCGs to ensure individuals are involved in the investigations, where they wish to be.

5.4 The National Patient Safety Agency’s (NPSA) document Being Open; Communicating patient safety incidents with patients their families and carer(s)’ sets out ten principles to help healthcare organisations create and embed a culture of Being Open:

- Acknowledgement
- Truthfulness, timeliness and clarity of communication
- Apology
- Recognising patient and carer expectations
- Professional support
- Risk management and systems improvement
- Multidisciplinary responsibility
- Clinical governance
- Confidentiality
- Continuity of care

5.5 Providers and CCGs are expected to be open with individuals about any mistakes that are made during the course of their treatment or care and should:

- acknowledge, apologise and explain when things go wrong;
- conduct a thorough investigation into the incident and reassure patients, their families and carer(s) that lessons learned will help prevent reoccurrence of the incident; and
- provide support for those involved to cope with the physical and psychological consequences of what happened.

5.6 We work with our providers to ensure that robust risk management systems are in place that are transparent and open, learn from mistakes and have a patient safety focused culture. Being Open, the Duty of Candour is embedded within each provider’s Incident Reporting procedures and this is actively monitored by the CCG to ensure individuals are involved in the investigations, where they wish to be. The CCG requires that all patient safety events are reported as soon as they are identified.

5.7 Where patients, their family or carer(s) inform healthcare staff of a patient safety event, their concerns will be taken seriously and will be treated with compassion and understanding by all staff. In addition, the CCG encourages all staff to report patient safety incidents that were prevented (i.e. near misses) no harm and low harm incidents as well as patient safety incidents that caused harm, severe harm or death.

5.8 The CCG acknowledges that information about patient safety events must be given in a truthful and open manner. A nominated senior manager will provide a single point of contact for the patient, family or carer(s) to ensure that factual, unambiguous information is provided throughout the patient safety event investigation, as well as providing a key contact to whom the patient, family or carer(s) may direct questions and requests.

5.9 Patients, their families and/or carer(s) should receive a meaningful apology which expresses a sincere expression of sorrow and regret for the harm that has resulted from the patient safety event.

5.10 Verbal apologies are essential as they provide the opportunity for face to face contact with the patient, their family and/or carer(s) and the healthcare team. The CCG recognises that an ‘apology’ is not an admission of liability and a verbal apology should be given as soon as staff are aware that a patient safety event has occurred. A further written apology, clearly stating that the organisation is sorry for the suffering and distress caused must also be given, as soon as practicable after the event.

5.11 Investigations should be carried out in accordance with the CCGs Serious Incident Policy.

5.12 Line managers will grade all patient safety events as soon as possible (within a maximum of five working days) after the event. The grading will reflect the actual
impact of the patient safety event and the risk to the organisation (likelihood x outcome). The level of local investigation and analysis will be dependent upon this grading.

5.13 All serious incidents, those which are classified with moderate, major and catastrophic outcome will automatically trigger a higher Root Cause Analysis (RCA) level of investigation.

5.14 The higher level investigation will be carried out according to the principles of root cause analysis. This will look past the immediate causes or active failures, digging deeper for the underlying or latent failures. The RCA tool kit, support and assistance is also available from the Federated Clinical Risk and Quality team.

6. Recognising patient and carer expectations

6.1 Patients, their family and/or carer(s) as well as staff will be provided with support in a manner appropriate to their needs. Support available will include the option of an independent advocate or interpreter or the provision of information regarding relevant support group and the Patient Advice and Liaison Service.

6.2 It is recognised that patients, their families and carer(s) will expect to be fully informed of the issues surrounding a patient safety event within a face to face meeting with a designated representative from the organisation.

7. Professional support

7.1 The CCG appreciates that staff involved in or witness to a patient safety event may feel traumatised by what has occurred and will require support throughout the investigation process.

7.2 Patient safety events vary significantly in their nature and the appropriate action to be taken in response will vary accordingly. No single one method of support is ideal for all staff members, so staff will be informed of the different types of help available to them and told how to access these readily. In terms of basic principles, the following is advocated:

- Immediate support should be provided by the Staff member’s Line Manager.
- In the absence of the Line Manager an alternative Senior Manager should be identified to provide immediate support to the staff member. Thereafter necessary steps will be taken (by the alternative Senior Manager) to ensure that the staff member’s Line Manager is informed of the patient safety event to enable any ongoing support needs to be identified and responded to.

7.3 In addition, there may be instances where staff may be requested to write statements or appear as witnesses as a result of being involved in or witnessing a patient safety event. In these instances, the Organisation will provide appropriate immediate and ongoing support to the staff member, as referenced within the Incident Reporting Policy. Support available will include:

- Staff members will usually be supported by their line manager in the first instance.
- The line manager will contact the appropriate risk management team to alert them to the information request and thus enable a nominated lead within that team to provide specialist support. Statement template available on request.
- The Staff member may also contact their Professional Body/Union, to secure additional personal support.

7.4 The effectiveness of the support measures provided will be assessed through management review between the Line Manager and the individual staff member.
7.5 Patient safety incidents are almost always unintentional. If the incident is determined to be the result of criminal or unsafe practice the Chief Nurse must be informed immediately.

8. Confidentiality
8.1 Information gathered as part of the patient safety event will remain confidential at all times. Where disclosure of the information is required, beyond the clinicians involved in treating the patient, consent will be obtained from the individual concerned.
8.2 Disclosure without consent may be justified if this is deemed to be in the public interest or where those investigating the patient safety event have statutory powers to obtain the information. In these cases advice must be sought from the Information Governance Team prior to disclosure.
8.3 To ensure that confidentiality is maintained, communication with parties outside of the clinical team must be kept on a strictly need-to-know basis, and where practicable, records will remain anonymous. Furthermore, prior to the commencement of the investigation, where possible, the patient, their family and carer(s) should be informed of who will be involved in the investigation of the patient safety incident. Patients, their family and or carer(s) should be given an opportunity to raise any concerns.

9. When Things Go Wrong

If a breach of the Duty of Candour occurs in the CCG we will:
- Ensure there is a direct written apology and explanation for the breach to the individual affected from the CCG Accountable Officer
- Ensure NHS England are notified of the breach of the Duty of Candour
- Undertake a full investigation of the CCG policies and practices in relation to openness and the circumstances of the breach, reporting to the CCG Governing Body
- Agree with NHS England a remedial action plan and ensure lessons learned are circulated widely within the organisation
- Ensure there is publication of the breach on the CCG website

If a breach of the Duty of Candour occurs in a provider organisation we will:
- Ensure there is a direct written apology and explanation for the breach to the individual affected from the Providers Chief Executive Officer
- Ensure the CQC are notified of the breach of the Duty of Candour
- Undertake a full investigation of the providers policy and practices in relation to openness and the circumstances of the breach, reporting to the CCG Governing Body
- Agree with the provider a remedial action plan with lessons learned circulated widely within the organisation
- Ensure there is publication of the breach on the providers website
- Implement the contractual levers in respect of a breach of Duty of Candour

10. Roles and Responsibilities
10.1 CCG roles and responsibilities
10.1.1 Staff working in the CCG have a responsibility to openly and honestly report incidents according to the organisational policy. Registered professionals working in the CCG must also apply the duty of candour according to their relevant professional code.
10.1.2 The CCG Governing Body is committed to implementing the principles of Being Open and the Duty of Candour
10.1.3 The Accountable Officer for the CCG is ultimately responsible and serious incidents will be brought to the attention to the Accountable Officer as appropriate. The CCG Governing Body has a key responsibility for ensuring that the principles of Being Open, the Duty of Candour are embedded at a senior level within the organisation and that strategic priority and scrutiny is maintained at Governing Body level.

10.1.4 The operational oversight is delegated to the Chief Nurse. The Chief Nurse will, through the Federated Clinical Risk and Quality team, be responsible for receiving information and analysing trends of commissioned services and will identify and act on lessons learnt ensuring that the principles of ‘Being Open’ is observed.

10.1.5 The CCG monitors the application of Duty of Candour by providers of commissioned services and receives assurance through the quality monitoring processes as part of contract review. When a breach of the contractual requirement for Duty of Candour is identified the CCG will take appropriate action with the provider as outlined in the NHS contract;

10.1.6 In co-ordinating a complex case it is the responsibility for the CCG to identify where duty of candour will be applied at the outset of the investigation within the terms of reference. The CCG will identify which provider will be the key contact for the individual affected for the duration of the investigation. The named person will then report to the CCG that the duty of candour requirement has been met.

10.1.7 In all cases the Federated Clinical Risk and Quality team will be informed either by telephone, electronically or by completion of the adverse incident form depending on the severity of the incident. The Federated Clinical Risk and Quality team, together with the senior manager involved, will agree what the appropriate level of response is required.

10.1.8 NHS England will also receive anonymous notification of the incident through the National Reporting and Learning System (NRLS), which is managed locally by the Federated Clinical Risk and Quality team on notification.

10.1.9 Further guidance on Expectations of Provider Organisations and a summary of Duty of Candour requirements are set out in Appendix A.

10.2 Notification to Relevant Statutory/Other Bodies

10.2.1 All cases of untimely or unexplained death and suspected unnatural deaths need to be reported to the coroner. A coroner may request that the case not be discussed with other parties until the facts have been considered, however, this should not preclude an apology or expression of regret. In this situation it should be made clear to the family that a full discussion of the circumstances and any residual concerns will be arranged at a date to suit both parties, after the coroner’s assessment is finished.

10.2.2 Health care organisations need to ensure they comply with the national notification requirements e.g. Serious Incident Framework 2015, CQC regulations, Health and Safety Executive under RIDDOR. These requirements are monitored by the CCG as part of the contract review process.

11. Monitoring Implementation

11.1 The CCG will assess the adequacy of implementation via several sources of assurances from provider organisations, including:

- Review of Being Open and Duty of Candour policies.
- Evidence of implementation from Root Cause Analysis reports.
- Updates against the Patient Safety Alert NPSA/2009/PSA003.
- Confirmation of identified senior clinical counsellors and the training programmes put in place.
Evidence of progress against agreed action plans.
Reported audit results of awareness amongst clinical staff.
Contract performance and quality meetings.

11.2 The Serious Incident Sign Off Group will monitor the use of being open and the duty of candour by the service provider incidents as reported in the root cause analysis paperwork submitted. Where the requirements do not appear to be met this will be escalated to the quality lead for the provider contract. The group will also make recommendations for change in practice and policy where appropriate. The CCG monitors the contractual duty of candour with providers as stated in the NHS standard contract through contract review meetings.

11.3 Should there be evidence that assurance around implementation is not consistent then the CCG will request assurances from providers that implementation plans have been developed and agreed at Board level. It will do this in order to ensure that awareness and understanding of the Being Open and Duty of Candour principles is increased amongst staff and that appropriate training and support is provided.

11.4 In addition the Federated Clinical Risk and Quality team will assess and challenge the robustness of Being Open and Duty of Candour engagement carried out within provider organisations during Serious Incident investigations. Concerns raised will be escalated via management routes and addressed on a case by case basis with providers.

12. Further Reading
For more information refer to the National Patient Safety Agency website www.nrls.npsa.nhs.uk

- NHSLA Guidance on the Duty of Candour
- Seven steps to Patient Safety for Primary Care. National Patient Safety Agency 2005
- Being Open: Communicating patient safety incidents with patients their families and carer(s). National Patient Safety Agency (NPSA) 2009
- National Framework for Reporting and Learning from Serious Incidents Requiring Investigation National Patient Safety Agency (NPSA) 2010 and update March 2013
- The following supporting organisational documents should be referred to in conjunction with this policy
- Complaints Policy
- Incident Reporting Policy
Appendix A - Expectations of Provider Organisations

1. Process
The CCGs would expect every provider organisation to take the following steps as soon as it is practical following a patient safety incident where harm has been caused. This best practice will also be followed by the CCGs if an incident that causes harm occurs internally:

1.1. Team Discussion
- The incident should be assessed to determine the level of immediate response and the basic clinical and other facts established.
- Identify who is best place to be responsible for leading the discussion with the patient or individual. Ideally this person should be known to and trusted by them and have a good grasp of the facts relevant to the incident. They should be able to maintain a medium to long-term relationship with the patient, their family and carer(s) where possible, and to be able to provide continued support and information with experience and expertise in the type of patient safety incident that has occurred. It is unacceptable for junior staff to be delegated the responsibility to lead a Being Open discussion.
- The healthcare professional or CCG representative communicating information about a patient or individual safety incident should be able to nominate a colleague to assist them with the meeting. Ideally this should be someone with experience or training in communication and Being Open procedures.
- Consider each team member’s communication skills; they need to be able to communicate clearly, sympathetically and effectively.
- A debrief session for those involved should be considered as part of the process and the ‘de-briefer’ should be identified at this point.

1.2. Apology
- A meaningful apology should be given – one that is a sincere expression of sorrow or regret for the harm that has resulted from the patient safety incident. This should be in the form of an appropriately worded and agreed manner of apology and should not be delayed for any reason including setting up a more formal Being Open discussion.
- Verbal apologies are essential as they allow face to face contact between the patient, their family and carer(s) and the healthcare team, and should be given as soon as staff are aware an incident has occurred. A written apology clearly stating that the organisation is sorry for the suffering and distress resulting from the incident must also be given.

1.3. Information and Actions Ahead of the Meeting
- Information must be given to the patient or individual in a truthful and open manner by the agreed nominated person, both verbally and in writing.
- Staff should be prepared if a patient or individual does not agree with the information provided or does not wish to participate in the Being Open process. This should be dealt with straight away and the following may help.
- Investigate possible sources of support and counselling that you anticipate the patient may need as a result of the incident or complaint; details should be given to the patient as soon as possible. Close liaison between PALS/Complaints and the incident investigation team will be essential to ensure joined up communications.
- Consideration should be given to ensuring that support is available to the patient or individual and that all reasonable adjustments are made to meet individual needs e.g. consideration and sensitivity of all individual needs that may need to be met, e.g. disability, culture, access to an independent advocate or utilisation of interpreting and translation services if appropriate. Providers should refer to

- Careful consideration should also be given to the venue of the meeting.
- The meeting should be held as soon after the incident as possible taking into account the patient’s clinical condition and the individual circumstances and social situation for those involved.
- Inform the patient or individual of the identity and role of all people attending the discussion before it takes place. This will allow them to state their own preferences about which healthcare staff should be present and when and where the meeting should be held.
- If for any reason it becomes clear during the initial discussion that the patient would prefer to speak to a different healthcare professional the patient’s wishes should be respected and a substitute in agreement with the patient provided. Consider use of a mutually agreed mediator.

1.4. Meeting

- Introduce and explain the role of everyone present to the patient and/or their carer(s) and ask them if they are happy with those present.
- Acknowledge what happened and apologise on behalf of the team and the organisation. Expressing regret is not an admission of liability.
- Patient or individual should be provided with a step by step explanation of what happened that is delivered openly and considers their individual needs. The information should be based solely on facts known at the time and it should be explained that new information may emerge during the incident investigation is undertaken and that they will be kept up to date with the progress.
- Health professional or CCG representative should use clear, straight forward language. Provision should be made to meet the communication needs of the patient and/or their family e.g. providing an interpreter.
- Health professional or CCG representative should ensure that the patient’s or individual understands of what happened is taken into consideration as well as any questions they might have.
- Health professional or CCG representative should check the patient or individual has understood the information given and offer to answer any questions.
- A formal note should be made of any issues and areas of disagreement and reassurance given that they will be followed up.
- Ensure the patient or individual are fully aware of the formal complaints procedures.

It is essential that the following does not occur during the Being Open discussion –speculation; attribution of blame; denial of responsibility; provision of conflicting information from different individuals.

1.5. Follow up

- Patient or individual should be given a single point of contact for any questions or requests they may have. The lead should liaise with the Complaints Department and Legal Department to avoid confusion and duplication if formal procedures were instigated.
- Patient or individual should not receive conflicting information from different members of staff and the use of medical jargon should be avoided.
- The patient or individual should be informed of what steps are/will be taken to prevent a similar incident reoccurring (if known at this stage) and give an explanation about what will happen next in terms of the long term treatment plan and the findings of the investigation.
• Being Open is not a one-off event and regular follow up meetings should be arranged by the nominated lead to ensure that the patient their relatives or carer(s) are kept updated. This is an important step in the process and there may need to be more than one follow-up discussion.

• Full minutes of the Being Open discussion meeting, which should be signed and dated by the Chair and all members of the panel present, should be shared with the patient or individual.

• Clarify in writing the information given; reiterating key points, recording action points and confirming assigned responsibilities and deadlines. Consideration should be given to providing written information in a translated format for patients whose first language is not English.

• Health professional or CCG representative should offer practical and emotional support to the patient their relatives or carer(s) and provide written information. This may involve getting help from third parties such as voluntary organisations as well as offering more direct assistance.

• Information about the patient or individual and the incident should not normally be disclosed to third parties without their consent.

1.6. Documentation
Accurate documentation must be kept during the course of the investigation process. This should include:

• The time, place, date, and names of attendees at the meetings.

• The plan for providing further information to the patient their relatives or their carer(s).

• Any offers of assistance and the patient, relative, carer response.

• The questions raised by the patient their family or carer(s) or their representatives and the answers given.

• The plans for follow up as discussed and the progress noted relating to the clinical situation, and an accurate summary of all the points explained to the patient their relatives or carer(s).

• Any copies of letters sent to the patient or other relevant documents.

• A copy of the incident report and a summary of the discussions of the meetings which has been shared with the patient or individual.

• Details of Being Open meetings and information exchanged should be included within the final Root Cause Analysis investigation report for the incident as this is required for the CCGs monitoring of performance and service improvement.

The documentation should be kept securely and responsibility for safe storage rests with the nominated lead.

1.7. Completing the Process
After completion of any investigation feedback to the patient or individual should take the form most acceptable to them. Whatever method is used, the communication should include:

• The chronology of clinical and other relevant facts.

• Details of the patient's or individuals concerns and complaints.

• A repeated apology for the harm suffered and any shortcomings in the delivery of care that led to the patient safety incident.

• A summary of factors that contributed to the incident.

• Information on what has been and will be done to avoid a reoccurrence of the incident and how these improvements will be monitored.
It is expected that in most cases there will be a complete discussion of the findings of the investigation. A copy of the report should be offered to the patient. However in exceptional cases information may be withheld or restricted and the patient their relatives or carer(s) will be informed of the reasons for this.

2. Continuity of Care
The CCG expects that patient or individual should be reassured that they will continue to be treated according to their clinical needs even in circumstances where there is a dispute between them and the healthcare team. They should also be informed that they have the right to continue their treatment elsewhere (as commissioned through the Choose and Book matrix) if they have lost confidence in the healthcare team involved in the incident.

3. Implementation
To implement Being Open successfully healthcare organisations need to have a culture that is open and fair with mechanisms in place to implement and embed the local Being Open Policy within risk management and clinical governance processes. The commissioning CCG will seek to encourage open and fair reporting of incidents from providers and will assist in Being Open processes where support is necessary.

Nominated Executive level and Non-executive leads should be identified to lead the policy and communication flow downs with staff to ensure that Being Open is implemented across the whole healthcare organisation.

Information about the organisations’ policies should be made available to patients and public via websites and should be part of the publication scheme.

3.1. Professional Support
Line managers should be aware that in order to provide good support to patients an individual or team will require support during an investigation process and following discussion may need to be guided to the most suitable support mechanism for their needs. Advice may need to be sought from Occupational health and Human Resources Departments or CIC (Confidential Counselling Service). It should be remembered that staff in the majority of cases do not intend to cause harm. Senior clinical staff will need to be identified within provider organisations to mentor and support fellow clinicians. Via these support networks staff should feel supported throughout the incident investigation as they may have been affected by being involved, and should not be unfairly exposed to punitive disciplinary action, increased medico-legal risk or any threat to their registration.

Health professionals and CCG representatives are therefore expected to be open about incidents they have been involved in, they are accountable for their actions and should feel able to talk to their colleagues and superiors about any incident and be treated fairly and supported when an incident happens. To ensure a robust and consistent approach to an investigation it is advisable to use the National Reporting and Learning System’s Incident Decision Tree to determine staff actions. When there is reason for the healthcare organisation to believe a member of staff has committed a punitive or criminal act, the organisation should take steps to preserve its position and advise staff at an early stage to enable them to obtain separate legal advice and or representation.

3.2. Training
Being Open discussions require staff to be trained in the specific skills and techniques required in Being Open. Although experienced staff may hold many of these skills and some skills may be similar to those required in breaking bad news, the fundamental difference is that the patient has been harmed as a result of a patient safety incident or has made a serious complaint which forms a different context and perspective. Being Open training is provided to NHS organisations.
through the National Patient Safety Agency (NPSA) at a cost. The NPSA also provide an e-
learning tool. The CCG will require evidence that provider organisations have appropriately
trained staff.
## Summary of Duty of Candour requirements

<table>
<thead>
<tr>
<th>Requirement under Duty of Candour</th>
<th>Responsible person/department</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Patient or their family/carer must be informed that a suspected or actual incident has occurred</td>
<td>Clinician responsible for episode of care during, or as a result of which, the incident occurred. Directorate Manager and CGARD (Caldicott Guardian) should be made aware/involved</td>
<td>Maximum ten working days from incident being reported on the IT system</td>
</tr>
<tr>
<td>2. Initial notification of incident must be verbal (face-to-face, where possible) unless patient or their family/carer decline notification or cannot be contacted in person. Sincere expression of regret or sorrow must be provided verbally. This must be recorded.</td>
<td>Clinician responsible for episode of care during, or as a result of which, the incident occurred. Directorate Manager should be aware/involved.</td>
<td>Maximum ten working days from incident being reported on the IT system.</td>
</tr>
<tr>
<td>3. Offer of written notification. Including sincere expression of regret or sorrow must be provided in writing. Whether declined or accepted, this must be recorded.</td>
<td>As above</td>
<td>Maximum ten working days from incident being reported on the IT system.</td>
</tr>
<tr>
<td>4. Step-by-step explanation of the facts (in plain English) must be offered. This may just be an initial view, pending investigation.</td>
<td>As above</td>
<td>As soon as practicable.</td>
</tr>
<tr>
<td>5. Maintain full written documentation of any meetings. If meetings are offered but declined this must be recorded.</td>
<td>As above. All follow-up letters/reports to the relevant person must be approved for release by the Chief Executive.</td>
<td>No timeframe prescribed.</td>
</tr>
<tr>
<td>6. Emerging information (whether during investigation or after investigation) must be offered.</td>
<td>As above.</td>
<td>As soon as practical.</td>
</tr>
<tr>
<td>7. Share incident investigation report</td>
<td>CGARD to provide final copy of report to</td>
<td>Within ten working days of report being</td>
</tr>
</tbody>
</table>
(including action plans) in the format they were approved in. | Directorate lead. | signed off as complete and incident closed. |
---|---|---|
8. Provide plain English explanations of reports, upon request. | CGARD/Directorates to check. | Ad hoc |
9. Inform patient’s commissioner (and lead commissioner, if appropriate) when communicating with a patient about an incident. | CGARD/Contracting. | Part of regular Contract review, or quarterly Quality Review Meeting |
10. Provide copies of any information shared with the patient to the commissioner upon request. | CGARD to coordinate | Ad hoc. |