

The duty of candour

The legal duty to be open and honest
when things go wrong

What it means for patients and their families



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

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

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

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

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

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

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

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

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

You should be told about where you can get support, such as counselling if appropriate, or independent advice (for example from Action against Medical Accidents – see back page for contact details).

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

What about older incidents?

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

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

The regulations *do* apply if the incident occurred after the regulations came in, but it is only realised later (for example, through a complaint investigation) that it met the definition of a 'notifiable safety incident'.

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

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

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

You can contact us at Action against Medical Accidents (AvMA – see back page for contact details). We will explain the procedures to you and offer specialist independent advice.

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

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

What you need to know

THE DUTY COVERS any incident that appears to have caused, or has the potential to cause, significant harm*

ORGANISATIONS DON'T LEGALLY have to tell you about incidents that cause a 'low level of harm' (e.g. minor or short-term harm) or 'near misses' but it is good practice to be open and to learn from all incidents

THERE DOES NOT NEED to be certainty that an incident has caused significant harm – only that it appears that it has or may do so in the future*

INCIDENTS WILL BE COVERED if the '*reasonable opinion of a healthcare professional*' would be that they did or could have caused significant harm*

THE EMPHASIS SHOULD BE on being open with you if there is any doubt

AvMA CAN HELP YOU to understand your rights and advise you on what to do next. See our contact details on the back page to get in touch

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

Contact details

Care Quality Commission (CQC)

The CQC is the independent regulator of health and adult social care organisations in England and is responsible for monitoring compliance with standards such as the duty of candour.

The CQC has legal powers to take action against organisations who do not comply.

Tel: 03000 61 61 61

www.cqc.org.uk

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

www.cqc.org.uk/duty-candour

Action against Medical Accidents (AvMA)

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

Helpline: 0845 123 2352

(10am – 5pm Monday-Friday)

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

www.avma.org.uk/help-advice

Action against Medical Accidents (AvMA)

For advice and information

Visit our website for a wide range of advice, information and support, including:

- making a complaint
- inquest support
- taking legal action

www.avma.org.uk/help-advice

Or call our helpline (10am-3.30pm Mon-Fri)

0845 123 2352

Action against Medical Accidents (AvMA) is a registered charity in England and Wales (number 299123) and in Scotland (number SCO39683)

www.avma.org.uk



www.facebook.com/AvMAuk



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Action against Medical Accidents

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Christopher Wren Yard
117 High Street
Croydon CR0 1QG

020 8688 9555 (office)

Please use the helpline number (left) for help or advice regarding a medical accident

avma
action against medical accidents