

REFERENCE NUMBER OF DOCUMENT:	11.2.321.05
DATE:	14/12/2023
COMMITTEE IDENTIFICATION:	Galago Directors
SECRETARIAT:	MS
DOCUMENT TYPE:	External Policy
DOCUMENT LANGUAGE:	E
THIS POLICY IS FOR:	Staff including Agency Workers (temporary workers), Commissioners and Service Users

DUTY OF CANDOUR

WARNING:

If the document contains proprietary information, it may only be released to third parties after management has approved its release.

Unless otherwise marked, documents are uncontrolled; uncontrolled documents are not subject to update notifications.

The latest revision of this document can be found in the reference panel above. It can also be determined and double checked by checking the 'Master Document List' before using or sending.

Any changes must be requested through the 'Document Control Manager' by submitting a 'Document Change Request' form.

DUTY OF CANDOUR POLICY AND PROCEDURE

1. PURPOSE

- 1.1 To set out the responsibilities of Nursing Direct under The Health and Social Care Act 2008 (as amended) and Regulation 20: The Duty of Candour. Nursing Direct will act in an open and clear way about Service User care and treatment.
- 1.2 To support Nursing Direct in meeting the relevant Key Lines of Enquiry and Quality Statements as set out by the Care Quality Commission (CQC).
- 1.3 To meet the legal requirements of the regulated activities that {Nursing Direct } is registered to provide:
 - Criminal Justice and Courts Act 2015
 - The Care Act 2014
 - Equality Act 2010
 - The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
 - Health and Social Care Act 2008 (Registration and Regulated Activities) (Amendment) Regulations 2015
 - Mental Capacity Act 2005
 - Mental Capacity Act Code of Practice
 - Data Protection Act 2018
 - The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2012
 - UK GDPR
 - Health and Care Act 2022

2. SCOPE

- 2.1 The following roles may be affected by this policy:
 - All Staff including Agency Workers
- 2.2 The following Service Users may be affected by this policy:
 - Service Users
- 2.3 The following stakeholders may be affected by this policy:
 - Family
 - Advocates
 - Representatives
 - Commissioners
 - External health professionals
 - Local Authority
 - NHS

3. OBJECTIVES

- 3.1 Nursing Direct promotes a culture of being:
 - Open
 - Honest
 - Transparent

Service Users are provided with Care that is safe, effective and based on best practice. Where any incidents occur that may have the potential to cause harm, Nursing Direct will act in a timely manner, investigating, reflecting, learning and, where appropriate to do so, sharing information to reduce the risk of reoccurrence.

- 3.2 Nursing Direct understands there are two types of Duty of Candour:
 - **Statutory duty** – The Statutory Duty of Candour is a legal obligation which mandates healthcare providers to be honest and open with service users (or their families) when there has been an unexpected incident that resulted in harm or death.
 - **Professional duty** – The Professional Duty of Candour is an ethical obligation that healthcare professionals voluntarily adhere to as part of their professional standards and codes of conduct. It emphasises openness, honesty, and communication with service users about their care, even in cases where there may not be a legal requirement to disclose adverse events.

Nursing Direct is regulated under the statutory Duty of Candour. However, certain groups of Staff including Agency Workers at Nursing Direct may also fall under the professional Duty of Candour, including specific roles within the Nursing and Midwifery Council (NMC).

4. POLICY

- 4.1 To meet the requirements of the Duty of Candour, Nursing Direct must make public commitments to relevant persons to transparency, openness and fairness in relation to the care, support and treatment of Service Users.
- 4.2 The relevant person must be notified in person as soon as possible, and this will be followed up with a written notification that includes:
 - A factual account of the incident
 - An apology
 - What further enquiries will be taking place
 - Confirmation of when an update will be provided
 - A further notification, including an apology and details of the outcome of any further investigations

- 4.3 Nursing Direct will encourage a culture of openness and transparency by leading by example through its day-to-day actions and communications.
- 4.4 Nursing Direct will support Staff including Agency Workers at all levels to follow this commitment, ensuring that they are not obstructed to do so.
- 4.5 Nursing Direct will take action to remedy any incident of bullying and/or harassment related to the Duty of Candour.
- 4.6 Nursing Direct will identify any notifiable safety incidents related to the Duty of Candour.
- 4.7 Any incident where an individual has been obstructed in carrying out their Duty of Candour will be investigated by Nursing Direct.

5. PROCEDURE

5.1 Awareness of all Staff including Agency Workers

- All Staff including Agency Workers must be made aware of their personal responsibility to report incidents, regardless of whether they are covered by the Duty of Candour.
- Each Staff including Agency Worker will be provided with an Staff including Agency Worker Handbook which outlines their roles and responsibilities that relate to the Duty of Candour at the point of induction.
- Duty of Candour will be discussed through various communication methods.
- All Staff including Agency Workers will be reminded that attempts by other Staff including Agency Workers or others to prevent them from reporting incidents is bullying and/or harassment, and that they must report this immediately to a senior manager within Nursing Direct.
- Staff including Agency Workers will be reminded that if they are unsure whether the incident is reportable or not, it must be reported anyway.
- Nursing Direct ensures that an organisational training plan includes Duty of Candour within induction, mandatory and refresher training plans.

5.2 Reporting

- All Staff including Agency Workers must report incidents defined in this policy in written form, in a clear, accurate way that becomes a permanent record using the Incident and Accident Reporting Form, even if a verbal report has been made.
- The report must be made to Nursing Direct, specifically the relevant coordinator, clinical lead or manager overseeing the package of care at the time of the incident
- Nursing Direct, specifically the relevant coordinator, clinical lead or manager overseeing the package of care then must formally report it to the Registered Manager, if they are not the same person, as soon as possible.

5.3 Make an Initial Assessment

Nursing Direct, specifically the relevant coordinator, clinical lead or manager will:

- Carry out an initial assessment of whether the report includes details of a notifiable safety incident under Regulation 20 (see section 5.4 for more details).
- If the conclusion is yes, or borderline, continue with the Patient Safety Incident Notification Policy and Procedure (PSIRF).
- If it is considered that the incident is not a notifiable safety incident under Regulation 20, Nursing Direct will follow normal incident reporting procedures.

5.4 Notifiable Safety Incidents

The CQC clearly defines a 'notifiable safety incident' as a specific term in the Duty of Candour regulation. It should not be confused with other types of safety incidents or notifications.

A notifiable safety incident must meet all three of the following criteria:

1. It must have been unintended or unexpected
2. It must have occurred during the provision of a regulated activity
3. In the reasonable opinion of a healthcare professional, it already has, or might, result in death, or severe or moderate harm to the person receiving care (this will vary depending on the type of provider)

If any of these three criteria are not met, it is not a notifiable safety incident but Nursing Direct will still follow the overarching Duty of Candour to be open and transparent.

Further information on Duty of Candour: notifiable safety incidents is available on the CQC website.

5.5 Notifying Relevant External Agencies

As with all incidents, it is of utmost importance that this policy is used alongside the relevant external notification procedures to ensure that relevant agencies are notified.

5.6 Notification and Support

Nursing Direct will promptly notify the relevant person(s) of an incident. Nursing Direct must ensure that the relevant person is given the support they need when receiving the information. Depending on the needs of the individual, this may be the offer of an advocate or interpreter, or other communication aids. There must be a written record taken of the notification, which is kept securely by Nursing Direct along with any other notes that are taken.

The notification to the relevant person must include:

- An accurate account of the incident
- An apology for the occurrence, emphasising that it does not imply liability but aligns with Duty of Candour requirements
- An offer of various sources of support and information, including internal resources within Nursing Direct and external options like advocacy and information services
- Details of the next steps, along with associated timings.
- Results from subsequent inquiries and investigations will be communicated in writing to the relevant person(s) if they express a desire to receive such updates.

- 5.7 **Enquiries and Investigation**
- Nursing Direct will assess the information they will need to carry out an investigation, taking statements and gathering information needed
 - Having gathered all the evidence, an investigation must take place
 - All information and evaluation of the information will be recorded and kept securely in line with data protection legislation
 - The purposes of the investigation are to establish if the incident took place, define its nature, gather facts about the processes around the incident, and identify causes where possible
- 5.8 **Final Statement and Correspondence to the Relevant Person(s)**
- Prepare a statement to be given to the relevant person and representative stating the outcome of the investigation, remembering that Duty of Candour focuses on the transparency and openness of the organisation when such events occur.
 - Include any lessons learned and changes made to the service because of the incident.
 - The final statement will include a more specific apology as the causes of the incident will now be established.
 - Where for any reason, the relevant person cannot be contacted, or after contact declines to communicate with Nursing Direct, a written record of all attempts to contact them must be kept.
 - All correspondence with the relevant persons must be recorded and kept securely
 - All correspondence should be written jargon free and where the need is identified, support from an advocate will be offered to ensure the content is accessible to the individual receiving it
 - Reasonable support must be provided to the relevant person throughout the process
- 5.9 **Breach of Candour by a Professionally Registered Person**
- If an intentional breach of candour is found to have occurred following investigation, and that this breach was by a professionally registered person, then that person will be reported to their professional registration body for further consideration.
 - The same action will be taken if, during the investigation, it is found that a professionally registered person had obstructed another person in their professional Duty of Candour
- 5.10 **Reporting a Possible Breach of Candour**
- If any individual believes that a breach of candour has taken place, they must report it to Nursing Direct management team.
 - If an individual has been stopped or hindered in their Duty of Candour, they must report it to Nursing Direct management team.
 - Nursing Direct management team will conduct an investigation into the allegations and will detail the findings for action if appropriate.
 - If the allegation concerns Nursing Direct management team, the individual must report the matter to Nursing Direct HR Team, who will carry out the investigation and take any action which may be required.
 - If the allegation concerns the actions of Nursing Direct, the individual must inform Nursing Direct and if action is not seen to be taken, the matter must be reported to the Care Quality Commission.

6. DEFINITIONS

6.1 Staff including Agency Workers

6.1.1 Staff

Denotes the employees of Nursing Direct Healthcare Limited.

6.1.2 Agency Workers

Refers to individuals who are contracted with Nursdoc Limited or another employment business as an Agency Worker (temporary worker) provided to Nursing Direct Healthcare Limited to perform care services under the direction of Nursing Direct.

6.2 Nursing Direct

Nursing Direct, also known as Nursing Direct Healthcare Limited, is the entity regulated by the CQC (Care Quality Commission) and responsible for the care service provision, contracted to provide homecare services to service users in their homes, in placements, essential healthcare facilities and in the community.

6.3 Nursdoc Limited

As the sister company to Nursing Direct Healthcare Limited, Nursdoc Limited acts as an employment business, specialising in providing staffing solutions to the healthcare sector.

6.4 CQC (Care Quality Commission)

CQC throughout this policy, the term "CQC" refers to the Care Quality Commission (CQC) which is the independent regulator of health and social care in England.

6.5 Notifiable Safety Incident

Regulation 20 (9) in relation to any other provider other than a Health Service Body: In relation to any other registered person, "notifiable safety incident" means any unintended or unexpected incident that occurred in respect of a Service User during the provision of a regulated activity that, in the reasonable opinion of a health care professional, appears to have resulted in:

The death of the Service User, where the death relates directly to the incident rather than to the natural course of the Service User's illness or underlying condition

An impairment of the sensory, motor or intellectual functions of the Service User which has lasted, or is likely to last, for a continuous period of at least 28 days

- Changes to the structure of the Service User's body
- The Service User experiencing prolonged pain or prolonged psychological harm
- The shortening of the life expectancy of the Service User

6.6 Relevant Persons

In Regulation 20, "relevant person" means the person using the service or, in the following circumstances, a person lawfully acting on their behalf:

- When the person using the service dies
- Where the person using a service is under 16 and not competent to make a decision in relation to their care or treatment, or
- Where the person using the service is 16 or over and lacks capacity to make decisions (CQC Provider Guidance)

6.7 Candour

Any person who uses the service harmed by the provision of a service provider is informed of the fact and an appropriate remedy offered, regardless of whether a complaint has been made or a question asked about it (CQC Duty of Candour Guidance)

6.8 Transparency

Allowing information about the truth about performance and outcomes to be shared with Staff including Agency Workers, people who use the service, the public and regulators

6.9 **Openness**

Enabling concerns and complaints to be raised freely without fear and questions asked to be answered (CQC Definition)

6.10 **Reasonable Support**

'Reasonable support' will vary with every situation, but could include, for example:

- Environmental adjustments for someone who has a physical disability
- An interpreter for someone who does not speak English well
- Information in accessible formats
- Signposting to mental health services
- The support of an advocate
- Drawing their attention to other sources of independent help and advice such as AvMA (Action against Medical Accidents) or Cruse Bereavement Care (CQC Definition)

6.11 **Definitions of Harm - Common to all types of service**

Moderate Harm: Harm that requires a moderate increase in treatment, including re-admission, prolonging of care, admission to hospital, referral to hospital as an outpatient, cancelling of treatment that is otherwise needed, or transfer to another specialist facility or treatment area. Moderate harm also includes significant (but not permanent) harm

Severe Harm: A permanent lessening of bodily, sensory, motor, physiologic or intellectual functions, including removal of the wrong limb or organ or brain damage, that is related directly to the incident and not related to the natural course of the Service User's illness or underlying condition

Moderate Increase in Treatment: An unplanned return to surgery, an unplanned re-admission, a prolonged episode of care, extra time in hospital or as an outpatient, cancelling of treatment, or transfer to another treatment area (such as intensive care)


Prolonged Pain: Pain which a Service User has experienced, or is likely to experience, for a continuous period of at least 28 days

Prolonged Psychological Harm: Psychological harm which a Service User has experienced, or is likely to experience, for a continuous period of at least 28 days

OUTSTANDING PRACTICE

To be 'outstanding' in this policy area you could provide evidence that:

- The wide understanding of the policy is enabled by proactive use of the QCS App
- Improvements and changes made due to Notifiable Safety Incidents are shared with relevant persons.
- Transparency is embedded in the culture at Nursing Direct and the same procedures to notify relevant persons are used, even when the threshold for Regulation 20 is not met in regard to the level of harm caused.

COMPLETED DATE:	
SIGN OFF DATE:	
REVIEW DATE:	
SIGNED:	 Marc Stiff – Group Managing Director