
DUTY OF CONDOUR

Duty of Candour Policy and Procedure

Purpose

To meet the requirements of Section 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.

To define the obligations of Moonstone Care uk Ltd. to act in an open and transparent way in relation to Service User care and treatment.

Scope

Any notifiable incident which occurs during the provision of a regulated activity which could include equipment failure, failure to assist with medication appropriately, staff negligence of some kind such as scalding. This is not a comprehensive list.

Policy

Moonstone Care is committed to transparency, openness and fairness and will demonstrate their compliance with this standard of behaviour in: daily practice and communication; by supporting employees at all levels to follow the commitment; and by not undermining any efforts to do so.

The publication and dissemination of this policy can be regarded as a statement of commitment to transparency and openness by Moonstone Care uk Ltd.

The registered provider and their representatives have the primary responsibility for the effective execution of this policy. In normal practice, the Registered Manager may carry out the procedure set out below, unless the Provider considers that the nature of the incident means that the investigation may be compromised if the Registered Manager carries it out, in which case the Provider should delegate a representative to manage the procedures.

Service Users and their representatives must be informed as soon as reasonably practical of any notifiable incident.

A notifiable incident is defined as any unintended/unexpected incident in respect of the Service User during the provision of a regulated activity, which in the reasonable opinion of a health care professional could have or has resulted in:

- The death of a Service User or;
- Severe harm, moderate harm or prolonged psychological harm.
- Severe harm can be defined as a permanent reduction of bodily, sensory, motor, psychological or intellectual functions, including procedures carried out on the wrong person, or wrong area of the body of the right person.

- Moderate harm can be defined as harm that requires a moderate increase in treatment, including re-admission, prolongation 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.
- Prolonged psychological harm can be defined as psychological harm which a Service User has or is likely to experience for a continuous period of at least 28 days.

Notifications should include:

1. Notification that the incident has occurred.
2. An apology – this is different to an admission of liability. Whilst it is appropriate to express sympathy or regret, the apology should not include any admissions of fault.

An apology is the best way of maintaining open communication and taking heat out of the situation in order that it can be approached professionally, rationally and logically. There should not be a reluctance to acknowledge a problem and apologise for its occurrence, without defining blame.

A template including a suggested apology outline is attached to this Policy.

What further enquiries will be taking place – if an internal investigation is to take place, who will be interviewed and whether external input will be obtained and when enquiries might be completed. Note that good quality assurance practice dictates that an internal investigation will always take place when an untoward incident (not just an incident as defined under this regulation) occurs, in order to provide quality improvement data for the management process..

A factual account of the incident – it is important that the account is purely factual and should avoid expressing an opinion as to the cause of the incident or admitting any blame.

Confirmation of when an update will be provided – the further notification should include an apology and details of the outcome of any further investigations.

Where for any reason the Service User cannot be contacted, or after contact declines to communicate with the service, a written record of all attempts to contact them must be kept.

Reporting a possible breach of candour:

If any individual considers that a breach of candour has taken place, i.e. a notifiable incident has not been reported as outlined above, they must report their allegation to the Registered Manager.

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[Next Update – 01/01/2018](#)

The Registered Manager will conduct an investigation into the allegations and report the findings to the Provider for action if appropriate.

If the allegation concerns the Registered Manager, the individual must report the matter to the Provider directly, who will carry out the investigation and take any action which may be required.

If the allegation concerns the actions of the Provider, the individual must inform the Provider, and if action is not seen to be taken, the matter must be reported to the Care Quality Commission. In this event the Provider must keep the reporting individual informed of progress, and carry out corrective action, if they wish to avoid referral to the Care Quality Commission.

If a breach of candour is found to have occurred following investigation, and that this breach was by a professionally registered person, then that person should be reported to their professional registration body for further consideration. The same action should be taken if, during the investigation, it is found that a professionally registered person had obstructed another person in their professional duty of candour.

Procedure

Awareness: All staff must be made aware of their personal responsibility to report incidents which may be covered by this regulation. They will be briefed on the Policy and its implications.

Remind staff of the Accident and Incident Reporting Policy and Procedure, which overlaps to a significant extent with this policy. If the Accident and Incident Reporting Policy and Procedure is fully and effectively implemented, staff will already be aware of the need for vigilance and the need to report not just accidents or incidents, but also “near misses” i.e. incidents which may have been stopped or ceased before any harm was done, but which if not stopped in time may have caused harm to an employee or Service User. As such the Accident and Incident Reporting Policy and Procedure already goes beyond this policy scope, but does not include the requirement to notify the Service User or their representative.

Remind staff that attempts by other staff to prevent them from reporting incidents is bullying and/or harassment, and that they should report this immediately to their manager, or if the pressure is from their manager, a representative of Moonstone Care uk Ltd.

Remind staff that should the incident appear at first to be on the borderline of reportable and non-reportable. It should be reported anyway.

Reporting, investigation and communication:

All staff must report incidents defined in this policy in a way which generates an understandable and permanent record, for instance using the attached forms even if a verbal report has been already been made. The report must be made to the person on duty and in charge of the service at the time of the incident, who in turn must formally report it to the Registered Manager if they are not the same person, as soon as is practical, with regard to the

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[Next Update – 01/01/2018](#)

seriousness of the incident. For example, a serious incident, may require immediate notification to the Registered Manager or their delegate even if they are not on duty at the time. A less serious incident may only require to be brought to their attention when they are next on duty. If in any doubt, report immediately.

The Registered Manager or delegate should:

Carry out an initial assessment of whether the report does include details of a notifiable incident under the regulations. If the conclusion is yes, or borderline, continue with this procedure. If it is considered that the report does not constitute a notifiable incident, discuss that conclusion with the Service User and the staff member making the report. If they agree with the conclusion, follow normal incident reporting procedures as set out in the Accident and Incident Reporting Policy and Procedure. If they do not agree and continue, after consultation, explanation and negotiation, to hold the opinion that the incident is reportable under the regulations, then proceed with this procedure.

Inform the Provider or their representative of the incident report, and agree with them who is the most appropriate person to continue the procedure. If the Provider takes over the role, the Provider should continue the process using the following procedure.

Prepare and deliver as soon as is practical a notification of the incident (or borderline incident which may not yet have been fully defined) to the Service User and their representatives. While this can be done verbally, and may need to be done in that way if circumstances dictate, such as the incident being very obvious at the time and needing to be acknowledged on the spot, good practice would be to gather at least outline information and record it, and quickly develop a notification statement with some thought and consideration behind it. This could be done in rough on the notification record attached simply in order to clarify matters and ensure all available data has been considered, and then transferred to a more formally formatted copy later. It is important to retain all records permanently, including rough notes, written notes on verbal exchanges, and written notes on discussions with the Service User and representatives. The latter could usefully be recorded on a discussion record sheet with the Care Plan.

Include an apology that the incident occurred, without apportioning blame in any way. (see template letter attached)

Inform the Service User (and representative if any) of sources of support and information which may be of assistance to them. Offer them support from within the organisation if possible, for instance by allocating to them staff other than those in whom they may have lost confidence as a result of the incident. External resources such as advocacy services should also be considered and offered if appropriate.

Prepare a list of people to be interviewed in order to gather data statements; also any other information which may assist an investigation, and include that information in the notification.

Inform the Service User and representative of the likely progress of the investigation and the estimated date of the final conclusion, or any proposed interim stage. If this is done separately to the initial informing of the incident, include the apology made in that document.

Identify and inform any other notification requirements, for instance CQC, Health and Safety Executive, GPs, Care Commissioners, Pharmacist, Adult Abuse Team, DBS, insurers (who will require notification as soon as possible and who may become involved with investigations), Environmental Health, and/or regional or national management if appropriate to the organisation.

Prepare a list of people to be interviewed in order to gather data statements; also any other information which may assist an investigation.

Carry out the interviewing and data gathering identified, adding any further sources which may be identified as the investigation proceeds.

Having gathered all the evidence you think you need, carry out an investigation and reach a conclusion. Record your deliberations and how the various factors were weighed and balanced, and keep the record. Seek outside or independent advice if you feel that you are lack the skills or knowledge to effectively weigh the factors and reach a conclusion you are confident of.

During the process this far, if possible avoid identifying individual person involved by name. The purposes of the investigation are to establish if the incident actually happened, define its nature, gather facts about the processes around the incident, and identify causes where possible. At this stage no blame can be attached to any person or process because the facts are not yet known, therefore to identify individuals by name may be unfair to them.

Prepare a statement to be given to the Service User and representative stating the outcome of the investigation. Remember that the underlying objective of the regulation is that the service be open, honest, fair, and responsive in its response to the incident. The final statement should include a more specific apology than the generic one issued with the first notification, because the causes of the incident should have been established. However, it is very advisable to discuss this area with your insurers, who will have competing concerns to your own obligations under the legislation, will not wish you to admit liability. If a conflict does arise between the obligations under legislation and the insurer's views, the legislation must be followed.

Suggested Template Initial Notification Letter. Transfer to your own letterhead, format and edit as required and where indicated.

[Date]

Dear [the Service User and/or representative],

Notification under the Duty of Candour Regulation 18: Notification of other incidents

I am informing you of an incident which has apparently occurred involving you, [insert Service User name]. The details of the incident, as they are known at the time of writing this notification are:

Date: _____

Time: _____
Location: _____

Nature of the incident: [describe the incident, not naming persons involved (other than the Service User) if possible, taking into account the definitions of an “incident” as set out in the policy section of this policy and procedure.]

I am sorry that this has apparently happened and I have begun the process of conducting an investigation into this. As part of that investigation I expect to interview:

[List people, by post or function, avoiding names if possible]

I will also be gathering information relating to the apparent incident (only if relevant)

[List the information you are planning to gather and review]

I will be making arrangements to support you during the investigation, and also in response to the effects of the apparent incident. [Edit as appropriate, and detail the support to be offered] I expect to be able to give you some further information by [state date]. This may be only interim information if I have not finished my enquiries, in which case I will give you a predicted date for the conclusion of the investigation.

If these target dates cannot be met because of issues of which I am currently unaware, I will contact you to advise you of reasons for the delay, progress to date and revised reporting dates.

Yours sincerely,

Registered Manager
Mr Adebayo Oshuntoki

An edited version of this letter can be used to make the final notification, by editing out the references to a pending investigation and support, and substituting the outcome of the investigation, and firming up on the apology in line with those conclusions.

Accident and Incident Log and investigation record – Service User

Name:

Date of birth:

Time and date of accident/incident:

Precise location of accident/incident:

How did the accident/incident happen (initial report)?

Name of witness(es):

Details of apparent injuries or harm (refer to policy definitions for clarification):

What immediate action was taken?

Reasons given for cause of accident/incident by service user:

Reasons given for cause of accident/incident by witness(es):

Report causes and recommended action by investigator:

Signed (investigator):

Designation:

Date:

Accident and Incident Log – Service User – Management Review
AT THE TIME OF THE ACCIDENT/INCIDENT

1. Was the Service User accompanied?
2. If accompanied, by whom?
3. Was the accompanying person acting in accordance with policy, procedure and training?
State which policies were relevant to the tasks /activities being conducted.
4. Was equipment provided for the processes resulting in the accident/incident?
Please specify:
5. Confirm whether personal protective equipment had been provided and whether it was being worn?
6. Did the Service User require medical attention?
If medical attention was required, please describe:

Investigators summary:

If insufficient space, provide full details on a separate but attached sheet

Investigators recommendations, including Care Plan changes:

Signature: (investigator)

Designation:

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[Next Update – 01/01/2018](#)

Date:

Service User informed by:

Date:

Insurance company informed by:

Date:

Reported to Management Meeting by:

Date:

Refer to Management Meeting Action Plan for planned outcomes arising from the investigation.