

## DUTY OF CANDOUR

### 1. Purpose of Report

1.1 The purpose of this report is to outline the implication for Social Work Services of the legislative changes imposed by Duty of Candour. The Duty of Candour Provisions are set out in the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (The Act).

1.2 Implementation of the new Act is supported by regulations. These regulations identify the procedures that organisations should follow when an unintended or unexpected incident results in the death or harm of an individual (or additional treatment is required to prevent injury that would result in death or harm).

### 2. Recommendations

Members are asked to:

2.1 note the implications of the new Act on Social Work Services as detailed at Section 3; and

2.2 note the resource implications regarding implementation as detailed at 3.12.

### 3. Considerations

3.1 Duty of candour is a legal requirement for Health, Care Services and Social Work to inform people (and their families) of incidents where they have been harmed as a result of the care or treatment they received. The intention of the legislation is to promote openness and transparency and ensure individuals are made aware of occurrences. The purpose of the new provisions is to support the implementation of consistent responses across health and social care providers.

3.2 The duty of candour provisions reflects the Scottish Government's commitment to ensure that where harm occurs, the focus should be on personal contact with those affected. The Act outlines the arrangements that need to be in place to ensure individual cases are identified, reviewed and action taken. The principles of learning and continuous improvement are the philosophy underpinning the approach.

3.3 The Act outlines the incidents which give rise to duty of candour and sets out the role of a Registered Health Professional in deciding whether the incident meets the criteria attaching to Duty of Candour. In this regard a Registered Health Professional must give their view on the incident and its relationship to the occurrence of death or harm and to any pre-existing illnesses or underlying conditions. The Registered Health Professional should not be involved in the case.

3.4 Implementation of the new Act requires social work to establish comprehensive arrangements to support implementation of Duty of Candour. This will necessitate the development of systems and processes to ensure staff are aware of responsibilities, incidents are reported, cases are reviewed, and findings examined and acted on. Social Work therefore require to ensure Duty of Candour Procedure forms part of their learning

systems. This will require integration of the duty of candour legislation into existing corporate governance frameworks, processes and procedures. There is also a need to ensure all elements of the procedure are being implemented and continuous improvement and refinement to the way that social work discharges its legal responsibilities takes place.

3.5 Procedures ensure staff are aware of responsibilities when Duty of Candour applies. They provide advice and guidance on the steps that need to be followed in these circumstances. There are tight timescales attaching to processes and these are highlighted in the associated guidance referred to in the linked background papers. Social Work Procedures should include:

- The development of pathways for notification of incidents;
- The establishment of robust systems and processes to guide case reviews;
- Processes ensuring notifications to relevant regulatory bodies take place;
- The links to other relevant processes;
- The delivery of training to ensure staff are aware of responsibilities;
- The development of staff support arrangements;
- The development of improvement plans linked to findings from reviews;
- The establishment of monitoring and oversight arrangements; and
- The completion of annual reports.

3.6 As part of the new arrangements, individuals affected by an incident should be involved in the review of their case and their views considered. Individual meetings should be offered and any findings from reviews should be made available to them. The meeting with individuals must include:

- a verbal account of the incident;
- an explanation of any further steps that will be taken by the organisation to investigate the circumstances which it considers led or contributed to the incident;
- an opportunity for the relevant person to ask questions about the incident;
- an opportunity for the relevant person to express their views about the incident; and
- the provision of information to the relevant person about any legal, regulatory or review procedures that are being followed in respect of the incident in addition to the procedure.

3.7 After the meeting the relevant person must be provided with:

- a note of the meeting; and
- contact details of an individual member of staff acting on behalf of the organisation who the relevant person may contact in respect of the procedure.

3.8 Consideration should also be given to the potential for claims for compensation and social work need to consider whether a review can proceed in these circumstances.

3.9 There may be occasions when a range of organisations are involved in an episode of treatment or care where the unexpected or unintended incident occurred. The duty of candour guidance provides advice on this matter. In these circumstances organisations (responsible persons) should be involved in providing information as part of a review or in providing support for relevant persons coping with the personal impact arising from the unintended or unexpected incidents. Responsible persons should seek to communicate with each other and ensure a co-ordinated approach is adopted. All parties are expected to co-operate fully throughout the duty of candour procedure and share lessons learned and necessary actions identified by the procedure.

3.10 The Act also sets out clear reporting arrangements and outlines the need for annual reports to be prepared. In this regard, social work must prepare and publish an annual report, as soon as reasonably practicable after the end of the financial year. The report must include:

- Information about the number and nature of incidents to which the duty of candour procedure has applied;
- An assessment of the extent to which social work carried out the duty of candour;
- information about social works policies and procedures in relation to the duty of candour. This should include information about procedures for identifying and reporting incidents, support available to staff and support available to persons affected by incidents;
- Information about any changes to the responsible person's policies and procedures as a result of incidents to which the duty of candour has applied;
- Other information social work identifies as relevant;
- When an organisation publishes a report, they must also notify:
- Healthcare Improvement Scotland, in the case of a report published by an organisation which provides an independent healthcare service (within the meaning of section 10F(1) of the NHS (Scotland) Act 1978);
- The Scottish Ministers, in the case of a report published by any other organisation which provides a health service; and
- The Care Inspectorate, in the case of a report published by an organisation which provides a care service or a social work service.

3.11 The new Duty of Candour places a range of new duties and responsibilities on the Social Work Service to inform people (and their families) of incidents where they have been harmed as a result of the care or treatment received.

3.12 The Duty of Candour (Scotland) Regulations 2018 came into force on 1 April 2018 and implementation necessitates the development of systems and processes to support compliance. The launch of new procedures requires to be supported by a comprehensive programme of training to ensure staff are familiar with their responsibilities. Arrangements for carrying out reviews will need to be put in place and be supported by robust monitoring and review arrangements. Links to other learning systems such as significant case reviews need to be made and links to legal services made to discuss individual cases.

#### 4. Governance Assurance

4.1 Clear governance and reporting arrangements need to be established as part of implementation of this new Act, this will require the development of joint reporting processes with colleagues within the Health and Social Care partnership, NHS and Police Scotland.

4.2 The Corporate Management Team, Strategic Planning Group Social Work and the Head of Finance and Procurement have been consulted and are in agreement with the content of the report.

#### 5. Impact Assessment

As this report does not propose a change in policy/strategy/plan/project, it is not necessary to complete an Impact Assessment.

#### Approved by

NAME	DESIGNATION
Lillian Cringles	Head of Social Work/Chief Social Work Officer

Appendices – None

#### Background Papers

The following link provides the detail of the regulations related to Duty of Candour  
<https://www.gov.scot/Publications/2018/03/1321>

The following link provides the detail of the guidance related to Duty of Candour  
<https://beta.gov.scot/publications/organisational-duty-candour-guidance/>