

Journey to improvement webinar

Duty of candour and consent

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Duty of candour - background

Openness

Transparency

Candour

Notifiable
safety
incidents

- Francis Inquiry (2013) – Mid Staffs Maternity report.
- Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, specifically regulation 20.
 - ❖ General duty.
 - ❖ Specific duty.
- Professional obligation, GMC, NMC, HCPC
- NHS Standard Contract

Types of candour

Statutory



Professional



Professional duty of candour

Every healthcare professional must be open and honest with patients and those close to them when something that goes wrong with their treatment or care causes, or has the potential to cause, harm or distress.

This includes **SAYING SORRY** and taking action to put things right where possible.

Saying sorry is:

- Always the right thing to do, both morally and as human beings.
- Not an admission of liability
- Acknowledges that something could have gone better.
- The first step to learning from what happened and preventing it recurring.



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Statutory duty of candour

- Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, specifically regulation 20.
- Overseen by the Care Quality Commission (CQC).
- Regulation 20 sets out some specific actions that providers must take when a notifiable safety incident occurs.



Regulation 20: Duty of candour

Guidance updated 30 June 2022

The changes clarify how you should apply the term "unexpected or unintended" to decide if something qualifies as a notifiable safety incident or not.

See updated sections:

[Notifiable safety incidents](#)

[Examples of notifiable safety incidents](#)

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3. Notifiable safety incidents
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5. What you must do when you discover a notifiable safety incident
6. How we regulate the duty of candour
7. Regulation 20 in full

When are harm levels applicable ?

Harm thresholds are applicable under the DOC

PSIRF - Patient Safety Incident Investigations (PSIIs)

PSIIs are not based on harm levels

PSIRF and DOC require separate governance systems.

The law of consent

- *Montgomery v Lanarkshire Health Board* - doctors must provide information about all material risks
- *"The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it."* - Paragraph 87 of *Montgomery* judgment

Evidence of consent: medico-legal perspective

- Documenting conversations around consent is important.
- A signature on a consent form is not necessarily in itself enough to evidence proper consent.
- The key is ensuring the patient understands the risks and benefits of their treatment (and any reasonable alternatives) so that they can make an informed decision.