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| SHANNON COURT CARE HOME LTD. | Issue Date: April 2019 | Reviewed: August 2023 |
| | Next Review: 09/26 | |
| <u>DUTY OF CANDOUR POLICY</u> | | |

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 the Home 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.

Policy

The Provider, individual or organisation, and their representatives, must make public commitments to transparency, openness and fairness; demonstrate their compliance with this standard of behaviour in daily practice and communication; support employees at all levels to follow the commitment; and not undermine their efforts to do so.

The publication and dissemination of this policy can be regarded as a statement of commitment to transparency and openness.

The Provider, individual or organisation, 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 of the Provider 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 healthcare professional could have or has resulted in:

- The death of a Service User or;
- Severe harm, moderate harm or prolonged psychological 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.

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.

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.

Notifications should include:

Notification that the incident has occurred.

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.

Note that the Complaints Policy already states that open and responsive communications must be established with a person who submits a complaint (in the context of this policy the complainant is the service itself in the first instance, because it is the service which has identified its own incident), and that 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

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logically. Therefore, if the Complaints Policy and Procedure is fully and effectively implemented, there should not be a reluctance to acknowledge a problem and apologise for its occurrence, without defining blame.

What further enquiries will be taking place

If an internal investigation is to take place, it must be decided 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.

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 (for example, the NMC for nursing practitioners). 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, through exposure to this policy and procedure with adequate time to read and understand it. Group implementation sessions would be a useful means of achieving this understanding, supported by inclusion of the matter in the next employee supervision session to test their retained understanding.

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.

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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 the service.

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 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 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, 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 the Family and Relationships section of their Care Plan on LogmyCare.
- Include an apology that the incident occurred, without apportioning blame in any way.
- Inform the Service User and representative 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, as well as 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, Safeguarding, GPs, Care

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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.

- 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 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 persons 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 advisable to discuss this area with your insurers, who will have competing concerns to your own obligations under the legislation and 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.

If a Breach of Candour is found to have taken place

Follow the policy set out above. Use the accident/incident reporting form to make the report in a full and accountable manner.

Training

All new staff should be encouraged to read the policy as part of their induction process. Existing staff should be offered training covering basic information about their duty of candour. All new staff will complete infection control training within the first 12 weeks of employment. Records of induction and ongoing training on their duty of candour will be kept in the staff personal files.

Implementation

Failure to comply with this policy may result in disciplinary action being taken in line with the Disciplinary Policy.

All staff are responsible for implementing this policy and ensuring that the correct procedures are followed. This document may be amended at any stage as training requirements develop. Where deemed necessary by the Registered Manager issues relating to training can be delegated to seniors. The Registered Manager should inform the Nominated Individual of the outcome of all disciplinary procedures.

Overall responsibility for ensuring the policy is implemented, monitored and reviewed rests with the Registered Manager.

Audit

This policy should be reviewed 3 yearly or when there are changes in relevant legislation.