

**Duty of Candour**

**Tobacco, Nicotine etc. and Care**

**April 2018**

**Policy Statement**

CrossReach is committed that the organisation and its staff should be open and candid about all incidents involving the health and safety, care and welfare of people who use a service. Notification of incidents to people who use the service and families/representatives should occur at the earliest possible opportunity.

CrossReach already promotes a culture of openness and honesty, and staff are encouraged and supported to report and assist people affected by any incident or event.

**Purpose of the Policy**

The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (the Act) imposes a duty of candour on CrossReach to inform people who use our services, or their representatives, if there have been mistakes in their care that have led to significant harm.

This policy describes the arrangements CrossReach have in place to ensure management and staff are clear when this duty of candour applies and the process to be followed.

**Who is Affected by this Policy?**

All CrossReach employees, people who use CrossReach services, representatives, agency workers, volunteers and students on placement.

**Who should know about this Policy?**

Anyone working for CrossReach in either a paid or voluntary capacity and people who use CrossReach services.

**Definitions as define by the Act**

**“Apology”** means a statement of sorrow or regret in respect of the unintended or unexpected incident. An apology or other step taken in accordance with the duty of candour procedure does not of itself amount to an admission of legal liability, negligence or breach of a statutory duty.

**"Responsible Person"** means;

* A person (other than an individual) who provides a care service,
* An individual who provides a care service and who employs, or has otherwise made arrangements with, other persons to assist with the provision of that service (unless the assistance in providing that service is merely incidental to the carrying out of other activities)
* A person (other than an individual) who provides a social work service,

**“Relevant Person”** means;

* The person who received the care service or the social work service, or
* Where that person has died, or is, in the opinion of the Responsible Person, lacking in capacity or otherwise unable to make decisions about the service provided, a person acting on behalf of that person.

**“Specified outcomes”** are;

* Death or permanent lessening of bodily, sensory, motor, physiologic or intellectual function,
* Sensory, motor or intellectual impairment which has lasted, or may last, more than 28 days,
* Pain or psychological harm which has lasted, or may last, more than 28 days,
* Changes to the structure of the person's body,
* Shortening of the person’s life expectancy,
* An increase in the person’s treatment,
* Treatment to prevent death or further injury leading to any of the above.

**Core Principles**

* The Duty of Candour will be integrated with existing processes for responses to complaints, accident / incident reporting and the notification of safeguarding incidents.
* The Head of Service must immediately be notified in the event of a Specified Outcome, and must then follow the duties in this policy as soon as reasonably practicable.
* The Head of Service will be the lead person to communicate with the Relevant Person throughout the process of discharging CrossReach’s Duty of Candour.
* The Manager must seek the opinion of a registered health professional, to determine that the incident appears to have resulted in, or could result in, a Specified Outcome.
* The registered health professional who gives the opinion following an incident must not be an individual who was involved in the incident.
* The Care Inspectorate must be notified in line with the notification procedures.
* Where it may be considered that Duty of Candour may apply, the Head of Service must be consulted before this notification is made.
* There does not need to be certainty that an incident has caused significant harm – only that it appears that it has, or may do so in the future. However, there must be evidence that the outcome relates directly to the incident rather than to the natural course of the Relevant Person's illness or underlying condition.
* A meeting will be offered with the Relevant Person.
* An apology will be provided to the Relevant Person.
* The Relevant Person must be supported throughout and kept up-to-date with progress and findings.
* A record must be kept of steps taken and information held by CrossReach.
* CrossReach will undertake a review of all incidents which are classed as specified outcomes to identify lessons learnt.
* CrossReach will prepare an annual report on specified outcome incidents, which will include:
  + information about the number and nature of incidents to which the duty has applied,
  + an assessment of the extent to which the responsible person carried out the duty,
  + information about the responsible person's policies and procedures in relation to the duty,
  + procedures for identifying and reporting incidents,
  + support available to staff and to persons affected by incidents, and
  + changes to policies and procedures as a result of incidents to which the duty has applied.
* All staff will undertake the e-learning module on Duty of Candour.
* CrossReach will notify the Quality Compliance and Improvement Governance Group of the Social Care Council and the Care Inspectorate of specified outcome incidents.

**Responsibilities**

CMT – to ensure that the legal responsibilities are met

Heads of Service – to follow the policy acting as the Responsible Person for CrossReach.

Head of Health and Safety/BP QCI – to draft the annual report and present to the Quality, Compliance and Improvement Governance Group.

Service Managers – to recognise any incidents which are classed as specified outcomes and immediately notify their Head of Service.

**References to Other Policies/Documents**

Accidents, Incidents and Near-miss

Complaints Policy

SSSC Codes of Practice

Adult Protection Policy

Child Protection Policy

Data Protection Policy

Procedure Information

Critical Incident Policy

**Ethics & Legislation**

The Policy will be followed in line with the Christian Ethos and values and to meet the requirements of relevant legislation, mainly The Health (Tobacco, Nicotine etc. and Care) (Scotland Act 2016).

**Monitoring and Auditing**

The Head of Health and Safety and Business Partner – Quality, Compliance and Improvement will review incident reports received to ensure all specified outcomes are identified and follow the Duty of Candour process.