

# Board of Directors Meeting

# Report

**Subject: Being Open – a Duty to be Candid – Communicating care and treatment related harm with patients, their families and carers policy.**

**Date: 16 October 2014**

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## Executive Summary

The Being Open – a Duty to be Candid – Communicating care and treatment related harm with patients, their families and carers is circulated to the Board of Directors for **final ratification**. It has been approved at Clinical Quality and Governance Committee and Trust Management Board. It has been widely consulted (see below).

In summary, all NHS healthcare services (with the exception of services commissioned under primary contracts) are now subject to contractual duty of candour under the 2013/14 Standard Contract. Under the contractual duty of candour, the Trust is required to comply with obligations regarding candour if a reportable patient safety incident (i.e. a patient safety incident involving moderate or severe harm or death) occurs or is suspected to have occurred. If there is a breach of the contractual duty of candour the commissioning body can recover from the provider either the cost of the episode of care, or up to £10,000, if the cost is unknown.

From October 2014 NHS providers are required to comply with the duty of candour. Meaning providers must be open and transparent with service users about their care and treatment, including when it goes wrong. The duty of candour will require all health and adult social care providers registered with CQC to be open with people when things go wrong. The regulations impose a specific and detailed duty of candour on all providers where any harm to a service user from their care or treatment is above a certain harm-threshold. The duty is being introduced as part of the fundamental standard requirements for all providers. It will apply to all NHS trusts, foundation trusts and special health authorities from October and the government plans to implement the standards for all other providers by April 2015, subject to parliamentary approval.

The duty of candour is a legal requirement and CQC will be able to take enforcement action when it finds breaches.

The policy was drafted and addresses Sherwood Forest Hospitals NHS Foundation Trust's (The Trust) response to the ethical responsibility and duty of candour when a patient safety incident occurs. Feedback was positive. Amendments were made to reflect the feedback given and this included (though is not limited to) amending sections 7.7.7 and adding in commentary regarding maternity services (7.1 & 7.7.6)

## Recommendation

## For Approval

## Relevant Strategic Objectives (please mark in bold)

<b>Achieve the best patient experience</b>	<b>Achieve financial sustainability</b>
<b>Improve patient safety and provide high quality care</b>	<b>Build successful relationships with external organisations and regulators</b>
Attract, develop and motivate effective teams	
<b>Links to the BAF and Corporate Risk Register</b>	Links to Risks 1.1, 1.3, 2.2, 2.3, 2.4, and 3.1 on the Board Assurance Framework
<b>Details of additional risks associated with this paper</b> (may include CQC Essential Standards, NHSLA, NHS Constitution)	If there is a breach of the contractual duty of candour the commissioning body can recover from the provider either the cost of the episode of care, or up to £10,000, if the cost is unknown. Going forwards risk of being assessed as non-compliant against the CQC essential standards of Quality and Safety
<b>Links to NHS Constitution</b>	The Duty of Candour has been written into the latest version of the NHS Constitution
<b>Financial Implications/Impact</b>	Potential contractual penalties as above
<b>Legal Implications/Impact</b>	Reputational and the duty of candour will be a legal requirement and CQC will be able to take enforcement action when it finds breaches.
<b>Partnership working &amp; Public Engagement Implications/Impact</b>	Improved adherence to Quality Schedule reporting
<b>Committees/groups where this item has been presented before</b>	The policy has been extensively consulted and this includes: <ul style="list-style-type: none"> <li>a) Trust Management Board, 28/07/2014 for consultation and approval 27 October 2014</li> <li>b) Clinical Quality and Governance Board Sub-Committee, 11/06/2014 and approval 10/09/14</li> <li>c) Quality Committee 19/09/14 via e-mail</li> <li>d) Divisional Clinical Governance Meetings for Emergency Care and Medicine, Planned Care and Surgery, Diagnostics and Rehabilitation and Newark in July 2014</li> <li>e) A significant number of individual key stakeholders were consulted on</li> <li>f) Presentations on Being Open have been held in ECM and PCS divisional governance groups</li> </ul>
<b>Monitoring and Review</b>	Monitoring via the quality contract, CCG Performance and Quality Committee. In addition, compliance with the policy will be monitored through the use of feedback forms and via the review of closed investigation files. Completion of compliance monitoring forms will be undertaken by the clinical governance co-ordinators (CGC) at the conclusion of the case, in conjunction with the Serious Incident Review and Sign Off Group and forms part of the core case file.
<b>Is a QIA required/been completed? If yes provide brief details</b>	No