



**COMHAIRLE NAN EILEAN SIAR**

**Health and Social Care Department**

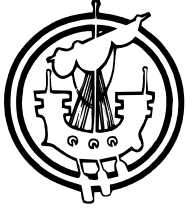
**DUTY OF CANDOUR**

**POLICY STATEMENT**

**&**

**PROCEDURAL GUIDANCE**

**2021**



# COMHAIRLE NAN EILEAN SIAR

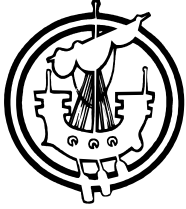
## Review Status

Reviewer's Name	Date	Job Title
Frank Creighton	18/05/20	Health and Social Care Policy Officer
Tim Langley	24/02/21	Legal and Procurement Manager

Initial Integrated Impact Assessment Form submission date:	
Joint Consultative Committee submission date :	

## Document Control

Version/Draft	Date	Latest Changes Made by:	Reason for Changes
2	14/5/21	Tim Langley	Remove references to reporting re health services, which was irrelevant; update reference to reporting body (Care Inspectorate)

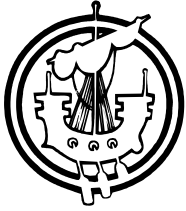


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# COMHAIRLE NAN EILEAN SIAR

## 1. Policy Statement

Comhairle nan Eilean Siar is committed to providing a consistently high standard of care to its Health and Social Care Department's service users; an integral part of this commitment is that we deliver services within a culture of honesty, openness and transparency.

Engaging a working practice of candour promotes responsibility for managing risk and developing safer systems; better engages staff in improving services; and creates greater trust in people who use the services, either first-hand or on behalf of someone else.

## 2. The Duty of Candour

Unexpected or unintended incidents can occur during the provision of treatment or care. How we respond to those incidents and learn from them to improve our service delivery is fundamental to our maintaining the community's trust in our ability to care for them and their loved ones. The duty of candour is essentially the requirement for organisations to be open in telling the "relevant person" (the service-user or someone acting on their behalf) that such an incident has occurred, apologising for it, and meaningfully involving them in a review of what happened.

This Procedural Guide aims to summarise the details of the duty and procedure, which are set out in Part 2 of the [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016](#) and [The Duty of Candour Procedure \(Scotland\) Regulations 2018](#). Reference should also be made to the Scottish Government's Organisational Duty of Candour Guidance (March 2018): <https://www.gov.scot/publications/organisational-duty-candour-guidance/>.

Organisations that provide a health service, care service or social work service are covered by the duty as "responsible persons". The Comhairle, as a local authority, is a responsible person for the purposes of the duty.

## 3. When is the Duty of Candour Procedure activated?

The Comhairle must follow the duty of candour procedure as soon as reasonably practicable after becoming aware that:

- an unintended or unexpected incident occurred in the provision of a health, care or social work service provided by it; and
- in the reasonable opinion of a registered health professional, the incident appears to have resulted, or could result, in any of the outcomes mentioned below, and the outcome relates directly to the incident rather than to the natural course of the person's illness or underlying condition.

The outcomes are:



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- A. The death of the person
- B. Permanent lessening of bodily, sensory, motor, physiologic or intellectual functions (including removal of the wrong limb or organ or brain damage) (“severe harm”)
- C. Harm which is not severe harm but which results in one or more of the following:
- An increase in the person's treatment
  - Changes to the structure of the person's body
  - The shortening of the life expectancy of the person
  - An impairment of the sensory, motor or intellectual functions of the person which has lasted, or is likely to last, for a continuous period of at least 28 days
  - The person experiencing pain or psychological harm which has been, or is likely to be, experienced by the person for a continuous period of at least 28 days
- D. The person requires treatment by a registered health professional in order to prevent:
- The death of the person
  - Any injury to the person which, if left untreated, would lead to one or more of the outcomes mentioned in paragraph B or C

## 4. The Opinion of the Registered Health Professional – the Start of the Procedure

The date on which the registered health professional provides their opinion to the Comhairle is the “procedure start date” for the purposes of the duty of candour.

Although no timescale is specified in the legislation for the provision of the professional’s opinion, if the procedure start date is later than one month after the date on which the incident occurred then an explanation of the reason for it must be provided to the relevant person. It is therefore important that the appropriate professional is promptly informed of the need to give an opinion, and that the opinion is given as soon as possible.

The registered health professional who gives the opinion must not be someone who was involved in the incident itself.

## 5. Management and Key Stages of the Procedure

As any incident which gives rise to the duty of candour procedure may involve operational, legal and reputational risks, it is vital that the Comhairle has a clear process so as to manage those risks. Therefore, responsibility for undertaking a duty of candour procedure should lie no lower than at Head of Service level. No staff below that level should activate the procedure without specific instructions. It will therefore be necessary to ensure that all staff are aware of the duty and whom to contact if they are concerned that the duty may have arisen in respect of an incident. **However, that should not prevent or deter any member of staff from**



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exercising their right to report a matter under the Reporting Concerns at Work procedure, or from fulfilling any professional reporting obligation.

Following the procedure start date, the Comhairle must:

- notify the relevant person
- at the appropriate time, provide an apology
- offer a meeting with the relevant person
- carry out a review into the circumstances leading to the incident, provide information about any further steps taken and make available, or provide information about, support to persons affected by the incident

The Appendix sets out a checklist, taken from the Guidance, which may be of assistance in ensuring that the actions are completed.

## 5.1 Notification

Although no timescale is specified in the legislation, the Guidance states that it should be considered good practice to notify the relevant person within 10 working days of the procedure start date.

Notification must include:

- an account of the incident insofar as the Comhairle is aware of the facts as at the date on which notification is provided
- an explanation of the actions which the Comhairle will take as part of the duty of candour procedure
- if the start date of the procedure is more than a month after the incident, an explanation of why that is the case

Notification need not be in writing, but it would usually be advisable for it to be.

**Note that there is no duty to provide information if it would prejudice a criminal investigation or it would contravene any restriction on disclosure arising under any legislation or rule of law. If you have any doubt about whether or not information should be provided, seek legal advice.**

## 5.2 The Apology

In addition to any apology provided at the time of the incident, the Comhairle must offer the relevant person a written apology, and must provide one if the relevant person wishes it. The written apology should be provided at an appropriate time during the procedure, taking account of the facts and circumstances in relation to the particular incident.

The Act defines an apology for the purposes of the duty of candour procedure as “a statement of sorrow or regret in respect of the unintended or unexpected incident”. Annex D of the Guidance provides helpful information on how to make a meaningful apology.



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There is a common perception that an apology equates to an admission of liability, and that organisations should never offer apologies for that reason. The Act specifically provides that an apology, or any other step taken in accordance with the duty of candour procedure, does not of itself amount to an admission of negligence or a breach of a statutory duty. However, you should always take advice in respect of the wording of an apology, and should not provide an apology until you are satisfied that adequate investigations into the incident have been made.

## 5.3 Meeting

The Comhairle must invite the relevant person to attend a meeting and give them the opportunity to ask questions in advance. Reasonable steps must be taken to ensure that the meeting is accessible to the relevant person, having regard to their needs.

The meeting must include:

- an account of the incident by the Comhairle
- an explanation of any further steps which will be taken to investigate the circumstances which led or contributed to the incident
- an opportunity for the relevant person to express their views and ask questions
- information about any other legal or review procedures which are being followed in respect of the incident

The relevant person should be spoken to in plain English, without the use of jargon, and staff should check they have understood what they have been told.

Following the meeting, a note of it must be provided to the relevant person along with contact details for the member of staff dealing with the matter.

## 5.4 Review, Further Steps and Support

The Comhairle must carry out a review of the circumstances which it considers led or contributed to the incident. The legislation does not specify the manner in which the review is to be undertaken, but it should follow one of the Comhairle's established review process if any are appropriate. The Act does require that the relevant person's views are sought and taken into account.

The Comhairle must then prepare a written report of the review, which must include:

- a description of the manner in which the review was carried out
- a statement of any actions to be taken for the purpose of improving the quality of service and sharing learning with other persons or organisations in order to support continuous improvement in the quality of services
- a list of the actions taken for the purpose of the duty of candour procedure in respect of the incident and the date each action took place



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If the review is not completed within 3 months of the procedure start date, the relevant person must be provided with an explanation of the reason for the delay.

The Comhairle must then offer to send the relevant person:

- a copy of the written report
- any further information about any actions taken for the purpose of improving the quality of service
- details of any services or support which may be able to provide assistance or support to the relevant person, taking into account their needs

It is important to think about how the report is written given that it may be read by the relevant person: it should not contain jargon or acronyms which are difficult to understand, but instead should be clear and unambiguous.

## 6. Record-Keeping

Managers should record incidents via the Comhairle's electronic incident management reporting system (replacing the previous system of reporting incidents on IR1 paper forms). This new system has many functions to help with overall incident management (including reporting and incident investigation). Full operational training on the system will be provided by the Health and Safety Team.

## 7. Annual Report

After the end of each financial year, the Comhairle must prepare and publish an annual report including the following information:

- the number and nature of incidents to which the duty of candour procedure has applied
- an assessment of the extent to which the Comhairle carried out the duty of candour
- information about the Comhairle's policies and procedures in relation to the duty of candour, including information about procedures for identifying and reporting incidents, and support available to staff and to persons affected by incidents
- Information about any changes to the Comhairle's policies and procedures as a result of incidents to which the duty of candour has applied
- such other information as the Comhairle thinks fit

The report must not mention the name of any individual or contain any information that could identify any individual.

Notification of the report must be given to the Care Inspectorate (formerly known as Social Care and Social Work Improvement Scotland).





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It is the responsibility of the Monitoring Officer, in consultation with the Chief Officer of the Western Isles Integration Joint Board and relevant Directors, to compile the Annual Report on behalf of the Comhairle.

## **8. Training and Support**

Relevant departments must ensure that staff are appropriately and adequately trained and supported in respect of the duty of candour procedure. A programme of in-house training will be provided as necessary.

In addition, a duty of candour eLearning module has been produced by NHS Education for Scotland, the Scottish Social Services Council, the Care Inspectorate and Healthcare Improvement Scotland:

### **[NHS Education for Scotland \(NES\)](#)**

**<https://learn.nes.nhs.scot/2654/elearning-nmahp/duty-of-candour>**

Relevant staff are encouraged to complete the module, which takes no longer than an hour.



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## APPENDIX: Organisational Duty of Candour Checklist

<b>STEP 1</b> <b>Identifying and Contacting the Relevant Person</b>	<ul style="list-style-type: none"> <li>• Do you know who the relevant person is in respect of this incident?</li> <li>• Is their preferred method of communication already known? If not, this needs to be determined and noted.</li> <li>• Has it been possible to make contact with them? If not, a note should be made of the attempts that have made to make contact.</li> </ul>
<b>STEP 2</b> <b>Notify Relevant Person</b>	<ul style="list-style-type: none"> <li>• Provide the relevant person with an account of the incident and what actions are going to be taken. (Note that if it is more than a month since the incident need to explain why).</li> </ul>
<b>STEP 3</b> <b>Arrange a Meeting</b>	<ul style="list-style-type: none"> <li>• Arrange a meeting – and provide the person with the opportunity to ask questions in advance of the meeting. At the meeting (or through communication if not desired):</li> <li>• Apologise, if not already happened.</li> <li>• Tell the person what happened</li> <li>• Tell them what further steps are being taken</li> <li>• Give the relevant person the opportunity to ask further questions and express their views</li> <li>• Tell them about any other processes that might be on-going.</li> <li>• Provide them with a note of the meeting and contact details.</li> </ul>
<b>STEP 4</b> <b>Carry out a Review</b>	<ul style="list-style-type: none"> <li>• Start a review – remember to seek the views of the relevant person.</li> <li>• Prepare a report – to include the manner it has been carried out.</li> <li>• Ensure that report focus is on improving quality and sharing learning.</li> <li>• Report to include the actions taken in respect of the duty of candour procedure.</li> <li>• Offer to send the relevant person a copy of the review report – remember to let them know of any further actions subsequently.</li> <li>• Make sure that a written apology is offered.</li> </ul>
<b>STEP 5</b> <b>Throughout Support and Assistance for Relevant Staff Person</b>	<ul style="list-style-type: none"> <li>• Consider and give relevant person support or assistance available to them</li> <li>• Staff to receive training and guidance on all requirements of the procedure.</li> <li>• Employees to be provided with details of services or support relating to their needs arising from the incident.</li> </ul>