

Legal Reference

1.0 **Regulations 15 & 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014**

Outcome Statement

2.0 **People are in safe, accessible surroundings that promote their wellbeing.**

2.1 **This is because the service complies with the regulations and will:**

- Make sure that service users, staff and others know they are protected against the risks of unsafe or unsuitable premises by:
 - a. The premises being suitable for their needs and activities
 - b. Measures being in place to ensure the security of the premises
 - c. The premises and grounds being adequately maintained
- Compliance with legal requirements relating to the premises
- Take account of relevant design, technical and operational standards - and also manage risks in relation to the premises.

2.2 We will ensure that the service has proper systems in place to protect the interests of service users, staff and visitors.

2.3 We will work together with staff and external agencies to provide a safe environment in which to live and work in the pursuit of "zero accident" potential.

2.4 Whilst the service and staff will always try to work safely, we accept that from time to time accidents will happen.
We will endeavour never to be judgemental nor will we seek to "blame the guilty party".
What we seek is to learn on each occasion so as future accidents or incidents can be avoided.

2.5 In the event of an accident occurring we will always Contact the resident and / or their next of kin to explain that an incident has occurred and offer a suitable and sincere expression of regret.

Policy Statement

3.0 We believe that people should be provided with a safe environment in which to enjoy their life.

We are committed to this in relation to the management of accidents and incidents in the home by the following.

3.1 Service users and others who work in or visit the premises can be confident that in relation to design and layout, the home:

- Takes account of identified risks.
- Meets the requirements of the Health and Safety at Work Act 1974 and associated regulations including the Regulatory Reform (Fire Safety) Order 2005 and other legislation.
- Ensures the premises are accessible to people and meet the appropriate requirements of the Equality Act 2010.
- Ensures the premises are designed and operated in a way that takes account of guidance from expert bodies in relation to specific needs.
- Takes account of the safety needs of people who use the premises.
- Ensures that all safety precautions are in place and tested with regard to all specialist equipment that are physically fixed to the premises.
- Ensures care is taken to maintain a suitable and safe environment for treatment having regard to the impact from equipment in use.
- Ensures the premises reflect Department of Health published guidance.

3.2 People can be confident that, in relation to maintenance, renewal and service continuity:

- There are clear procedures, which cover:
 - a. How the premises are maintained
 - b. The identification, assessment, management and review of risks
 - c. The collection, storage, handling, transport, treatment and disposal of waste.
- Appropriate risk assessments are undertaken regarding the safety and suitability of the premises in which the care, treatment and support is delivered.
- Relevant guidance is taken into account, including that from the Care Quality Commission which may be published from time to time.

3.3 Service users and staff understand what to do in the event of an emergency.

3.4 People can be confident that, in relation to maintenance and renewal:

- There are clear procedures which cover:
 - a. What happens in the event of electricity, water or gas supply failure
 - b. What will happen in the event of a fire or flooding
 - c. Other emergencies that occur on the premises
 - d. How the situation will be managed should IT or communication systems, which are integral to the premises, fail.
- The management of risk includes the prevention and control of Legionella.

Procedure

4.0 In the event of an accident or incident occurring it is important for staff to:

- Remain calm and act in a professional manner.
- Remove or isolate any source of danger that may have caused the event or which might cause further injury
- Protect the injured person from further harm
- Summon help and administer first aid if required
- Make sure that the emergency services have been called (if required) and that any injuries are dealt with by qualified and competent staff.

4.1 Staff should be aware that:
"The most important life preserver is to preserve your own life".

"Never put yourself at risk. If an accident then happens to you, the emergency services are now dealing with two casualties instead of one".

4.2 The manager or senior member of staff on duty should ensure that after dealing with the initial accident or incident, a full and accurate record of events is documented. This will include:

- Speaking to the people involved in the event to obtain a clear understanding of what occurred.
- If a casualty is transferred to hospital, you should write your best recollection of what (if anything) they said.
- Fill out the appropriate Accident /Incident Form (Forms 002 and 003) and make an appropriate entry in the Accident Log (Form 004).
- Speak to any witnesses and document their account of the event.
- Witnesses may wish to write their own account, draw pictures or even use photographs to show what happened.

4.3 All senior staff should be aware of the circumstances under which the service is required to notify the Care Quality Commission.
Regulations 18, 19 and 20 of The Care Quality Commission (Registration) Regulations 2009 require notification without delay of:

- The death of any service user
- Any serious injury to a service user.
- Any accident or incident which has an impact on the life expectancy of a service user
- Serious illness of a service user at which nursing care is not provided.
- Any event which adversely affects the well being or safety of a service user.
- Any theft, burglary or accident in the home
- An allegation of misconduct by the provider or an employee.

The form is available from the CQC website - www.cqc.org.uk
(Type "notifications" into the search box to locate and download the form).

This awareness also extends to understanding the requirement to report to HSE those injuries which are required by Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR 2013). The two reportable lists are not the same, so is important that staff check on the HSE website

4.4 Where an accident or incident occurs which involves a service user, an entry or record must be made in the following:

- Care Plan
- Daily Report Record (Form 017)
- Communication Book (Form 010)
- Accident / Incident Form (Forms 002 or 003)
- Accident Log (Form 004)

4.5 The manager should ask the service user if they wish the service to advise their next of kin of the accident or incident.

The service users wishes in this regard should be respected.

4.6 Where the service user is unable to make known their wishes in regard to notifying the next of kin, the manager should make the decision to either notify or not.

In general terms the next of kin would be notified if:

- There is genuine cause for concern
- The service user has been admitted to hospital
- The service user has previously expressed a wish in similar circumstances
- The next of kin has expressly requested to be informed in such circumstances.

4.7 The manager should review the causes and results of each accident or incident to determine if there is a learning opportunity to prevent a recurrence in the future or whether further action needs to be taken in order to make the service safe.

Media Interest

4.8 All staff should be aware that they should refrain from making comments to anyone outside the service, at any time.

This includes comments to the press, TV, radio or other members of the media.

4.9 Staff should be aware that when an accident or incident occurs in the home, there is a legal process that must be followed as part of an investigation.

Following investigation, the Care Quality Commission, Health and Safety Executive, Police or other enforcing agency, may decide to take legal action against the service, a contractor in the home or any other individual who is either employed by the service.

It may well prejudice the legal process for information to be placed in "the public domain" which might later form part of a court case.

4.10 Staff should also be aware that inappropriate comments made by staff at such a time might be seen to indicate an admission of liability on the part of the service or another individual, which could well have a prejudicial effect on the service if legal action follows.

4.11 In cases where an individual is responsible for deliberately passing information to the media which subsequently undermines the legal process, they may well be guilty of "Contempt of Court" and be ordered to appear in court.

4.12 In an effort to reduce the pressures on staff and reduce the risk of an accidental disclosure of information by staff who are approached by any representative of the media in relation to any accident or incident, staff should be advised to comment:

"I am sorry, but I am unable to comment at this time. If you wish, I can give you the name and telephone number of the Service Manager who will be able to assist you. Thank you. Good bye".

4.13 Wherever there is media interest in the activities of the home, the manager is responsible for handling all such media enquiries.

In some circumstances these questions will require to be passed to the Directors or owners of the service.

Specific arrangements should be included in the Emergency Plan.

4.14 The manager should promote a culture of openness in all aspects of the serviced activity but must be mindful at all times that individual confidentialities must be maintained throughout.

5.0 Duty of Candour

Definition

Following the Mid Staffordshire inquiry report from Sir Robert Francis a new concept of "Duty of Candour" was created.

This has been defined by Sir Robert as:

"The volunteering of all relevant information to persons who have or may have been harmed by the provision of services, whether or not the information has been requested and whether or not a complaint or a report about the provision has been made".

5.2 From 1st April 2015 the "Duty" of Candour is placed on the "Registered Person". This includes the Registered Care Provider (Nominated Individual) and the Registered Manager of the service.

5.3 The stated aim of this new "Duty" is to:

- Detect problems without delay
- Be open, honest and transparent following incidents
- Create a culture of "zero harm" and compassionate care
- Ensure real leadership and motivation of all care staff

5.4 Where the Registered Person / Registered Manager fail to adhere to the Duty of Candour, they may be liable to criminal proceedings in some cases. Equally, companies are vicariously liable for the actions of their employees.

When an incident or accident occurs, which is "notifiable" to CQC

5.5 In addition to any other actions taken by staff and specifically in relation to ensuring compliance with The Duty Of candour, the Manager must – regardless of whether any information has been requested:

- Contact the resident and / or their next of kin to explain that a notifiable incident has occurred. The explanation should include any material facts as they may be known and should include an appropriate expression of regret / apology. No staff member should ever suggest that they "think this is what probably happened" – only state provable facts.
- Where an incident / accident is notifiable to CQC, the manager should seek insurers / insurance brokers and / or legal advice if required.

This will ensure that what you say complies with the Law without giving any admission of liability. Such admissions could potentially prejudice the insurers position in the event of a claim.

******Please Note******

Apologising for what has happened is not the same as advising that the organisation is responsible – the Manager should apologise for what has happened, not what they may, or may not, have caused.

- Be aware of the publications "Saying Sorry" (NHS Litigation Dept.) and NPSA Leaflet "Being Open".

- Answer any questions raised as honestly and openly as possible, making sure that responses are factual and can be supported with available evidence

5.6 Surveys over a number of years have indicated that there are two main factors in why people take legal action:

1. The original injury
2. Inensitive handling and poor communication post incident

The results further indicate that a prompt apology, explanations and reassurance that the events will not reoccur may prevent many claims from being brought at all.

What This Actually Means In A Social Care Setting

5.7 The most obvious example is when a person is injured as a result of falling.
In the past this may have just been considered to be 'one of those things', investigated, notification made and any follow up preventative actions carried out

The law now requires that, under our "Duty of Candour" (Regulation 20), we need to talk to the people who might be (or might have been) affected.

******Please Note******

Good service providers will already be meeting the Duty of Candour requirements as part of their normal management process.

However, we must ensure that:

- We speak to the injured person, their family or declared next of kin and tell them what has happened.
- When we speak to the injured person or their family, we should tell them we are sorry for what has happened.
- We do not tell the injured person or their family that we are sorry for anything that we may have caused – this is likely to be construed as an admission of guilt / liability and may invalidate any insurance cover the service has in place.
- This means that we also need to ask service users, their relatives and next of kin what they want to know about and answer as fully as we are able - ensuring that we only state facts that can be proved – not assumptions or conjecture

5.8 Many server providers purchase legal advice and indemnity insurances which operate at times when notifiable incidents / events occur.

Before "expressing apology and regret", the manager is strongly advised to contact their insurers or legal advisors to ensure that they are not going to say something in a way which could be seen as an admission of liability on the part of the service.

All staff must be aware that what they say at this time may be critical at some point in the future.

5.9 A simple statement or expression may be seen, in the eyes of the law, as an admission of liability. In almost all insurance policies, there is a clause which invalidates the insurance cover if the wrong process is followed.

The insurer should be able to provide a written process for the service to follow.

5.10 Current evidence would suggest the vast majority of people will not want to know about a

minor event which causes no injury other than slight bruising - but do want to know about a incident or accident which requires medical intervention and may be notifiable to CQC.

In order to have confidence that the "Duty of Candour is being fully and effectively discharged, establishing at the outset what service users, their relatives or interested parties want to be informed about is crucial.

5.11 There is evidence to show that where an incident is handled well, many families will not pursue further action. However, where an incident is handled badly or families feel that they have not been fully informed or even feel that information has been withheld, the likelihood of further action multiplies by anything up to tenfold.

Duty Of Candour - Regulation 20A

5.12 Whenever the home has been given a rating by CQC following an inspection, the manager must display the results for public viewing.

5.13 In the case of any website maintained by, or on behalf of, the home:

- The Care Quality Commission website address
- The place on the CQC website where the most recent inspection results can be accessed
- The most recent rating by CQC for the service – ensuring that it is clearly evident that the rating relates to the service and no other part of the business

5.14 The manager must ensure that there is at least one notice which shows the most recent rating by the Care Quality Commission relating to the service.
The notice or sign must be:

- Legible
- Displayed conspicuously in a place which is accessible to service users and visitors
- Dated with the date that the rating was given by CQC

5.15 Where the service is part of a group or larger organisation, there must be a sign displayed in the "principal place of business" (Head Office) showing the service providers overall performance and the performance of each individual care home or premises to which a CQC rating relates.

The Following Evidence Will Demonstrate That The Required Outcomes Are Being Met And Relevant Standards Achieved

6.0 There should be evidence that:

- There is a robust Accident / Incident reporting system in place in the service
- The approved and appropriate forms are used
- Staff are aware of the system in use and follow it
- Records are appropriately made and retained
- Accidents and Incidents are followed up to ascertain outcomes and identify learning opportunities
- Accidents and Incidents are routinely analysed for trends and patterns

Training Required

7.0 Staff should be aware of the following:

- An accident is defined as:
"Any event whose occurrence could not readily have been foreseen which results in a bodily injury to any person".
- An incident is defined as:
"Any event whose occurrence could not readily have been foreseen and no bodily injury is sustained by any person".
- Staff should be aware of the requirements of Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR 2013).
- Staff should understand the requirement of some accidents or incidents to be reported to the Health and Safety Executive or the Care Quality Commission
- All staff should receive awareness training and familiarisation with the accident recording system as part of the Induction Training Programme.

Forms And Referenced Documents For This Procedure

- 8.0 Form 002 - Accident / Incident Form – Service User – available from office
- 8.1 Form 003 - Accident / Incident Form – Non Service User – available from office
- 8.2 Form 004 - Accident Log
- 8.5 Form 063 – Care Plan
- 8.6 Reference - CQC website address is: www.cqc.org.uk