Essex Partnership University
NHS Foundation Trust

POLICY ON COMMUNICATING PATIENT SAFETY EVENTS: BEING OPEN AND THE DUTY OF CANDOUR

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POLICY SUMMARY
This policy and associated guidance aims to ensure that the Trust has an open, honest and consistent approach to communication with patients, relatives, staff or relevant others in the event of any patient safety incident, complaint or claim. The guidance describes the process for acknowledging, apologising and explaining when things go wrong and also outlines the professional, contractual and statutory Duty of Candour to which staff must comply to ensure that when cases of severe or moderate harm occur patients and relatives are fully informed and involved in the investigation process.
The Trust monitors the implementation of and compliance with this policy in the following ways;
Monitoring of implementation and compliance with this policy and associated procedural guideline will be undertaken by the Trust Safeguarding Group and the Mental Health and Safeguarding Committee.

Services	**Applicable**	**Comments**
Trustwide	✓	

The Director responsible for monitoring and reviewing this procedure is Executive Director of Mental Health & Deputy CEO

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

POLICY ON COMMUNICATING PATIENT SAFETY EVENTS, 'BEING OPEN'

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ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

POLICY ON COMMUNICATING PATIENT SAFETY EVENTS: "BEING OPEN" AND THE DUTY OF CANDOUR

1.0 INTRODUCTION

1.1 Essex Partnership University NHS Foundation Trust (EPUT) is committed to the provision of high quality health care and encourages principles of good practice throughout all services. The Trust recognises that when an incident occurs or when things go wrong resulting in the harm of a service user it is essential that honest and open communication between healthcare teams and service users/carers is carried out in a timely and appropriate manner. Ensuring good communication when a patient safety event occurs is essential and can aide in the prevention of incident recurrence.

1.2 **Being Open**

The culture of being open should be intrinsic throughout the Trust. It involves:

- Acknowledging, apologising and explaining when things go wrong;
- Conducting a thorough investigation into the incident and reassuring service users, their families and carers that lessons learned will help prevent the incident recurring;
- Providing the support for those involved to cope with the physical and psychological consequences of what happened.

Promoting a culture of being open in all communication is therefore a prerequisite to providing high quality healthcare and improving patient safety.

1.3 **Duty of Candour**

The Duty of Candour is the requirement for all clinicians, managers and healthcare staff to inform patients/relatives of any actions which have resulted in harm. It actively encourages transparency and openness and the Trust has a contractual obligation to ensure compliance with the standard for all incidents that result in moderate or severe harm, or death.

2.0 BACKGROUND

2.1. In 2005 the National Patient Safety Agency (NPSA) advised all NHS organisations to implement "*Being open Safer Practice Notice*" and subsequently updated this notice with a *Patient Safety Alert; Being open.* (2009). This document uses this guidance and aims to describe how the Trust demonstrates its openness concerning service user related safety events when mistakes are made.

2.2. The National Health Service Litigation Authority *Apologies and explanations. Letters to Chief Executives and Finance Directors* (2009) requires all Trusts to demonstrate that following a clinical serious incident, complaint or claim a

nominated staff member(s) will be identified to engage with service users, carers, relatives and staff. This policy and associated guidance describes the arrangements in place to support service users, carers and relatives and emphasises that they should receive an apology as soon as possible after a service user related safety event that is appropriate and genuine.

2.3 Regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

(http://www.legislation.gov.uk/ukdsi/2014/9780111117613/pdfs/ukdsi_9780111117613_en.pdf)

is a direct response to recommendation 181 of the Francis Inquiry report into Mid Staffordshire NHS Foundation Trust. This recommendation states that a statutory duty of candour should be imposed on healthcare providers. In interpreting the regulation on the duty of candour, the Care Quality Commission has published guidance on how this will be regulated and inspected. This guidance can be located at:

http://www.cqc.org.uk/sites/default/files/20141120_doc_fppf_final_nhs_provider_guidance_v1-0.pdf

3.0 DEFINITIONS

3.1 A patient safety event is 'any unintended or unexpected incident that could have or did lead to harm for one or more patients receiving NHS funded healthcare'.

3.2. A serious incident (SI) is a serious incident or near miss which may require further investigation including those reported via Safeguarding Children and Safeguarding Adults procedures.

3.3. A complaint is an expression of dissatisfaction received by the Trust verbally or in writing either directly from or on behalf of existing or former service users, carers, relatives, visitors or other users of Trust facilities.

3.4. A claim is a request for compensation.

3.5. Root Cause Analysis is a structured approach and reporting system for investigations of patient safety events or incidents.

4.0 SCOPE

4.1. The policy is to be implemented following all patient safety events and applies to all staff involved in the treatment of service users and those who are involved in the investigation of incidents, complaints and claims.

4.2. "Near miss" or "no harm incidents" are not included within this policy. It is not a requirement that "prevented", "no harm" or "near miss" events are discussed with patients. Where his type of incident occurs, managers and healthcare staff may use discretion and make local decisions giving consideration to

communicating to service users where they believe that it is in the best interests of the service user their family and carers to do so.

4.3. This policy needs to be read in conjunction with the Policy and Procedure for Reporting Adverse Incidents (including Serious incidents), Guidance on Supporting Staff during an Investigation, Complaints Policy, Claims Policy and the Service User Communication and Information Policy.

5.0 RESPONSIBILITIES

5.1 The Executive Board has overall responsibility for ensuring the principles of this policy and procedures and other associated policies are implemented across the organisation. The duty of ensuring all measures needed to implement the policy and associated procedural guidelines is delegated to Directors within their areas of responsibility.

5.2. The Trust Board of Directors is fully committed to a culture of providing high quality healthcare and improving patient safety, this embraces the implementation of the principles of this Policy which will be monitored through the clinical and risk management Governance.

5.3. The Executive Director of Mental Health & Deputy CEO will ensure:

- This policy and procedural guidance is embedded into clinical practice and updated regularly.
- The identification and implementation of training and educational needs arising from this policy documentation are met.

5.4. The Medical Director will ensure that there is effective training and information for medical staff in the implementation of this Policy and related guidance.

5.5. Directors and Senior Management will have responsibility within their own service area for;

- Monitoring the implementation of this policy via clinical audit and supervision.
- Ensuring staff receive effective training and that they are competent to implement being open and Duty of Candour principles
- Ensure training records are maintained
- Ensure that the Risk Management Team is appropriately notified on all Patient Safety Events.
- Be able to evidence that EPUT policies have been followed during any level of investigation.

5.6. The Learning Lessons Oversight Committee will in relation to being open and the Duty of Candour:

- Ensure there is a measured approach to learning Trust-wide by sharing examples of good practice, and positive outcomes from being open/ Duty of Candour following patient safety events that occur within the Trust.
- Produce a quarterly report to provide assurance to the Board that the principles of being open/Duty of Candour are being upheld and that

learning from experience is facilitated within the organisation aimed at improving quality of care and safety.

- Undertake a regular and systematic analysis of adverse incidents including serious incidents.
- Discuss any narrative or statistical information identified through the being open/Duty of Candour process about practice, service user or staff safety issues, which may not yet be reported or evidenced from which learning points can be identified and report to the Integrated Governance Committee.
- Identify new risks emanating from Patient Safety Events that may require a risk assessment and subsequent entry on to the Trust Risk Register as appropriate
- Share learning opportunities with the wider Trust through the governance structure to facilitate changes in practice
- Organise two learning workshops to include being open/Duty of Candour processes to be held each year (one in the south and one in the north). The workshops will be open to carers, service users and staff.

5.7. Managers and other Persons in Charge/Team Leaders/Ward Managers/Senior Sisters and Charge Nurses, where identified as the nominated Contact point for Service users their families and carers that have been involved in a Patient Safety Event will:

- Ensure the procedures and principles detailed within this policy and associated procedural guidance are followed, documented and monitored to meet all relevant guidance.
- Follow this Policy's procedural guidance Section 3.0 "Being Open" Process.

5.8. Individuals have a responsibility to ensure that the principles contained within this policy and associated guidelines are followed; in that they:

- Must ensure that they report all patient safety events, complaints or claims to their line manager immediately.
- Have an awareness of this Being Open Policy.
- Have responsibility to ensure as part of continuing professional development they acquire, maintain and disseminate knowledge and skills to carry out where required the principles of being open and THE Duty of Candour.
- Through, clinical supervision and post event reviews, can expect to receive support tailored to their individual need.

6.0 KEY PRINCIPLES

6.1. Below there is set out the underlying principles for the processes for open communication and support, between healthcare organisations, healthcare teams, staff and service users, their families and or carers. To enable a consistent approach in being open, all Trust staff must approach communication involving any incident between service user and or carers relatives using the following key principles, *Ten Key Principles of "Being*

Open" (NPSA, 2005). They can be adapted to meet local and individual situational need.

6.2. Ten Key Principles of *"Being Open"*

1. Principle of Acknowledgement - all incidents should be acknowledged and reported as soon as identified to the person in charge of the area. The person in charge or line manager will agree with the Clinical Manager the person nominated to communicate with the service user, relatives and or carers.

2. Principles of Truthfulness, Timeliness and Clarity of Communication – information must be given in a truthful and open manner by the nominated person who should give a step-by-step explanation of what happened. Communication must be timely and information must be based solely on the facts known at that time and updated with any new information as it emerges. Information must be clear and unambiguous with the nominated person as the single point of contact.

3. Principle of Apology – a sincere expression of sorrow or regret for any harm that has resulted from an incident must be communicated by a nominated staff member; consideration of the use of an MDT discussion to compliment the apology. Both verbal and written apologies should be given as early as possible by the nominated member of staff. The most important consideration here is not to delay in giving a meaningful apology for any reason, (service users are more likely to seek medico-legal advice if verbal and written apologies are not promptly communicated).

4. Principle of Recognising Patient and Carer Expectations – service users and or carers should be fully informed of the issues surrounding an incident and its consequences, in a face to face meeting with a representative from the Trust. They should be treated sympathetically, with respect and consideration, and provided with support where required to met their needs such as an independent advocate and or translator. Where appropriate, information on the Patient Advisory and Liaison Service (PALS) and other relevant support groups such as Cruse Bereavement Care should be given, as soon as it is possible.

5. Principle of Professional Support – the Trust aims to create a culture where all incidents are reported and where staff feel supported throughout the incident investigation process. To this end the NPSA incident decision tree (IDT) as detailed in SI Policy Corporate Procedural Guidelines CP3 is used. Where there is a reason to believe a member of staff has committed a criminal act the Trust will advise staff at an early stage to obtain legal advice and or representation, relevant Trust policies in this process must be followed and include:
    - CP53/ CPG53 Raising Concerns Policy (Whistleblowing Policy)
    - HR27a/HRPG27a Disciplinary Policy

6. Principle of Risk Management and Systems Improvement – Root Cause Analysis (RCA), Significant Event Audit (SEA) investigations will be used to investigate a patient safety event as per Trust Adverse Incident Policy CP3 and Trust Complaints policy CP2.

7. Principle of Multi-Disciplinary Responsibility (MDT) – it is important to identify senior managers and senior clinicians to participate in incident investigation and clinical risk management as per Trust Adverse Incident Policy CP3 and complaint investigation as per Trust policy CP2.

8. Principle of Clinical Governance – findings from investigations are analysed and are disseminated so that continuous learning programmes and audits are developed to allow monitoring of the implementation of changes in practice. A system of accountability is set out within the policy.

9. Principle of Confidentiality – full consideration in respect of confidentiality and privacy must be appropriately maintained. Details of a patient safety incident should at all times be considered confidential. Consent of the individual concerned should be sought prior to disclosing information beyond the clinicians involved in treating the service user. The service user, relatives and or carers will be informed who will be conducting and involved in the investigation before the investigation takes place to give an opportunity to raise any objections.

10. Principle of Continuity of Care – service users are entitled to expect that they will continue to receive all usual treatment and continue to be treated with dignity, respect and compassion. If a service user expresses a preference for their healthcare needs to be taken over by another team appropriate arrangements will be made for them to receive treatment elsewhere.

7.0 PROCEDURAL CONTENT

7.1. Being open is a process rather than a ‘One Off’ event and involves a number of stages the Procedural Guidance documentation attached to this policy covers the following elements of implementation.

7.2. General considerations and foundation principles for being open and the Duty of Candour process:

- Incident detection/recognition and immediate actions
- Initial reporting and preliminary Team discussions
- The initial discussion with patient/carer
- Investigation process and relevant follow up discussions
- Outcomes/process completion

7.3. The corresponding procedural guidance provides further detail around considering and dealing with specific patient issues/circumstances and the requirements for documenting all communication.

8.0 IMPLEMENTATION OF POLICY

8.1. This policy will be disseminated across the organisation through the Trust Intranet site.

8.2. In cases where the service users and or carers inform healthcare staff when something untoward has happened, this must be explored immediately. Any concerns must be treated with compassion and understanding by all healthcare staff. Denial of a service users concerns in any way must be avoided at all costs as this may make future open and honest communication more difficult.

9.0 POLICY REVIEW AND MONITORING

9.1. The Executive Director of Mental Health / Executive Nurse will ensure that this policy and associated procedural guidelines is reviewed every three years from the date of approval by the Trust Board of Directors.

9.2. An audit to monitor compliance and implementation of the process outlined will be undertaken at this time including as a minimum:

- Process for encouraging open communication between healthcare organisations, healthcare teams, staff, patients and/or their carers
- Process for acknowledging, apologising and explaining when things go wrong
- Requirements for truthfulness, timeliness and clarity of communication
- Provision of additional support as required
- Requirements for documenting all communication

9.3. The results will be presented to the Health Safety and Security Committee and appropriate Trust Committees for appropriate action to be taken.

10.0 ASSOCIATED DOCUMENTS AND GUIDANCE.

10.1. The Trust's documents of Policy and Procedural Guidance associated with this policy are:

- CP2 and CPG2 Complaints Policy and Guidelines.
- CP10 NHS Litigation Authority Claims Policy
- CP3 Adverse Incident Reporting including Serious incident Policy
- CLP28 Clinical Risk Assessment and Management Clinical Guideline
- CP53/ CPG53 Raising Concerns Policy (Whistleblowing Policy)
- HR27a/HRPG27a Disciplinary Policy
- MCP2/ MCPG2 Mental Capacity Act 2005 & DoLS Policy
- HR26 Employee Wellbeing & Sickness Absence Policy

10.2. This Trust Policy and Associated Procedural Guidelines is consistent with the following professional and government bodies' guidance:

- National Patient Safety Agency (NPSA), Patient Safety Alert; "Being open", 2009.
- National Patient Safety Agency (NPSA), Being Open Safer Practice Notice, 2005.

- National Patient Safety Agency (NPSA), Being open; communicating patient safety incidents with patients their families and carers. 2009.
- National Patient Safety Agency (NPSA). Seven steps to patient safety. The full reference guide. London. 2004.
- NHS Litigation Authority Apologies and Explanations. Letter to Chief Executives and Finance directors. 2009.
- General Medical Council, Good Medical Practice. 2001
- Nursing and Midwifery Council, The Code: standards of conduct, performance and ethics for nurses and midwives.
- Department of Health. The NHS Constitution for England. 2009.
- Department of Health, Listening, responding, improving – A guide to better customer care. 2009.
- The Mental Capacity Act 2005

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