Duty of Candour Policy

1. Purpose

This policy aims to improve the quality and consistency of communication when children, young people and adults (**CYPAs**) are involved in a notifiable incident by ensuring that, if mistakes are made, CYPAs and/or their parents/carers receive the information they need promptly in order to enable them to understand what has happened; receive an apology; and that CYPAs and/or parents/carers are informed of the action Ambitious about Autism will take to try and ensure that a similar type of incident does not recur.

An apology is not an admission of liability.

2. Statutory Guidance

The Duty of Candour (CQC Regulation 20) came into force for NHS Bodies and Health and Social Care on 27 November 2014 (updated March 2015) and is a direct response to recommendation 181 of the Francis Inquiry report into Mid Staffordshire NHS Foundation Trust which recommended that a statutory duty of candour be imposed on healthcare providers. In interpreting the regulation on the duty of candour, Ambitious about Autism uses the definitions of openness, transparency and candour used by Robert Francis in his report:

- **Openness** – enabling concerns and complaints to be raised freely without fear and questions asked to be answered.
- **Transparency** – allowing information about the truth about performance and outcomes to be shared with staff, learners, the public and regulators.
- **Candour** – any CYPA harmed by the provision is informed of the fact and an appropriate remedy offered, regardless of whether a complaint has been made or a question asked about it.

The regulation and its implementation reflect the approach proposed by the Dalton/Williams review (March 2014), including defining a notifiable patient/service user safety incident to include moderate harm, severe harm, death, and prolonged psychological harm. These definitions are contained within Regulation 20 itself. NHS bodies have been encouraged for some time to voluntarily report moderate incidents. Regulation 20: Duty of Candour is seen in full in Appendix 1.

The Being Open framework was updated in November 2009 by the National Patient Safety Agency (NPSA - The NPSA no longer exists, but its functions transferred to the NHS Commissioning Board Special Health Authority on 1 June 2012). It details how being open about what happened and discussing patient safety incidents promptly, fully and compassionately can help service users, their carers/families and professionals to cope better with the aftereffects.

3. Policy Statement

Promoting a culture of openness is a prerequisite to improving service user safety and the quality of healthcare systems. It involves apologising and explaining what happened to service users who have been harmed in the course of their treatment. It ensures that communication is open, honest and occurs as soon as possible following an incident. It

encompasses communication between external organisations, care, education and CYPA and/or their parents/carers.

Ambitious about Autism is committed to improving communication between CYPAs, parents/carers and other professionals when a CYPA has suffered a serious injury, has died or might die or come to harm (including psychological harm) as the result of a CYPA safety or behavioural incident.

4. Key Principles

4.1 Principle of truthfulness, timeliness and transparency of communication

The senior leader on duty must give information about a CYPA safety incident to users and/or their carers in a truthful and open manner. CYPAs want a step-by-step explanation of what happened that considers their individual needs and is delivered openly. Communication should also be timely, CYPAs and/or their parents/carers should be provided with information about what happened as soon as practicable. It is also essential that any information given is based solely on the facts known at the time. Staff should explain that new information may emerge as an incident investigation is undertaken and CYPAs and/or their parents/carers will be kept up to date with the progress of an investigation. CYPAs and/or their parents/carers should receive clear, unambiguous and transparent information and be given a single point of contact for any questions or requests they may have. They should not receive conflicting information from different members of staff and using jargon which they may not understand should be avoided. It is accepted that on rare occasions situations might arise where it might be inappropriate and/or not in the best interests of the CYPA or carer to be informed. Where such concerns are evident advice should be sought.

4.2 Principle of apology

CYPAs and/or their parents/carers should receive a sincere expression of sorrow or regret for the harm that has resulted from a CYPA's safety incident. This should be appropriately worded, in an agreed manner and as early as possible. Both verbal and written apologies should be given.

Verbal apologies are essential because they allow face-to-face contact between the CYPA and/or their parent/carers and the team. This should be given as soon as staff are aware an incident has occurred. It is important not to delay for any reason including waiting for a more formal multidisciplinary Being Open discussion with the CYPA and/or their parents/carers, fear and apprehension or lack of staff availability. Delays are likely to increase the CYPAs and/or their parents/carer's sense of anxiety, anger or frustration.

A written apology signed by a senior leader at Ambitious about Autism, which clearly states that the organisation is sorry for the suffering and distress resulting from the incident, must also be given.

4.3 CYPAs with learning disabilities

Where a CYPA has difficulties in expressing their opinion verbally, an assessment should be made about whether they are also cognitively impaired (see above). If the CYPA is not cognitively impaired, they should be supported in the Being Open process by alternative communication methods (e.g. given the opportunity to write questions down, use PECs, iPad, communication mats). An advocate, agreed on in consultation with the CYPA, should be appointed. Appropriate advocates may include carers, family or friends of the CYPA. The advocate should assist the CYPA during the Being Open process, focusing on ensuring that

the CYPA's views are considered and discussed.

4.4 Service users with different communication needs

A number of CYPAs will have particular communication difficulties, such as hearing impairment. Plans for the meeting should fully consider these needs.

Knowing how to enable or enhance communications with a CYPA is essential to facilitating an effective Being Open process, focusing on the needs of individuals and their families. The lead for Speech & Language Therapy can be approached for advice regarding appropriate communication with people who have complex communication difficulties.

5. Roles and Responsibilities

Responsibility for the development, maintenance and review of this policy lies within the senior leadership team. All staff have a duty to uphold this policy with the organisation as part of their duty of care and duty of candour.

5.1 Chief Executive

The Chief Executive is responsible for ensuring the infrastructure is in place to support openness between care professionals and CYPAs and/or their carers following an incident that led to serious harm, major harm, or death.

5.2 All members of staff

All staff will be expected to adhere to this policy. Staff will also be aware of the relevant requirements regarding the duty of candour as set out in their relevant professional regulatory body's codes of conduct. All staff have a responsibility for ensuring that CYPA safety incidents are acknowledged and reported via Databridge or My Concern as soon as they are identified. In cases where the CYPAs and/or carers inform staff when something untoward has happened, it must be taken seriously from the outset. Any concerns should be treated with compassion and understanding by all staff.

6. Other Key Policies

This policy should be read alongside the following other policies, which can be found on the AaA website, or requested:

- Adult at Risk Safeguarding and Protection Policy and Procedure
- Behaviour Policy
- Child Protection and Safeguarding Policy and Procedure
- Code of Conduct
- Compliments and Complaints Policy
- Preventing Extremism and Radicalisation Policy
- Risk Assessment Policy
- Serious Incident Reporting Policy
- Whistleblowing Policy

7. Further details found in Appendix 1

More information regarding the Duty of Candour regulations can be found in the appendix below:

- Appendix 1: CQC Regulation 20 regarding Duty of Candour.

8. Monitoring Arrangements

This policy will be reviewed by the Nomination and Renumeration Committee and approved by the Joint Group Board Committee on an annual basis.

Appendix 1: Regulation 20: Duty of Candour

1. Registered persons must act in an open and transparent way with relevant persons in relation to care and treatment provided to service users in carrying on a regulated activity.

2. As soon as reasonably practicable after becoming aware that a notifiable safety incident has occurred a health service body must—

    a. notify the relevant person that the incident has occurred in accordance with paragraph (3), and
    b. provide reasonable support to the relevant person in relation to the incident, including when giving such notification.

3. the notification to be given under paragraph (2)(a) must—

    a. be given in person by one or more representatives of the registered person,
    b. provide an account, which to the best of the registered person's knowledge is true, of all the facts the registered person knows about the incident as at the date of the notification,
    c. advise the relevant person what further enquiries into the incident the registered person believes are appropriate,
    d. include an apology, and
    e. be recorded in a written record which is kept securely by the registered person.

4. The notification given under paragraph (2)(a) must be followed by a written notification given or sent to the relevant person containing—

    a. the information provided under paragraph (3)
    b. details of any enquiries to be undertaken in accordance with paragraph (3)
    c. the results of any further enquiries into the incident, and
    d. an apology.

5. But if the relevant person cannot be contacted in person or declines to speak to the representative of the registered person —
    (a) paragraphs (2) to (4) are not to apply, and
    (b) a written record is to be kept of attempts to contact or to speak to the relevant person.

6. The registered person must keep a copy of all correspondence with the relevant person under paragraph (4).

7. In this regulation—

"apology" means an expression of sorrow or regret in respect of a notifiable safety incident.

"Moderate harm" means—

(a) harm that requires a moderate increase in treatment, and
(b) significant, but not permanent, harm.

"Moderate increase in treatment" means an unplanned return to surgery, an unplanned re-admission, a prolonged episode of care, extra time in hospital or as an outpatient, cancelling of treatment, or transfer to another treatment area (such as intensive care);

"Notifiable safety incident" has the meaning given in paragraphs (8) and (9);

"Prolonged psychological harm" means psychological harm which a service user has experienced, or is likely to experience, for a continuous period of at least 28 days;

"Prolonged pain" means pain which a service user has experienced, or is likely to experience, for a continuous period of at least 28 days;

"Relevant person" means the service user or, in the following circumstances, a person lawfully acting on their behalf—

(a) on the death of the service user, (b) where the service user is under 16 and not competent to make a decision in relation to their care or treatment, or (c) where the service user is 16 or over and lacks capacity in relation to the matter;

(b) "severe harm" means a permanent lessening of bodily, sensory, motor, physiologic or intellectual functions, including removal of the wrong limb or organ or brain damage, that is related directly to the incident and not related to the natural course of the service user's illness or underlying condition.

8. In relation to a health service body, "notifiable safety incident" means any unintended or unexpected incident that occurred in respect of a service user during the provision of a regulated activity that, in the reasonable opinion of a health care professional, could result in, or appears to have resulted in—

   a. the death of the service user, where the death relates directly to the incident rather than to the natural course of the service user's illness or underlying condition, or
   b. severe harm, moderate harm or prolonged psychological harm to the service user.

9. In relation to a registered person who is not a health service body, "notifiable safety incident" means any unintended or unexpected incident that occurred in respect of a service user during the provision of a regulated activity that, in the reasonable opinion of a health care professional—

(a) appears to have resulted in—
   i. the death of the service user, where the death relates directly to the incident rather than to the natural course of the service user's illness or underlying condition,
   ii. an impairment of the sensory, motor or intellectual functions of the service user which has lasted, or is likely to last, for a continuous period of at least 28 days,
   iii. changes to the structure of the service user's body,
   iv. the service user experiencing prolonged pain or prolonged psychological harm, or
   v. the shortening of the life expectancy of the service user; or

(b) requires treatment by a health care professional in order to prevent—
   i. the death of the service user, or
   ii. any injury to the service user which, if left untreated, would lead to one or more of the outcomes mentioned in subparagraph (a).