

COVID-19 Public Inquiry: Duty of Candour

Liz Hackett, partner
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“They're excellent - they're very professional and very experienced.”

Chambers 2021

Overview of session

- A reminder of the duty of candour
- The duty of candour, inquiries and arising liabilities
- Fostering a culture of candour

Duty of candour

- The quality of being open and honest
- When things go wrong, patients and their families expect three things:
 - To be told honestly what happened
 - What can be done to deal with any harm caused
 - What will be done to prevent recurrence to someone else
- There is a duty of candour on all organisations registered with the CQC and all registered professionals

Duty of candour

- Duty to tell patients, and where appropriate their families, in an open and honest way when unanticipated errors occur, causing harm to the patient above a predetermined threshold
- Not a new or novel concept
- Sir Robert Francis: Mid Staffordshire NHS Foundation Trust Public Inquiry

Duty of candour

- Regulation 20: Health and Social care Act 2008 (Regulated Activities) Regulations 2014
- Any unintended or unexpected **notifiable safety incident** that did or could have led to harm for anyone to whom the Trust provides care and treatment
- Harm must reach the threshold:
 - Catastrophic harm
 - Severe harm
 - Moderate harm
 - Prolonged psychological harm (28+ days)

Duty of candour

- Recognising when an incident that causes harm to a patient occurs
- Notifying the patient, or a person lawfully acting on their behalf, that something has occurred
- Apologising to the patient
 - NHS Resolution "Saying Sorry" leaflet

Duty of candour

- Supporting the patient
- Keeping the patient updated as investigations evolve
- Fully documenting compliance with the above
- What about low harm and near misses?

Candour in inquiries

- Public hearings shine a light on candour
- Prime Minister in announcing the Covid-19 Inquiry stated that it would enable the

“state [to discharge its] obligations to examine its actions as rigorously and candidly as possible and to learn every lesson for the future.”

Candour in inquiries

- Huge public interest in any inquiry, but particularly so in Covid-19
- At the heart of a public inquiry is:
 - what happened
 - why it happened
 - **what can be done to prevent it happening again**

Candour in inquiries

- Being open
- Being helpful
- Being reflective
- Saying sorry
- Demonstrating learning

Candour in inquiries

- Grenfell Tower Inquiry:

Reflecting on Phase I of the Grenfell Tower Inquiry, bereaved families *“were...vocal in their dissatisfaction with what they saw as a lack of candour on the part of the authorities and corporate entities. It was a consistent complaint arising in each of the facilitated groups with families criticising perceived evasiveness”*.

- Morcombe Bay:

Investigation Chairman, Dr Bill Kirkup CBE showed disapproval in the Morcombe bay inquiry with Trust staff refusing to be interviewed for the inquiry. The panel noted their disapproval in the report and even published one person’s refusal letter.

- Hillsborough Inquiry:

Point of learning 21 in the report:

The response of South Yorkshire Police to criticism over Hillsborough has, over the years, included several examples of what might be described as ‘institutional defensiveness’. The force’s repeated failure to fully and unequivocally accept the findings of independent inquiries and reviews has undoubtedly caused pain to the bereaved families.

Candour in liabilities arising from Covid-19

- Candour is a continuing dialogue
- Candour and inquests
- Candour in claims

A culture of candour

- Candour only effective as part of a wider commitment to safety, learning and improvement
- To support candour, there must be a culture of candour, demonstrated through
 - Induction
 - Training
 - Processes of review
 - A “just culture”
 - Avoiding defensiveness and blame
 - A commitment to learning and improvement
- Freedom to speak up

Questions/ discussion



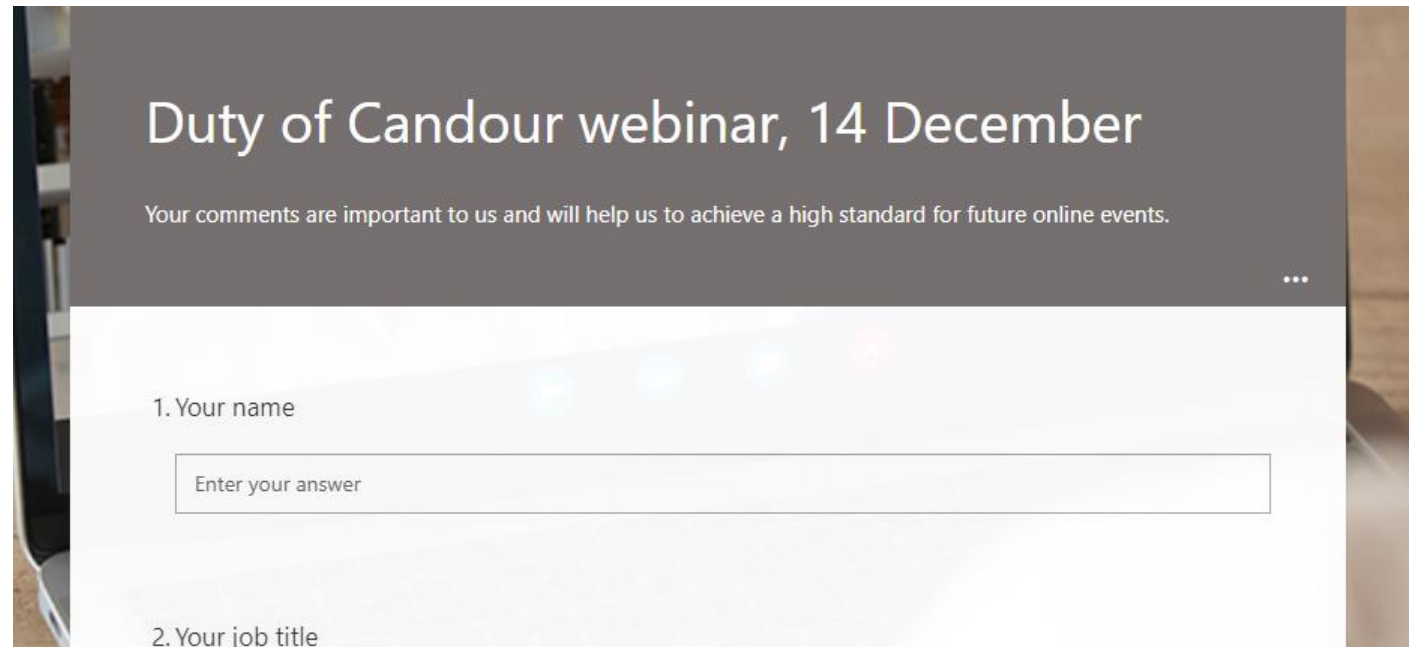
Up coming
COVID-19 public
inquiry

[Find out more about how we can help you prepare for the inquiry in our COVID-19 inquiry brochure](#)

We would be grateful if you would complete the feedback form, by

[clicking here](#)

Thank you.



Duty of Candour webinar, 14 December

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