



COSCA (Counselling & Psychotherapy in Scotland)
16 Melville Terrace | Stirling | FK8 2NE
t: 01786 475 140 f: 01786 446 207
e: info@cosca.org.uk w: www.cosca.org.uk

The Duty of Candour

COSCA's Guidance

1. Background and Introduction:

The organisational duty of candour provisions of the Health (Tobacco, Nicotine etc. & Care) (Scotland) Act 2016 and The Duty of Candour (Scotland) Regulations 2018 came into force on 1 April 2018.

- [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act](#)
- [The Duty of Candour \(Scotland\) Regulations 2018](#)

The purpose of the above duty of candour provisions is to support the implementation of consistent responses across health and social care providers when there has been an unexpected event or incident that has resulted in death or harm, that is not related to the course of the condition for which the person is receiving a service.

The legal duty of candour in Scotland applies to an individual who is a 'registered health professional' defined in the above legislation as follows: 'a member of a profession to which section 60 (2) of the Health Act 1999 applies'.

2. Application of Legal Duty of Candour

The legal duty of candour does not, therefore, apply to counsellors and psychotherapists per se as they are not registered health professionals covered under the above Health Act.

The legal duty of candour does, however, apply to 'responsible persons' defined as follows:

(a) a Health Board constituted under section 2(1) of the 1978 Act

- (b) a person (other than an individual) who has entered into a contract, agreement or arrangement with a Health Board to provide a health service
- (c) the Common Services Agency for the Scottish Health Service constituted under section 10(1) of the 1978 Act
- (d) a person (other than an individual) providing an independent health care service mentioned in section 10F(1) of the 1978 Act
- (e) a local authority
- (f) a person (other than an individual) who provides a care service
- (g) an individual who provides a care service and who employs, or has otherwise made arrangements with, other persons to assist with the provision of that service (unless the assistance in providing that service is merely incidental to the carrying out of other activities)
- (h) a person (other than an individual) who provides a social work service, with “social work services” having the meaning given by section 48 of the Public Services Reform (Scotland) Act 2010.

The Scottish Ministers may by regulations modify the above definition of “responsible person”.

It is, therefore, possible that some member organisations of COSCA are covered by the legal duty of candour.

3. The COSCA Statement of Ethics and Code of Practice

The COSCA Statement of Ethics and Code of Practice already covers the duty of candour, albeit not using the same terminology and not explicitly describing it as such.

Paragraph 2.4 in the ethical principles section of the above Statement covers this duty as follows: ‘Members demonstrate integrity, openness and objectivity to their clients and colleagues. Members do not exploit or harm their clients, or colleagues.’ In COSCA’s view the derivation of integrity is veracity, which connects directly with the duty of candour. In the Code of Practice there are various other references to how this ethical principle in the above paragraph should be enacted. Therefore, the above duty is already embedded in the COSCA Statement of Ethics and Code of Practice.

This guidance expands on the above paragraph using the language of the duty of candour and reinforces the duty that COSCA members already have to demonstrate integrity, openness and objectivity in their work.

4. Candour

COSCA acknowledges that the provision of counselling, psychotherapy, training, supervision and related services, is associated with risk and that there are unintended or unexpected events resulting in harm and death from time to time.

Members of COSCA should be open and honest with relevant parties about known risks involved in the service, and also the known costs, benefits and commitments that are associated with the service delivered.

COSCA recognises that when adverse events occur and/or when things go wrong during the provision of the above services, members should be proactively open and transparent with the relevant parties and have personal contact with those affected. They should do this regardless of whether relevant parties are aware of the above adverse events or the harm done to them e.g. when a GDPR breach or a duty of confidentiality breach occurs.

This approach is fundamental in helping to promote a culture of support, care, learning and continuous improvement in the carrying out of the above services.

When adverse events happen, COSCA individual and organisational members should tell people honestly what has happened, what will be done in response, and what actions will be taken to stop this happening again to someone else in the future. They should also provide reasonable support to the parties involved.

Being candid in this way will help to make the services offered safer in the future, and will engender greater trust in clients, students, supervisees etc.

Brian Magee
Chief Executive
COSCA (Counselling & Psychotherapy in Scotland)
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