University Hospitals of Morecambe Bay
NHS Foundation Trust

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Which Principles of the NHS Constitution Apply? 3,4,5	**Which Staff Pledges of the NHS Constitution Apply?** • Patients have the right to be treated with a professional standard of care. • Patients have the right to expect NHS bodies to monitor, and make efforts to improve continuously.
Does this document meet the requirements of the Equality Act 2010 in relation to Race, Religion and Belief, Age, Disability, Gender, Sexual Orientation, Gender Identity, Pregnancy & Maternity, Marriage and Civil Partnership, Carers, Human Rights and Social Economic Deprivation discrimination? **Yes**	
Document for Public Display: Yes	
Reference Check Completed by……Frances Sim……..Date……7.5.15…. **To be completed by Library and Knowledge Services Staff**	

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BEHAVIOURAL STANDARDS FRAMEWORK

To help create a great place to work and a great place to be cared for, it is essential that our Trust policies, procedures and processes support our values and behaviours. This document, when used effectively, can help promote a workplace culture that values the contribution of everyone, shows support for staff as well as patients, recognises and celebrates the diversity of our staff, shows respect for everyone and ensures all our actions contribute to safe care and a safe working environment - all of which are principles of our Behavioural Standards Framework.

Behavioural Standards Framework – Expectations 'at a glance'

1. SUMMARY

This Being Open Policy deals with the University Hospitals of Morecambe Bay NHS Foundation Trust's response to both an ethical responsibility and a duty of candour requiring health care professionals and managers to inform patients about actions which have resulted in harm.

In his report into the events that occurred at Mid Staffordshire Hospital, Robert Francis QC made recommendations that there should be a statutory duty of candour where there is a belief or suspicion that any treatment or care provided to a patient has caused death or serious injury.

The Health and Social Care Act 2008 (Regulated Activities) Regulations (SI 2014/2936)[1] came into force on 27th November 2014. The Regulations require NHS Trusts to act in an open and transparent way. As soon as reasonably practical after becoming aware that an incident has occurred, the organisation must notify the patient or their relative, provide an explanation as to what went wrong and, where appropriate, provide an apology.

It is recognised that a culture of openness is a precondition to improving patient safety and the quality of health care systems. This Trust is committed to the principle of openness and this policy details the meaning of openness in practice. *Being Open* is one of a range of measures in place to effectively manage unexpected events and support those affected by them.

2. PURPOSE

Implementation of the policy will lead to a:

- standardised methodology for communication with patients
- statement of the information required
- statement of the record keeping required
- standardised approach to dissemination of the information process for monitoring the policy and it's effectiveness

3. SCOPE

This policy stipulates the mandatory arrangements for communication about patient safety incident information with patients or carers.

Importantly it does not prevent the passage of other information to patients about patient safety incidents they may have been involved in. Communication with patients and relatives is integral to their care and staff are encouraged to discuss matters openly with patients and carers.

The level of response in relation to the information deemed appropriate to share with patients and their carers requires an assessment in accordance with the grade of incident to ensure consistency of approach. The mandatory decision to be open and the level of response are dependent on the grading of the patient safety incident.

4. POLICY

4.1 Duties

4.1.1 Governance Team

- Reporting information on the Being Open process and key performance indicators to the Clinical Divisions and the Trust Committees.
- Undertake quarterly audit of statutory Duty of Candour compliance.

4.1.2 Senior Person responsible for the individual's care

- Responsibility for ensuring the Being Open Policy is followed in appropriate incidents.
- Responsibility for maintenance and safe storage of documentation.
- Providing patients with a letter, as detailed in Appendix 1
- Ensure the details of communication with patients are recorded on the incident report.

4.1.3 All staff

- Ensure the details of communication with patients are recorded on the incident report.

4.1.4 Junior Staff

It is unacceptable for junior staff to communicate patient safety information alone or to be delegated the responsibility to lead a *Being Open* discussion unless they volunteer and their involvement takes place in appropriate circumstances (i.e. they have received appropriate training and mentorship for this role).

4.1.5 Trust Board

The Trust Board will receive and discuss minutes of the Quality Committee and receive regular reports on all aspects of Governance, Risk Management and Internal Controls. Adherence to this policy will be monitored by the Quality Committee through routinely reported information.

4.1.6 Weekly Patient Safety Summit

Incidents initially thought to cause moderate or greater harm are reviewed each week by the Weekly Patient Safety Summit and the requirement for the completion of Duty of Candour confirmed.

4.2 Timing

The initial *Being Open* discussion with the patient and/or their carers should occur as soon as possible after the patient safety incident. Factors to consider when timing this discussion include:

- clinical condition of the patient;
- availability of key staff involved in the incident and in the *Being Open* process;
- availability of support staff, for example a translator or independent advocate, if required;
- patient preference (in terms of when and where the meeting takes place and which healthcare professional leads the discussion);
- privacy and comfort of the patient; arranging the meeting in a sensitive location.

4.3 Discussions with patients

4.3.1 Choosing the individual to communicate with patients and/or their carers

This should be the most senior person responsible for the patient's care and/or the investigation lead. The individual(s) should:

- be known to, and trusted by, the patient and/or their carers;
- have a good understanding of the facts relevant to the incident
- have creditability associated with the level of seniority or have sufficient experience and expertise in relation to the type of patient safety incident for patients, carers and colleagues to feel confident that matters will be appropriately addressed.
- have excellent interpersonal skills, including being able to communicate with patients and/or their carers in a way they can understand and avoiding excessive use of medical jargon

Some patient safety incidents that resulted in moderate harm or severe harm may result from errors made by healthcare staff while caring for the patient. In these circumstances the member(s) of staff involved may or may not wish to participate in the *Being Open* discussion with the patient and/or their carers.

It is recognised that staff involved may be upset and distressed and require support during the process. Details of support provision are contained in the Trust policy for supporting staff involved in traumatic or stressful incidents.

Every case where an error has occurred needs to be considered individually, balancing the needs of the patient and/or their carers with those of the healthcare professional concerned. In cases where the healthcare professional that has made an error wishes to attend the discussion to apologise personally, they should feel supported by their colleagues throughout the meeting.

In cases where the patient and/or their carers express a preference for the healthcare professional not to be present, it is recommended that a personal written apology is handed to the patient and/or their carers during the first *Being Open* discussion – advice regarding the content of this letter may be sought from the Customer Care Team.

4.3.2 Content of the initial *Being Open* discussion with the patient and/or their carers

The patient and/or their carers should be advised of the identity and role of all people attending the *Being Open* discussion before it takes place. This allows them the opportunity to state their own preferences about which healthcare staff should be present.

There should be an expression of genuine sympathy, regret and an apology for the harm that has occurred.

The facts that are known and agreed by the multidisciplinary team. Where there is disagreement, communication about these events should be deferred until after the investigation has been completed. The patient and/or their carers should be informed that an incident investigation is being carried out and more information will become available as it progresses. It should be made clear to the patient and/or their carers that new facts may emerge as the incident investigation proceeds.

The patient's and/or carer's understanding of what happened should be taken into

consideration, as well as any questions they may have. Appropriate language and terminology should be used when speaking to patients and/or their carers.

The patient and/or carers should be offered an opportunity to discuss the situation with another relevant professional where appropriate.

There should be consideration and formal noting of the patient's and/or carer's views and concerns, and demonstration that these are being heard and taken seriously.

Information on likely short and long-term effects of the incident (if known) should be shared. The latter may have to be delayed to a subsequent meeting when the situation becomes clearer. An explanation should be given about what will happen next in terms of the long-term treatment plan and incident analysis findings.

An offer of practical and emotional support should be made to the patient and/or their carers. This may involve getting help from third parties such as charities and voluntary organisations as well as offering more direct assistance. Information about the patient and the incident should not normally be disclosed to third parties without consent.

The patient should be provided with contact details so that if further issues arise later there is a conduit back to the relevant healthcare professionals.

It should be recognised that patients and/or their carers may be anxious, angry and frustrated even when the *Being Open* discussion is conducted appropriately.

It is essential that the following does not occur:

- speculation;
- apportioning of blame;
- criticism or comment on matters outside their own experience;
- renunciation of responsibility;
- provision of conflicting information from different individuals.

The initial *Being Open* discussion is the first part of an ongoing communication process.

4.3.3 Documentation regarding the Being Open

There should be documentation of:

- the time, place, date, of meetings as well as the name and relationships of all attendees;
- the plan for providing further information to the patient and/or their carers;
- offers of assistance and the patient's and/or carer's response;
- questions raised by the family and/or carers or their representatives, and the answers given;
- plans for follow-up as discussed;
- progress notes relating to the clinical situation and an accurate summary of all the points explained to the patient and/or their carers;
- copies of letters sent to patients, both attached to Ulysses Safeguard and the Weekly Patient Safety Summitt minutes;
- copies of any statements taken in relation to the patient safety incident;
- a copy of the incident report form.
- a summary of the *Being Open* discussion should be shared with the patient.

Documentation regarding both the investigation and discussions with the patient and/or carer should be kept securely and separately to the patient's medical records. Details of patient contact and digitised copies of documentation should be held on the Computerised Risk Management System, linked to the incident report.

Responsibility for maintenance and safe storage of documentation lies with the investigation lead.

4.3.4 Follow-up

Being Open may not be a one-off event and regular follow-up meetings should be arranged by the investigation lead to ensure the patient and/or carers are kept updated. The investigation lead should also liaise with the legal and customer care department to avoid confusion and duplication if formal procedures were to be instigated.

Where there are implications for continuity of care, it may be valuable to consider including the GP in one of the follow-up discussions either at discharge or at a later stage, the principles described for the initial meeting apply throughout.

Patients and/or their carers should be reassured that they would continue to be treated according to their clinical needs even in circumstances where there is a dispute between them and the healthcare team. They should also be informed that they have the right to continue their treatment elsewhere if they have lost confidence in the healthcare team involved in the patient safety incident.

4.3.5 Completing the process

After completion of the incident investigation, feedback should take the form most acceptable to the patient. Whatever method is used, the communication should include:

- the chronology of clinical and other relevant facts;
- details of the patient's and/or their carer's concerns and complaints;
- a repeated apology for the harm suffered and any shortcomings in the delivery of care that led to the patient safety incident;
- a summary of the factors that contributed to the incident;
- information on what has been and will be done to avoid recurrence of the incident and how these improvements will be monitored.

It is expected that in most cases there will be a complete discussion of the findings of the investigation.

If the patient requests a copy of the incident report form and/or investigation report, ***a copy which does not identify staff by name*** should be given to them. In exceptional cases information may be withheld or restricted, for example, where communicating information will adversely affect the health of the patient; where investigations are pending coronial processes; or where specific legal requirements preclude disclosure for specific purposes. In these cases the patient will be informed of the reasons for the restrictions.

4.4 Special Circumstances

4.4.1 When a patient dies

When a patient safety incident has resulted in a patient's death it is crucial that communication is sensitive, empathic and open. It is important to consider the emotional state of bereaved relatives or carers and to involve them in deciding when it is appropriate to discuss what has happened. The patient's family and/or carers will probably need information on the processes that will be followed to identify the cause(s) of death. They will also need emotional support. Establishing open channels of communication may also allow the family and/or carers to indicate if they need bereavement counselling or assistance at any stage.

Usually, the *Being Open* discussion and any investigation occur before the coroner's inquest. But in certain circumstances it may be appropriate to wait for the coroner's inquest before holding the *Being Open* discussion with the patient's family and/or carers. The coroner's report on post-mortem findings is a key source of information that will help to complete the picture of events leading up to the patient's death. In any event an apology should be issued as soon as possible after the patient's death, together with an explanation that the coroner's process has been initiated and a realistic timeframe of when the family and/or carers will be provided with more information.

4.4.2 Children and Young People

The legal age of maturity for giving consent to treatment is 16. It is the age at which a young person acquires the full rights to make decisions about their own treatment and their right to confidentiality becomes vested in them rather than their parents or guardians. However, it is still considered good practice to encourage competent children to involve their families in decision making.

The courts have stated that younger children who understand fully what is involved in the proposed procedure can also give consent. This is sometimes known as Gillick competence or the Fraser guidelines[2]. Where a child is judged to have the cognitive ability and the emotional maturity to understand the information provided, he/she should be involved directly in the *Being Open* process after a patient safety incident. The opportunity for parents to be involved should still be provided unless the child expresses a wish for them not to be present.

Where children are deemed not to have sufficient maturity or ability to understand, consideration needs to be given to whether information is provided to the parents alone or in the presence of the child. In these instances the parents' views on the issue should be sought. More information can be found in the Consent Policy or on the Department of Health's website[3].

4.4.3 Patients with mental health issues

Being Open for patients with mental health issues should follow normal procedures, unless the patient also has cognitive impairment (see below). The only circumstances in which it is appropriate to withhold patient safety incident information from a mentally ill patient is when advised to do so by a consultant psychiatrist who feels it would cause adverse psychological harm to the patient. However, such circumstances are rare and a second opinion (by another consultant psychiatrist) would be needed to justify withholding information from the patient. Apart from in exceptional circumstances, it is never

appropriate to discuss patient safety incident information with a carer or relative without the express permission of the patient. To do so is an infringement of the patient's human rights.

4.4.4 Patients with cognitive impairment

Some individuals have conditions that limit their ability to understand what is happening to them. They may have authorized a person to act on their behalf by an enduring power of attorney. In these cases steps must be taken to ensure this extends to decision making and to the medical care and treatment of the patient. The *Being Open* discussion would be held with the holder of the power of attorney. Where there is no such person the clinicians may act in the patient's best interest in deciding who the appropriate person is to discuss incident information with, regarding the welfare of the patient as a whole and not simply their medical interests. However, the patient with a cognitive impairment should, where possible, be involved directly in communications about what has happened. An advocate with appropriate skills should be available to the patient to assist in the communication process.

4.4.5 Patients with learning disabilities

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

4.4.6 Patients who do not agree with the information provided

Sometimes, despite the best efforts of healthcare staff or others, the
relationship between the patient and/or their carers and the healthcare professional breaks down. They may not accept the information provided or may not wish to participate in the *Being Open* process. In this case the
following strategies may assist:

- deal with the issue as soon as it emerges;
- where the patient agrees, ensure their carers are involved in discussions from the beginning;
- ensure the patient has access to support services;
- where the senior health professional is not aware of the relationship difficulties, provide mechanisms for communicating information, such as the patient expressing their concerns to other members of the clinical team;
- offer the patient and/or their carers another contact person with whom they may feel more comfortable. This could be another member of the team, the individual with overall responsibility for clinical risk management or a member of the customer care team;
- use a mutually acceptable mediator to help identify the issues between the healthcare organisation and the patient, and to look for a mutually agreeable solution;
- ensure the patient and/or their carers are fully aware of the formal complaints procedures;
- write a comprehensive list of the points that the patient and/or their carer disagree with and reassure them you will follow up these issues.

4.4.7 Patients with a different language or cultural considerations

The need for translation and advocacy services, and consideration of special cultural needs (such as for patients from cultures that make it difficult for a woman to talk to a male about intimate issues), must be taken into account when planning to discuss patient safety incident information. It would be worthwhile to obtain advice from an advocate or translator before the meeting on the most sensitive way to discuss the information. Further advice, including approved arrangements for translation services, can be provided by the customer care team.

4.4.8 Patients with different communication needs

A number of patients will have particular communication difficulties, such as a hearing impairment. Plans for the meeting should fully consider these needs.
Knowing how to enable or enhance communications with a patient is essential to facilitating an effective *Being Open* process, focusing on the needs of individuals and their families and being personally thoughtful and respectful.

5. ATTACHMENTS	
Number	**Title**
1	Template Letter
2	Equality and Diversity Impact Assessment Tool

6. OTHER RELEVANT / ASSOCIATED DOCUMENTS	
Unique Identifier	**Title and web links from the document library**
Corp/Proc/057	Consent to Examination or Treatment – Adults and Children http://uhmb/cs/tpdl/Documents/CORP-PROC-057.docx
Corp/Proc/022	Reporting and Investigating Incidents including Serious Incidents http://uhmb/cs/tpdl/Documents/CORP-PROC-022.docx

7. SUPPORTING REFERENCES / EVIDENCE BASED DOCUMENTS	
References in full	
No	**References**
1	The Health and Social Care Act 2008 (regulated Activities) Regulations 2014 (SI2014/2936) Available at: http://www.legislation.gov.uk/uksi/2014/2936/pdfs/uksi_20142936_en.pdf (accessed
2	NSPCC. A child's legal rights: Gillick competency and Fraser guidelines. Available at: http://www.nspcc.org.uk/preventing-abuse/child-protection-system/legal-definition-child- rights-law/gillick-competency-fraser-guidelines/
3	Department of Health website. Available at: https://www.gov.uk/government/organisations/department-of-health (accessed
Bibliography	
	Being Open – Safer Practice Notice NPSA 2005 Available at: http://www.nrls.npsa.nhs.uk/beingopen/ (accessed 7.5.15)
	Being Open – Patient safety Alert NPSA/2009/003 Available at: http://www.nrls.npsa.nhs.uk/beingopen/ (accessed 7.5.15)

	DoH (2003). Making amends: a consultation paper setting out proposals for reforming the approach to clinical negligence in the NHS. London: DoH 2003 Available at: http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/Public ationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4010641 (accessed 7.5.15)

8. DEFINITIONS / GLOSSARY OF TERMS

Abbreviation or Term	Definition

9. CONSULTATION WITH STAFF AND PATIENTS

Enter the names and job titles of staff and stakeholders that have contributed to the document

Name	Job Title	Date Consulted

10. DISTRIBUTION PLAN

Dissemination lead:	Head of Patient Safety
Previous document already being used?	Yes
If yes, in what format and where?	Heritage
Proposed action to retrieve out-of-date copies of the document:	N/A
To be disseminated to:	
Document Library	Yes
Proposed actions to communicate the document contents to staff:	Include in the UHMB Weekly News – New documents uploaded to the Document Library

11. TRAINING

Is training required to be given due to the introduction of this procedural document? No

Action by	Action required	Implementation Date

12. AMENDMENT HISTORY				
Version No.	**Date of Issue**	**Page/Selection Changed**	**Description of Change**	**Review Date**
1.0	01/09/2006		Original	19/09/2008
2.0	16/10/2007	All	Re draft	31/10/2010
3.0		All	Re draft based on latest NHSLA guidance and Trust Management structure.	June 2015
3.1	January 2013	Monitoring Section	Monitoring amended to reflect all minimum requirements	June 2015
4	April 2015	P3 and appendix 1	Included reference to statutory duty and amendment of template	Jan 2018
4.1	04/10/2017	Page 3	BSF page added	01/04/2018
4.2	11/04/2018	Page 1	Review Date extended – form 049/2018	01/09/2018
4.3	08/11/2018	Page 1	Review Date extended – form 155/2018	01/01/2019

Appendix 1

University Hospitals of Morecambe Bay
NHS Foundation Trust

Trust Headquarters
Westmorland General Hospital
Burton Road
Kendal
LA9 7RG

Tel: <insert telephone number>
Fax: <insert fax number>
Web: www.uhmb.nhs.uk

Sample letter
<insert date>
<insert reference>

PRIVATE AND CONFIDENTIAL
<insert name>
<insert address>

Dear <insert name>

Following the recent suspected patient safety incident which occurred during your / your (insert relative) stay on (insert ward), I wish to express my sincere regret.

The Trust aims to provide a quality service to you/your (insert relative) and to investigate promptly any suspected patient safety incidents and share findings with those involved. In line with the Trust's policy of 'Being Open', we would like the opportunity to discuss our investigation with you and share our findings.

We would like to invite you to attend a meeting or to have a telephone discussion which is being organised as part of the investigation. Prior to this going ahead, I would appreciate your preference on the following options in relation to the meeting or telephone conversation:

1. Any questions which you would like answered?

2 Your preference of date and time for the meeting or telephone discussion?

If you would prefer not to attend any meetings or have a telephone discussion, then we would be grateful if you would let us know.

Once the investigation has been concluded a further meeting or telephone conversation would be arranged as required to discuss the outcomes with yourself / your family.

I / (insert staff member) will be your lead contact during the investigation process and can be contacted on (insert telephone number).

Yours sincerely

<insert name>
<insert designation>

Appendix 2 : EQUALITY & DIVERSITY IMPACT ASSESSMENT TOOL

		Yes/No	Comments
1.	**Does the policy/guidance affect one group less or more favourably than another on the basis of:**		
	• Race	No	
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender	No	
	• Culture	No	
	• Religion or belief	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Age	No	
	• Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
2.	**Is there any evidence that some groups are affected differently?**	No	
3.	**If you have identified potential discrimination are there any exceptions - valid, legal and/or justifiable?**	No	
4.	**Is the impact of the policy/guidance likely to be negative?**	No	
4a	**If so can the impact be avoided?**	N/A	
4b	**What alternative are there to achieving the policy/guidance without the impact?**	N/A	
4c	**Can we reduce the impact by taking different action?**	N/A	

If you have identified a potential discriminatory impact of this procedural document, please refer it to the HR Equality & Diversity Specialist, together with any suggestions as to the action required to avoid/reduce this impact.

For advice in respect of answering the above questions, please contact the HR Equality & Diversity Specialist, Extension 6242.