



Duty of Candour Policy

Department: Care

Version: 2

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Date approved: 17th July 2020 To be reviewed: July 2022 by
Head of Care
& Support

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1. INTRODUCTION

- 1.1. This policy describes how Hill Homes Care will demonstrate its openness with customers and relatives when errors are made and ensure that the principles of Being Open and the requirements of the Duty of Candour are applied, as appropriate.
- 1.2. This policy is integral to the incident, serious incident, complaints, legal and safeguarding processes. Being open is part of the 'Fair Blame' culture required of all healthcare providers and is fundamental to being a learning organisation.
- 1.3. The statutory Duty of Candour came into force on 27 November 2014 under Regulation 20 of The Health and Social Care Act 2008 (Regulated Activity) Regulations 2014 (the Regulations) which applies to all health and social care organisations registered with the Care Quality Commission.
- 1.4. Hill Homes Care is committed to promoting a culture of openness, which facilitates the ongoing improvement in quality.
- 1.5. This policy applies to all staff employed by, or providing services on behalf of, Hill Homes Care.

2. DEFINITIONS

- 2.1. **Being Open:** open communication of customer safety incidents that result in any harm of a customer whilst receiving healthcare.
- 2.2. **Duty of Candour:** both a contractual and statutory duty enforceable by the Care Quality Commission that requires organisations to be open and transparent with the relevant person when a notifiable customer safety incident occurs in relation to the care provided.
- 2.3. **Apology:** a meaningful and sincere expression of sorrow or regret for any suspected harm caused.
- 2.4. **Moderate harm:** harm requiring a moderate increase in treatment and is significant but not permanent.
- 2.5. **Prolonged psychological harm:** psychological harm that a customer has experienced, or is likely to experience, for a continuous period of 28 days or more.
- 2.6. **Relevant person:** the customer or, in the following circumstances, a person acting lawfully on their behalf:

- on the death of the customer
 - where the customer lacks capacity
- 2.7. **Serious incident:** serious incidents in health care are adverse events where the consequences to customers, families, staff or organisations are so significant, or the potential for learning is so great, that a heightened level of response is justified.
- 2.8. **Severe harm:** a permanent lessening of bodily, sensory, motor, physiological or intellectual functions that is directly related to the incident and not related to the natural course of the customer's illness or underlying condition.
- 2.9. **Transparency:** allowing information about the truth about performance and outcomes to be shared with staff, customers, the public and regulators.

3. AIMS AND OBJECTIVES

- 3.1. The objectives of this policy are to ensure that:
- Hill Homes Care complies with its statutory obligations
 - customers can expect openness and transparency from Hill Homes Care
 - Hill Homes Care learns from mistakes made by either its own services or those by the wider healthcare community
 - there is a proactive approach to customer safety with the onus on risk management systems and processes to identify incidents that require review and learning
 - all stakeholders work in partnership
 - while staff do not intend to cause harm, unfortunately incidents do occur and, when they do, customers/relatives/others deserve an apology and explanation as soon as possible
 - staff understand that saying sorry is not an admission of liability and feel able to apologise at the earliest opportunity
 - staff understand their duty to be open and honest and that they contribute to a learning culture by reporting customer safety incidents that lead to harm, as well as near misses

4. POLICY STATEMENT

- 4.1. *Principle of acknowledgement*
- Hill Homes Care mandates that all customer safety events are acknowledged. Concerns from the customer and/or their family must be taken seriously and will be treated with compassion and understanding by all staff. Hill Homes Care recognises that denial of a person's concerns or defensiveness will make future open and honest communication more difficult.

4.2. *Principles of truthfulness, timeliness and clarity of communication*

Information about a customer safety incident must be given in a truthful, timely and open manner by an appropriately nominated contact as a single point of contact. New information may emerge from the investigation and the customer and their family will be kept informed with clear, unambiguous information for any questions or requests they may have.

4.3. *Principle of apology*

Saying sorry is not an admission of liability and it is the right thing to do. Where harm has occurred, customers and their families will receive a meaningful and sincere verbal and written apology from Hill Homes Care.

4.4. *Principle of recognising customer and family expectations*

Customers and their families can reasonably expect to be fully informed of the issues surrounding a customer safety incident, and its consequences, in a face-to-face meeting with representatives from Hill Homes Care. They will be treated sympathetically, with respect and consideration. Confidentiality will be maintained, and support will be provided in a manner to meet their needs. This may involve an independent advocate or an interpreter. Appropriate information about other relevant support groups will be given as soon as possible.

4.5. *Principle of professional support*

Hill Homes has committed to create a culture in which all staff are encouraged to report customer safety events. Staff should feel supported throughout the investigation process as they too may have been traumatised by the event. Hill Homes Care policies will ensure a robust and consistent approach to customer safety event investigation. Where there are concerns about the practice of individual staff, the Human Resources advisor should be contacted for advice. Where there is reason to believe a member of staff has committed a punitive or criminal act, Hill Homes Care will take steps to preserve its position and advise the member(s) of staff at an early stage to enable them to obtain separate legal advice and/or representation. Staff should be encouraged to seek support. Where appropriate, a referral will also be made to the Independent Safeguarding Authority.

4.6. *Principle of risk management and systems improvement*

Root Cause Analysis will be used to uncover the underlying causes of customer safety events. Investigations will focus on improving systems of care, which will be reviewed for their effectiveness. Being Open is integrated into customer safety

incident reporting, risk management policies and processes, legal processes and the complaints process.

4.7. *Principles of clinical governance*

The clinical governance framework is a process by which customer safety incidents are investigated and analysed, to identify what can be done to prevent their recurrence. It is a system of accountability through the Chief Executive to the Board to ensure that changes are implemented, and their effectiveness reviewed. Findings are disseminated to staff so they can learn from customer safety incidents. Audits monitor the implementation and effects of changes in practice following an incident. The principles of honesty and transparency of Being Open underpins the framework.

4.8. *Principle of confidentiality*

Details of a customer safety incident should be considered confidential at all times. The consent of the individual concerned should be sought prior to disclosing information beyond those involved in direct care of the customer. Hill Homes Care will anonymise any incident it publishes.

Where it is not practical, or an individual refuses consent to disclosure, disclosure may still be lawful if justified in the public interest or where those investigating the customer safety incident have statutory powers for obtaining information. Communications with parties outside of the incident lead and those involved in the investigation will be on a strictly need-to-know basis and, where practical, records are secure and anonymised where released. Where possible, it is good practice to inform the customer and their family about who will be involved in the investigation before it takes place and give them the opportunity to contribute or raise any objections.

5. LEGISLATION, REGULATION & GUIDANCE

5.1. The statutory Duty of Candour came into force on 27 November 2014 under Regulation 20 of The Health and Social Care Act 2008 (Regulated Activity) Regulations 2014 (the Regulations) process.

5.2. Alongside the implications for the customer, a failure to comply with all aspects of Duty of Candour is a breach of 20(2a) and 20(3) of the Regulations which can result in a criminal prosecution being brought against Hill Homes Care by the CQC.

6. CONFIDENTIALITY

6.1. Under the Data Protection Act 2018 and the Human Rights Act 1998, all personal and sensitive organisational information, is treated as confidential, including:

- anything of a personal nature, that is not a matter of public record

- sensitive organisational information

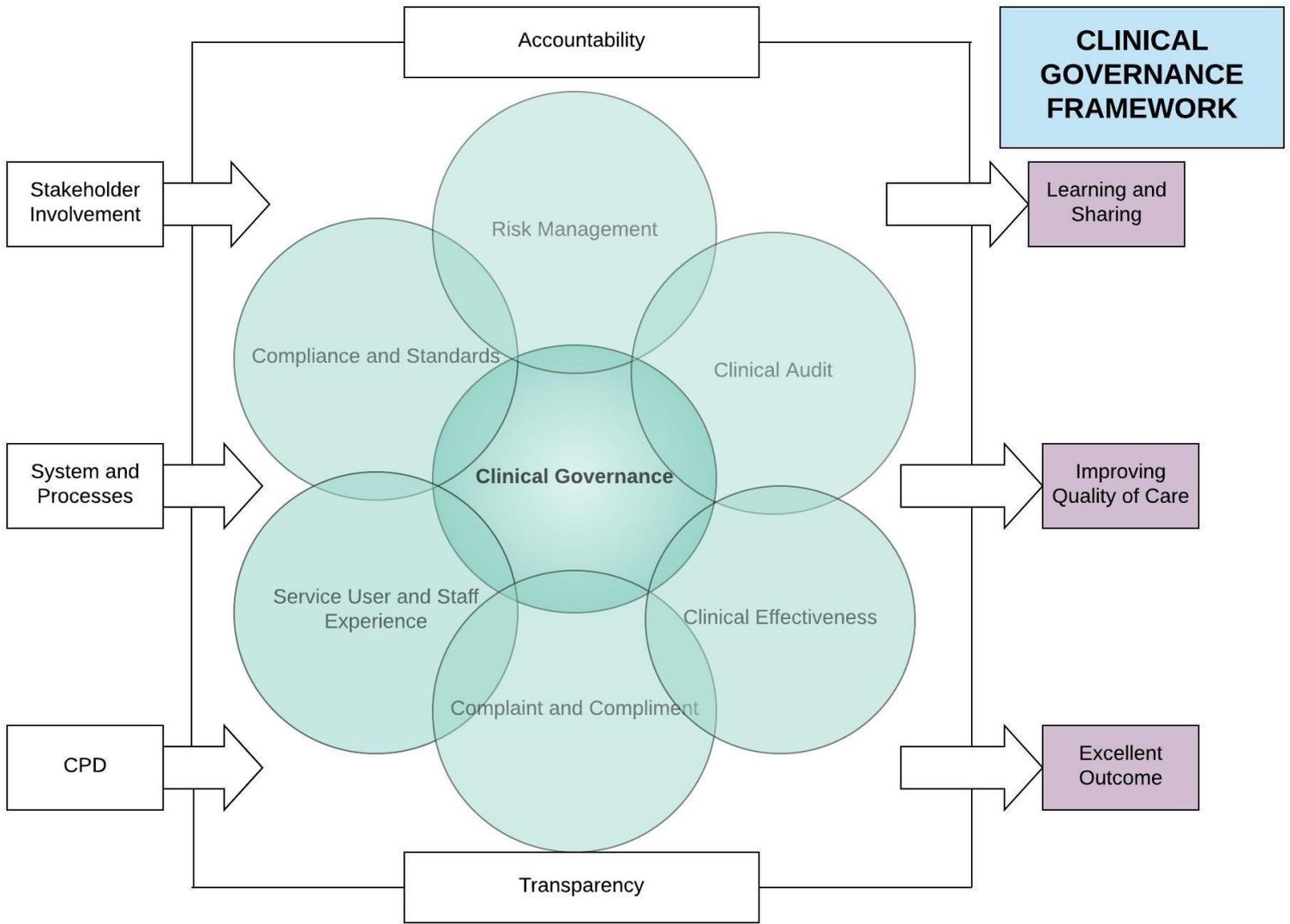
Hill Homes Care will ensure that it only involves other agencies and share information with the consent of the complainant involved, unless:

- it is required by law
- the information is necessary for the safeguarding of children and/or vulnerable adults

7. MONITORING AND REPORTING

- 7.1. All safeguarding incidents at Hill Homes Care must be reported to the Head of Care and Support
- 7.2. The Head of Care and Support is responsible for making the required safeguarding notifications to the CQC and local authority
- 7.3. All safeguarding incidents are reported to the Finance, Risk and Audit Committee as a standing item on their agenda.

APPENDIX 1



APPENDIX 2

DUTY OF CANDOUR PROCEDURES

1. The Duty of Candour must be applied when an incident occurs that could result in, or appears to have resulted in, the death, severe or moderate harm, or prolonged psychological harm to a person using the service (customer).
2. When an incident meeting the 'principle of acknowledgement' criteria (see 4.1 of the Duty of Candour policy) has occurred, the Head of Care and Support must inform the relevant person as soon as practical after the incident has been identified. This must be within 10 days of the incident has been reported and sooner where possible. Consideration must be given to what support should be offered to the relevant person when providing the initial notification. All reasonable attempts must be made to contact the relevant person and, where this does not prove possible, the reasons must be documented.
3. When a customer safety incident has resulted in a customer's death, it is crucial that communication is sensitive, empathetic and open. It is important to consider the emotional state of bereaved relatives and to involve them in deciding when it is appropriate to discuss what has happened. The customer's family will 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 to indicate whether 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 or post-mortem evidence before holding the Being Open discussion with the customer's family. 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 and Hill Homes Care's investigative processes have been initiated and a realistic timeframe of when the family will be provided with more information. Staff should follow the incident management policies and seek advice from the CEO on the order of communication if in doubt.

4. The relevant person is the customer or, where the customer lacks mental capacity, a person acting lawfully on their behalf. Other than this, information should only be disclosed to family members when the customer has given consent.
5. Communication with the relevant person must be person-to-person (face-to-face or telephone) and must include:

- a step-by-step account of all relevant known facts about the incident in a way that is understandable to them;
 - an explanation of what investigation/enquiries will be undertaken and that the aim of these are to provide the customer or their relevant person with answers on what happened and what learning there has been in order for Hill Homes Care to implement actions where possible to minimise the risk or prevent a similar accident from happening again;
 - a meaningful apology that is an expression of sorrow or regret;
 - an enquiry as to whether the relevant person wishes to be involved in the investigation and, if so, the options to achieve this. If the relevant person does not wish to be involved in the investigation, an explanation of how the findings can be fed back, should the relevant person wish to receive these;
 - provision of contact details for the Head of Care and Support in case the relevant person wishes to add any further information or has further queries.
6. The communication with the relevant person must be followed up in writing confirming the content of the discussion and reiterating the apology. The letter should be signed by the Head of Care and Support.
 7. On completion of the incident investigation, the Head of Care and Support must contact the relevant person and offer to meet with them and/or to provide a copy of the report, depending on what the relevant contact wishes.
 8. Consideration should be given to who the appropriate persons may be to accompany the Head of Care and Support at this meeting e.g. the CEO or a Board Member to reiterate an apology or a member of operational staff who can provide added reassurance on the actions that are being taken.
 9. This meeting should be followed up in writing with the relevant person setting out a brief summary of the discussions and conclusions.
 10. The Head of Care and Support must document all Duty of Candour activity and upload copies of all documentation to digital files.
 11. The Being Open procedure mirrors that of the Duty of Candour except that:
 - it will apply to low harm and no harm incidents only
 - the process can be handled by either the Head of Care and Support or any other manager with the requisite skills and attributes

- the Being Open process will be managed within a timescale agreed on a case-by-case basis.

12. Sometimes, despite the best efforts of staff or others, the relationship between the customer and Hill Homes Care staff breaks down. They may not accept the information provided or may not wish to participate in the Being Open process. In which case the following strategies may assist:

- deal with the issue as soon as it emerges
- where the customer agrees, ensure their family is involved in the discussions from the beginning
- ensure the customer has access to support services
- offer the customer and/or their family another contact person with whom they may feel more comfortable.
- use a mutually acceptable mediator to help identify the issues between Hill Homes Care and the customer, and to look for a mutually agreeable solution
- ensure the customer and their family are fully aware of the formal complaints procedures
- write a comprehensive list of the points that the customer and/or their family disagree with and reassure them you will follow up these issues.

13. The need for translation and advocacy services, and consideration of special cultural needs, must be taken into account when planning to discuss customer safety 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. Hill Homes Care will avoid using 'unofficial translators' or the customer's family or friends as they may distort information by editing what is communicated.

14. A number of customers 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 service user is essential to facilitating an effective Being Open and Duty of Candour processes, focusing on the needs of individuals and their families and being personally thoughtful and respectful.

15. It is possible that an incident believed to have affected customer safety, and which may have caused harm, may be found through investigation to be erroneous. In such circumstances the principles of truthful, timely and open communication continue to apply, with full and consistent explanations being provided to the customer and/or their family, staff involved, and any relevant organisations. Similarly, the identification and

dissemination of any recommendations and learning points continues to be an important part of the Being Open and Duty of Candour processes

16. If a customer or a member of their family believes that Hill Homes Care is in breach of the Duty of Candour, this should be raised directly with the Head of Care and Support or the CEO in the first instance, or by raising a formal complaint. Customers and/or their family also have the right to make contact with the Action against Medical Accidents (AvMA-www.avma.org.uk/help-advice or call 0845 123 2352 Mon-Fri 10am- 3.30pm) or alternatively they can also contact the CQC directly on 03000 61 61 61.
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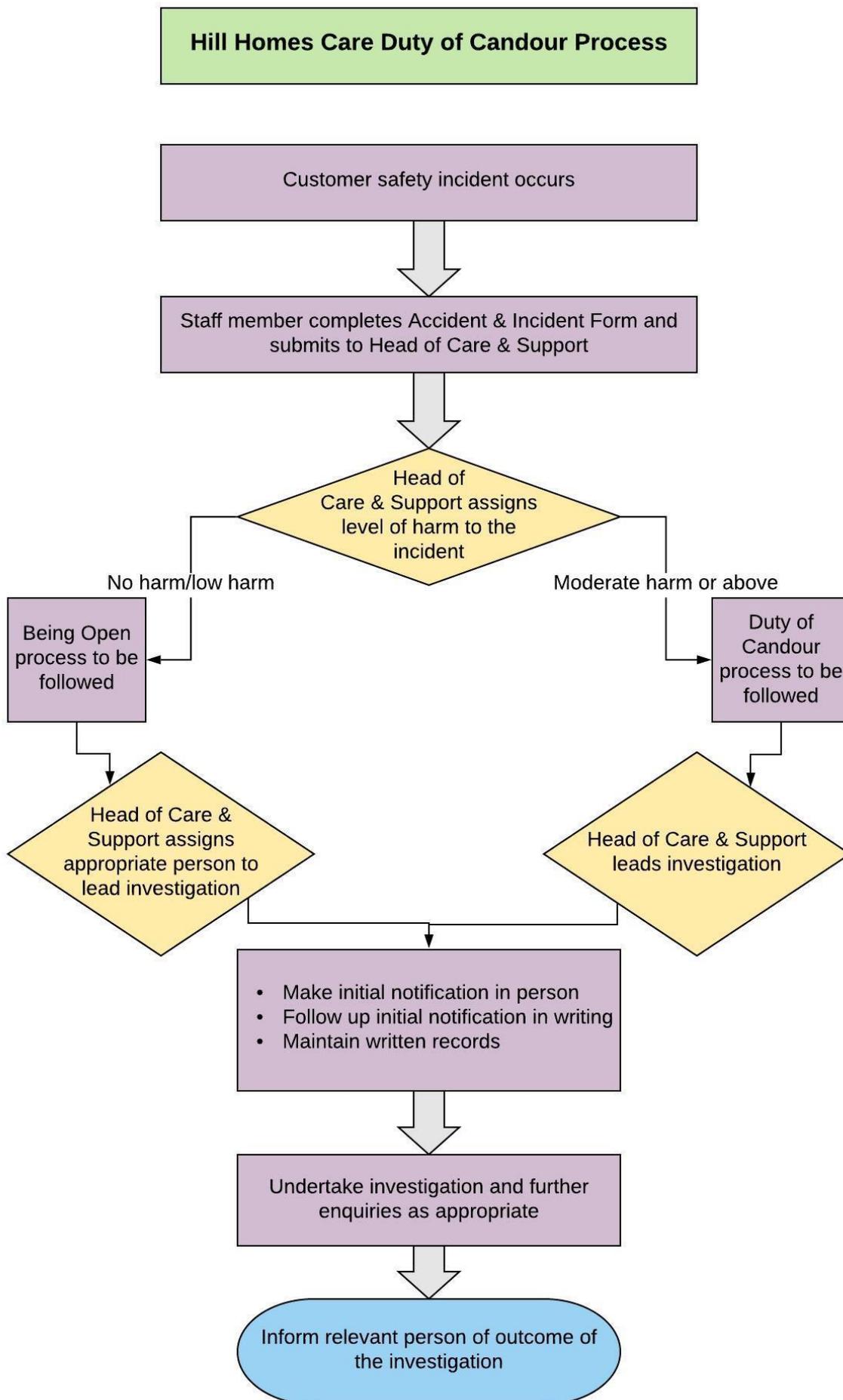
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31. It is possible that an incident believed to have affected customer safety, and which may have caused harm, may be found through investigation to be erroneous. In such circumstances the principles of truthful, timely and open communication continue to apply, with full and consistent explanations being provided to the customer and/or their family, staff involved, and any relevant organisations. Similarly, the identification and

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APPENDIX 3



APPENDIX 4

FIRST ACKNOWLEDGEMENT LETTER

NAME

ADDRESS

DATE

Dear <Name>

Delete / amend as appropriate

[I am writing to you further to our conversation of.....] about the incident on....

Add in condolences as appropriate

[On behalf of Hill Homes Care (HHC), may I offer you our profound condolences on your loss? I realise that this must be a very difficult time for you and your family].

When we attended [**you/r**], our actions on the day were reviewed against our internal processes and we found that the service that we provided to [**you /your/named person**] may have fallen short of the standards that we set for ourselves. I would like to take this opportunity to sincerely apologise to you and your family for this.

[As we discussed on the phone], we have decided to investigate this matter further. We will investigate this in line with our Clinical Governance Framework. If this incident is declared as a Serious Incident, we will conduct an in-depth investigation that will be completed and submitted to our Board within 60 working days, which will be on [**insert date**]

I will be your named contact throughout this time. If you have any comments or questions for the investigation team, or wish to be part of the investigation process, I will be happy to support you through this. The team may need to meet with you to take your recollections of the event, and I can be with you to support you through this as well.

Once our Board has approved the report I will arrange to meet with you to talk through our investigation methods, the findings and what this means for customer care and safety provided by the HHC.

We can help with any costs incurred by you and your family, provided you are travelling within the UK. It would be helpful to know if you need any specialist assistance or support. There are advocacy groups, who can provide independent support and advice if you feel you need. I can forward the local contact details to you on request.

Once again I would like to apologise for the potential service failure. The investigation process aims to identify where we can change and modify our systems and processes, and I would like to assure you that we are committed to being truthful and honest about any findings that the investigation may identify.

In the meantime, if you have any questions, please feel free to contact me on [**enter phone number**] or via email on [**enter email address**]

Yours sincerely

NAME

JOB TITLE

APPENDIX 5

CONCLUSION LETTER

NAME

ADDRESS

DATE

Dear <Name>

Further to our correspondence with you on the [DATE], I would like to inform you that we have now completed our investigation into the events on the day we attended [**YOU/ YOUR RELATIVE,.....,**] and I have included a copy for you.

[I would like to take this opportunity to repeat the condolences of Hill Homes Care (HHC) on your sad loss].

Our investigation found that the care offered to [**you/your relative**] did fall short of the exacting standards that we set for ourselves and for this I would also like to extend to you sincere apologies on behalf HHC.

Once you have had the opportunity to review the report, I would like to meet with you, if you wish, to:

- explain the way that HHC investigates;
- talk through the findings; and
- help explain what the final report means.

If you do want to meet, you can contact me on [**insert phone number**] or email [**insert email**].

Any meetings you wish to attend can be arranged at a date and place that is convenient to you and any associated costs incurred by you or your family will be refunded by HHC, if your family is based in the United Kingdom. Your independent advocate is invited to attend if you wish this additional support.

Please be assured that we remain committed to being open about any findings the investigation has identified and will take all the necessary steps to improve our service as a result.

I appreciate that this news may be difficult for you at this time and apologise wholeheartedly for the fall in our standards and the distress that this must have caused to you and your family. If you have any further questions or comments, please do not hesitate to contact me on the phone number or email address above.

Yours sincerely

NAME

JOB TITLE