Association of Christians in Counselling and Linked Professions

professional standards authority accredited register

Duty of Candour Guidelines

Being open and honest about mistakes with clients, colleagues and organisations



Duty of Candour Guidelines

What is a duty of candour?

A duty of candour is an ethical duty that applies to healthcare professionals such as doctors and nurses who are required to be open and honest with patients when things go wrong.

The application of duty of candour is also being explored by the Professional Standards Authority in relation to the standards and ethics of accredited registers. ACC have an accredited register of counsellors.

A duty of candour implies three main activities:

- Understanding and effective communication of the rationale for treatment (in our case counselling) and any risks involved.
- Being open and honest when things go wrong, saying sorry and trying to put things right.
- Reporting risks in the wider system including those associated with colleagues' malpractice.

What does ACC's Ethics and Practice say about the duty of candour?

ACC's Ethics and Practice contains three fundamental premises that relate to the duty of candour. They are:

- All clients are entitled to high standards of care.
- When mistakes are made, harm should be minimized.
- Members have a role in maintaining professional standards generally.

There are helpful expansions of all of three fundamental premises which members should become familiar with in the Ethics and Practice which is available on ACC's website.

The document also has a list of personal qualities that counsellors need to possess and actively embrace, which are helpful enablers of the duty of candour. These include:

- Honesty
- Wisdom

- Steadfastness
- Equity (fairness)
- Courage
- Humility

How does the duty of candour relate to counselling practice for ACC members?

Arguably in a medical context, where the duty of candour is explicitly written into practice codes and can form part of an NHS employment contract, things that go wrong are easy to identify. For example, a pharmacist may dispense the wrong dose of a drug or a G.P. misdiagnose a condition. Similarly, in counselling practice clearly identifiable mistakes can be made, for example forgetting a client appointment or misfiling a referral for counselling so that a prospective client has a longer wait before they can commence counselling. The duty of candour to be open, honest and apologise for the mistake and make amends where possible is relatively straightforward in these cases.

However, there are many situations in counselling where a client or colleague can suffer distress, but where the judgement of whether a 'mistake' has been made, is more subjective. This is in part because counselling is a complex profession with many different philosophical approaches and concomitant understandings of positive therapeutic interventions. It is also because counselling is heavily reliant on the quality of relationships in both its service to clients, and in its training, managerial and supervisory functions. Finally, it is because so much of the agency in counselling practice and the profession is mediated through the therapeutic use of self.

It can therefore be hard to know how to assess and manage situations where something appears to have gone wrong, because of the complexity inherent in the profession. These guidelines have been produced to help ACC counselling members work through how a duty of candour can be thought about and acted on in relation to their clients, colleagues and counselling organisations.

BEING OPEN AND HONEST WITH CLIENTS

Mitigating the risks of things going wrong

There are a number of activities that help to mitigate the risks of clients being harmed or experiencing distress. These are widely accepted practices and should be covered in all qualifying counselling courses. Consider undertaking CPD if there is any area that you believe needs development in your practice.

They include:

- Conducting good assessment processes.
- Explaining clearly to your clients all elements of your counselling contract or agreement, what your approach to counselling is and what will happen if things for any reason need to change or if a problem is encountered.
- In settings where there is a higher risk of overlapping relationships (for example in churches or small communities), discuss how boundary issues will be managed.
- Holding regular reviews with your clients, including feedback processes and outcome measures.
- Maintaining your own fitness to practice (see section below).

Mistakes that appear obvious to the counsellor

Given the above qualifications, when a counsellor believes that they have made a mistake, it is normally advised that they contact the client, explaining what has happened and apologise for any inconvenience or harm caused as soon as is practically possible, even when:

a) the client is unaware of the mistake, and
b) there is no apparent harm caused by the mistake.

Where time allows, you may wish to discuss the situation with your supervisor, and if deemed appropriate (that is sufficiently serious), to notify your insurance company that you have made a mistake with a client. However, both of these activities could introduce an unnecessary delay, and immediacy is normally welcomed by clients in situations where something has gone wrong and needs to be responded to.

There is also, however, a balancing ethical obligation to act in the best interests of the client and to do no harm, and there may be cases where the counsellor may consider that being open and honest in a situation where a mistake has been made could cause harm to a client. As with all ethical concerns, when a counsellor believes that being open and honest may be detrimental to the client they should seek advice as appropriate and proportional from their supervisor, peer support group and if required their professional body before making a final decision.

Counsellors need to carefully reflect on their motives to ensure that they are not simply acting to avoid personal discomfort, loss of professional reputation and/or misguided beliefs about what the 'best interests of the client' are.

In all cases a note should be made against the client's record. When the decision has been made not to inform a client about a mistake the rationale should be clearly noted in the supervisory as well the client record. **Please note that a client retains the right to have access to their records** – so a mistake that is not reported to them may come to light at a later point.

Problems that become evident in the therapeutic relationship

Problems within the therapeutic relationship can be ideal opportunities for therapeutic change when the counsellor can stay curious about the process that is occurring. Moreover, when counsellors feel comfortable with their own limitations and fallibilities, there is freedom to admit to mistakes without being defensive, which helps to create genuineness in the working relationship.

There are many different approaches to counselling but all centre on establishing and maintaining a positive therapeutic relationship both within sessions and in all encounters with clients outside of sessions. Counselling by its very nature involves dialogue with clients about sensitive personal issues which can make clients particularly vulnerable to anything that alters their perception of the empathy, competence and trustworthiness of their counsellors.

Therefore, all counsellors carry the risk that something that they do or say, or alternatively that they fail to do or say could have a negative impact on their client and in extreme cases risk rupturing the therapeutic relationship and causing harm to the client.

There are also well documented relational phenomena including transference, countertransference and projection which can tip therapeutic relationships into challenging territory and risk increasing the experience of distress in the client.

Steps in responding to relational concerns

Your client may alert you to a problem by complaining directly to you about an aspect of their experience with you. Alternatively, you many notice that the client is showing signs that all is not well between you or with their experience of counselling.

1. Depending on your level of experience, you may wish to take the issue to supervision first to allow space for reflection before opening a conversation with your client. This may require contacting your supervisor before your next planned session.
2. Initiate a conversation that recognises your client's distress and gives space to explore the problem. It is important to be curious, to listen well and own your part in the process, without needing to apportion blame other than for mistakes that you recognise are yours and can freely apologise for.
3. It is always helpful to remember that the counselling process creates an environment where a client's relationship patterns reproduce themselves within the counselling relationship itself, providing the client with an opportunity for self-discovery.
4. Affirming the experience of the client, respecting their autonomy and seeking to understand whether and how the therapeutic relationship can best be repaired from their perspective.
5. As required provide further information about the counselling process and your approach and training, to help set the context for the work that you are doing together, ensuring that you also discuss any risks involved and gain informed consent to proceed.
6. Re-negotiate the therapeutic alliance as required to take into account agreed new ways of working together.
7. Remind the client that if they continue to feel aggrieved, they have recourse to ACC's complaints policy.
8. Alert your professional body and insurance company if you believe that a complaint may be made against you.
9. Document the process you undertook to resolve the issue with your client.

10. Reflect on the experience with your supervisor and peer support group to identify learning outcomes and any CPD and/or restorative activities that you may need.
11. Maintain your fitness to practice.

The importance of maintaining your fitness to practice

A counsellor needs to be fully 'fit to practise' in relation to their health, attentiveness and levels of engagement with standards of practice in order for them to be able to respond well to issues that arise in the therapeutic relationship.

Fitness to practise also implies that the counsellor is able to effectively mobilise the resources offered by the profession to equip themselves to firstly notice and then respond in a timely and appropriate way to signs that might indicate that the client is unhappy or otherwise distressed by an aspect of the therapeutic relationship.

The resources offered by the profession include:

- Supervision: securing a supportive supervisor who encourages candour and demonstrates how to work through difficulties with openness, honesty and humility.
- Training: CPD on a range of topics including but not limited to the therapeutic relationship, difference and diversity, the legal and ethical context of working as a counsellor.
- Advice and support from peers and professional counselling membership bodies.
- Professional Liability Insurance.

BEING OPEN AND HONEST WITH COLLEAGUES

All counsellors have a general duty to uphold the standards of the profession. We need to balance this with our duty not to undermine colleagues or speak against them.

If you have a concern about a colleague that relates to a potential breach of their ethical code, then a duty of candour may apply to you. It is important to be able to distinguish between behaviours that breach an ethical code and behaviours that you are personally or morally averse to but have no direct bearing on a colleague's ability to practice. If in doubt, please feel free to contact ACC.

Special care needs to be taken with concerns raised by clients about a previous counsellor as client confidentiality applies. In this situation, the client retains the responsibility to raise a complaint against their counsellor with the appropriate membership body.

Steps in responding to concerns about counselling colleagues (peers)

1. Speak in confidence to a trusted peer or your supervisor or with ACC to reflect on the situation and gain another professional perspective on your concern and to confirm that at least one other counselling professional also believes that there is a fitness to practise or other ethical issue that calls for action under the duty of candour.
2. Undertake a risk assessment. Is there evidence of a breach of the ethical code of sufficient seriousness that the counsellor's employer and/or professional body need to be informed? If so, proceed directly to step 6.
3. Where appropriate, approach the counsellor directly making it clear that you want to have a conversation to explore a concern that you have about their wellbeing, or their behaviour in relation to their ethical code. If it is not appropriate for you to directly approach your colleague, go straight to step 6.
4. Be clear with the colleague about the nature of your concern, sharing the evidence you have of behaviours or situations that have given rise to it.
5. Seek from your colleague their assurance that they will address the issue in supervision and/or with another responsible professional, for example their current manager or counselling tutor. Monitor the situation and if no action appears to be taken and if the concern remains, or if otherwise appropriate proceed to step 6.
6. Escalate (or share) the concern with your colleague's employer, trainer and/or professional body. It is important that you do this with the acceptance that you will need to put forward your name and the evidence that you have of a fitness to practise and/or ethical concern about the counsellor.
7. Preserve the confidentiality of your colleague and the details of the complaint and co-operate with the complaints process to the best of your ability.

Responding to concerns about supervisees, supervisors, tutors and managers

Mitigating actions similar to those outlined for counselling practice on page 4 will help to avoid problems and concerns arising in formal professional relationships. These include having clear agreements in place that set out roles and responsibilities, establishing complaints or grievance processes, having regular reviews and opportunities for feedback.

The steps set out above for responding to concerns about colleagues, apply also to raising concerns about counsellors who are in a professional relationship with one another. However, where professional relationships have existed over time and/or have a structure of authority, it can be difficult for either party to act under a duty of candour and particularly difficult for the professional in the subordinate role. It is well to remember that raising a concern is a responsibility of the professional, however awkward it may be to do so.

Concerns that are raised directly with the person involved can be examined and explored where there is an invitation and willingness to do so (following steps 1-5). Moreover, where a professional relationship exists, it might be helpful to ask another independent professional such as supervisor, manager or peer to facilitate the dialogue and discussion between e.g. supervisor and supervisee, or counsellor and manager, or trainee and tutor. It is good practice to produce notes from the meeting that all parties review and agree. Confidentiality should be respected by all parties, although this should not inhibit anyone from escalating a concern if it is sufficiently serious and unresolved with the person's employer and to the person's professional membership body.

This underlines the importance of ensuring that you work only with colleagues whether they are supervisors, counselling tutors and/or managers that are members of an accredited professional register of counsellors, or equivalent registration with the Health and Care Professions Council (HCPC).

BEING OPEN AND HONEST ABOUT ORGANISATIONS

There may be occasions where a duty of candour applies to aspects of a counselling organisation rather than an individual. There may be for example a culture that is misaligned with the values and ethos of the counselling profession that allows risky or harmful practices to take place. These may be seen for example

in the proliferation of dual roles; administration processes that do not sufficiently respect confidentiality of client records, and/or the employment of insufficiently trained and qualified staff etc.

Raising a concern within an organisation that you work for can be a daunting task. As with the processes above it is worth finding a trusted colleague who you can discuss the situation with in confidence, prior to taking any action. As a member of ACC, you can also ring us to discuss your concerns and obtain help and advice.

We recommend that, if at all possible, you then raise your concerns directly with the organisation, pointing clearly to where practices appear to breach ethical guidelines for counselling. If the organisation is affiliated with a professional body, then you may at any point choose to also raise a complaint with the organisation's professional body.

Finally depending on the structure of the organisation you may also be able to make a complaint to the Charity Commission. When raising a formal complaint, you will need to be willing to provide your name and evidence in support of your allegations.

The importance of self-care

Raising legitimate concerns and making complaints where there is evidence of malpractice benefits the whole profession. However, it can be individually costly to all parties concerned. It is recommended that you pay careful attention to resources that will help support and sustain you during this time.

How will ACC respond to concerns raised under a duty of candour?

ACC will process any formal concern that we receive under a duty of candour in line with our complaints process which explicitly refers to raising concerns as well as making complaints against registered members and affiliated organisations.

There is a time limit that normally applies to the raising of a complaint or concern arising from counselling or supervision which is currently set at three years from the end of the relationship. However, for complaints and concerns that relate to serious breaches of the code of ethics and practice this time frame can be extended.