

# DUTY OF CANDOUR & BEING OPEN – DRAFT POLICY PROPOSALS FOR CONSULTATION

## CONSULTATION RESPONSE TEMPLATE

### Summary

In January 2018, Justice John O'Hara published his report on the Inquiry into Hyponatraemia-Related Deaths (IHRD). His first recommendation was that a statutory Duty of Candour should be enacted in Northern Ireland and that it should apply to Healthcare Organisations and everyone working for them. Justice O'Hara also recommended that criminal liability should attach to breach of this duty and to obstruction of another in the performance of this duty. He made further recommendations about the guidance, support and protection that should be provided for staff in order to create a more open culture.

In response, the Department of Health (DoH) established an Implementation Programme to take forward the recommendations arising from the Inquiry and the Duty of Candour Workstream, and its Being Open subgroup, have been responsible for developing the proposal options to address the recommendations on candour.

Through a co-production process, the Workstream and Subgroup have developed policy options for the statutory Duty of Candour and the policy framework for Being Open guidance, taking account of: research commissioned and evidence submitted; feedback from staff and service users; and input from other key stakeholders.

The DoH is now seeking your views on the following proposals developed by the Workstream and Subgroup:

- a. Policy options for the statutory organisational Duty of Candour; and
- b. Policy options for the statutory individual Duty of Candour; and
- c. The policy framework for Being Open guidance.

A detailed summary of these proposals, as well as Easy Read and Plain English versions of the proposals, are available [here](#) on the DoH website.

## Ways to respond

The consultation opened on 12 April 2021 and will close on 2 August 2021.

Stakeholders can respond by completing the Consultation Response template below and submitting it to:

**E-mail:** [IHRD.implementation@health-ni.gov.uk](mailto:IHRD.implementation@health-ni.gov.uk)

**Written:** IHRD Implementation  
Department of Health  
Room D1  
Castle Buildings  
Stormont Estate, BELFAST  
BT4 3SQ

Alternatively, an online survey is available to be completed on Citizen Space [here](#), a Consultation Questionnaire is available [here](#), or stakeholders can submit written comments by email or letter to the addresses listed above. Stakeholders do not have to address every question within the consultation, and can instead focus on the questions or issues that are of particular interest.

## Data Protection

The DoH will publish a summary of the consultation responses and, in some cases, the responses themselves, but these will not contain any personal data. We will not publish the names or contact details of respondents, but will include the names of organisations responding. For further information on how we will process data and your rights, see the Privacy Notice for this Consultation [here](#).



## DUTY OF CANDOUR & BEING OPEN – CONSULTATION RESPONSE TEMPLATE

<b>Name</b>	
<b>Contact Details</b>	
<b>Are you responding on behalf of an organisation? If so, what is the name of your organisation?</b>	<b>No</b>

**Please provide your comments and feedback on the policy proposals relating to a statutory Duty of Candour and Being Open Framework.**

An emphasis on candour and openness in clinical interactions is welcome. Creating a culture in which this happens is rightly a priority for the NHS in Northern Ireland. Such a duty is already explicit in GMC guidance to doctors. Criminalizing this area is not going to create the desired culture of openness but rather will sadly have the opposite effect. A distortion of clinical care will result, with the threat of sanction leading to an imbalance in how care is delivered. The result will be either marked over-reporting of even very minor issues due to fear of being in breach of the duty, or a retreat into silence. Either outcome is the antithesis of the intention of the proposal. It is instructive to note that when this issue has been investigated by other jurisdictions, none has felt that criminal sanction would be helpful in promoting an open healthcare culture. Northern Ireland is not alone in having tragic clinical episodes; it is hard to understand how it can come to such a different conclusion about appropriate intervention.

The workforce deficits in Northern Ireland are well known and the subject of much media attention currently. The implementation of this proposal will no doubt have a chilling effect on work to address this crisis; when choosing which Medical school, Deanery or Trust to apply to, staff will have the option of several jurisdictions with no such law, or Northern Ireland, the only one with it. The resulting disincentive seems clear.

No-one wishes to see the failures outlined in the Hyponatremia Enquiry, or on other occasions, repeated in the future, and everyone would want to see open, high quality and transparent clinical care delivered; unfortunately the current proposal around criminal sanction is highly likely to jeopardise the very aims it espouses.