

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

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 is 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 this questionnaire, or by submitting their own written response, to the policy proposals to:

E-mail: IHRD.implementation@health-ni.gov.uk

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

In addition, an online questionnaire is available on the Citizen Space website [here](#), which allows stakeholders the opportunity to respond to the consultation questions online.

If, for any reason, you are unable to access the electronic versions of the documents you can request a paper copy by e-mailing IHRD.implementation@health-ni.gov.uk or by writing to the address below. The consultation documents, including the questionnaire, may also be requested in an alternative format by also contacting this address.



Terminology (paragraphs 2.25 – 2.27)

1. Do you agree with the terminology and definitions adopted by the Workstream in respect of “openness” and “candour”? If yes, please provide any additional information and / or insights.

Duty of Candour should already have a statutory footing, in our own personal experience we know this would have significantly changed the outcome of the police investigation in our sons case when [REDACTED] [REDACTED] involved had no shame in making a false statement to the police which differed greatly to the response I received from the [REDACTED]. We made a complaint to the [REDACTED] this complaint was overseen by an [REDACTED] [REDACTED] and this was signed off by the office of the chief executive who didn't question the integrity and transparency of our complaint that was made. Numerous lies were documented in the response although failure of parental consent was acknowledged it wasn't acknowledged in a sincere or meaningful apologetic manner and no apology was given to [REDACTED] from the onset. The Trust set out 4 recommendations but failed to be forthcoming and involve or update us in any recommendations they set out on the use of mechanical restraint. We experienced lack of transparency and the stress and anxiety has never been resolved. we cannot step away from the turmoil but [REDACTED] [REDACTED] without any recognition or retraining. We strongly feel statutory duty of candour should extend to educational settings, as often HSCT cross over to other organizations, infact statutory candour should be enforced across all public bodies to ensure honesty, transparency and accountability for significant repeated harm or cover up.

If duty of candour had been on a statutory footing the OT may have made different decisions in being forthright and honest or duty of candour could have been enforceable for the cover up and harm caused to our son and our family which has been significant.

Honesty costs nothing, its based on a person's integrity, some people no matter how professional lack this. Not everyone has good intentions and without statutory of duty there is no prevention of harm to further of service users. Duty of candour will



address the cultures within HSCT. A HSCT employee informed me during our complaint "The Trust don't look favourably on whistleblowers" which is why employees currently have no integrity when it comes to openness and candour. I hope the culture of bringing organizational shame for serious concerns or mistakes is addressed in statutory duty of candour. There should be no shame in the Truth!

Openness and candour are important for all service users. Terminology has been promoted during and leading up to the release of the consultation so I think the public are aware of what candour should look like to them as a service user if something were to go wrong and how effectively and efficiently things can be put right is based on honesty but there is failure to implement candour.

Integrity of not only the organization but the professional are important in changing a deep rooted culture of coverup which impacts all families involved.

HCPC or GMC is not enough to oversee professionals when they cause significant and serious harm.

Truth and justice should not have barriers when families experience tragic and significant harm through HSCT staff.

2. If not, do you suggest a preferred terminology that should be used to describe this policy and the statutory duty? Please provide evidence to support any alternative proposal.



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Statutory Organisational Duty of Candour (Section 3)

Scope (paragraph 3.8 – 3.9)

3. Do you agree with the proposed scope of the statutory organisational Duty of Candour? If yes, please provide any additional information.

4. If not, do you have a preferred approach for the scope of the statutory organisational Duty of Candour? For example, should the scope be limited to regulated organisations that directly provide health and social care services? Please provide evidence to support any alternative proposal.

I feel that Duty of Candour should extend beyond the organization. There needs to be individual recognition of candour when professionals across all HSC make significant errors and harm to any service user and protect their significant errors with cover up by telling lies, blackmailing other staff to cover for them and falsifying or amending notes. Individual criminal charges should be enforceable when covering up of failures has occurred.

Having direct experience of this and offered an apology overseen by a solicitor which was neither meaningful or sincere, constant changing of stories and lying to protect others should see enforceable duty of candour and criminal charges. I would like accountability to be more meaningful than a word that is kicked about and provides real intention to safeguard future service users from poor practice.

Organizations across HSCT should have a duty to ensure the same honesty and transparency is organizational from the top CEO level right down to employees.



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Routine Requirements (paragraphs 3.10 – 3.11)

5. Do you agree with the routine requirements of the statutory organisational Duty of Candour? If yes, please provide any additional information.

6. If not, do you have a preferred approach for the routine requirements of the statutory organisational Duty of Candour? Please provide evidence to support any alternative proposal.

Requirements – When Care Goes Wrong (paragraphs 3.12 – 3.18)

7. Do you agree with the proposed definition for the significant harm threshold for the Duty of Candour procedure? If yes, please provide any additional information.



8. If not, do you have a preferred definition for the significant harm threshold for the Duty of Candour procedure? Please provide evidence to support any alternative proposal.

Statutory Duty of Candour Procedure (paragraphs 3.19 – 3.23)

9. Do you agree with the proposed requirements under the statutory organisational Duty of Candour when things go wrong? If yes, please provide any additional information or insights.

10. If not, do you have a preferred approach for the requirements under the statutory organisational Duty of Candour when things go wrong? Please provide evidence to support any alternative proposal.



Apologies (paragraphs 3.24 – 3.26)

11. Do you agree with the proposed legislative requirement to provide an apology as part of the Duty of Candour procedure? If yes, please provide any additional information or insights.

12. If not, do you have a preferred policy approach in respect of apologies in circumstances where the threshold for the Duty of Candour procedure has been met? Please provide any evidence to support any alternative proposal.

13. Do you agree with the proposals in respect of apologies under the statutory organisational Duty of Candour? If yes, please provide any additional information or insights.



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14. If not, do you have a preferred approach for the proposals in respect of apologies under the statutory organisational Duty of Candour? Please provide evidence to support any alternative proposal.

Support and protection for staff (paragraphs 3.27 – 3.28)

15. Do you agree with the proposals for support for staff under the statutory organisational Duty of Candour? If yes, please provide any additional information or insights.

16. If not, do you have a preferred approach for the support for staff under the statutory organisational Duty of Candour? Please provide evidence to support any alternative proposal.



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Reporting and monitoring (paragraphs 3.29 – 3.32)

17. Do you agree with the proposed reporting and monitoring requirements under the statutory organisational Duty of Candour? If yes, please provide any additional information.

18. If not, do you have a preferred approach for the reporting and monitoring requirements under the statutory organisational Duty of Candour? Please provide evidence to support any alternative proposal.

Criminal sanctions for breach (paragraphs 3.33 – 3.40)

19. Do you agree with the proposed criminal sanctions for breach of the statutory organisational Duty of Candour? If yes, please provide any additional information.



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20. If not, do you have a preferred approach for the criminal sanctions for breach of the statutory organisational Duty of Candour? Please provide evidence to support any alternative proposal.

Obstruction offence (paragraphs 3.41 – 3.42)

21. Do you agree with the proposed obstruction offence under the statutory organisational Duty of Candour? If yes, please provide any additional information.

22. If not, do you have a preferred approach for the obstruction offence under the statutory organisational Duty of Candour? Please provide evidence to support any alternative proposal.



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Additional feedback

23. Is there any additional evidence, or observations that you wish to provide in respect of the policy proposals for the statutory organisational Duty of Candour?



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Statutory Individual Duty of Candour (Section 4)

Policy Proposal – Statutory Individual Duty of Candour with criminal sanction for breach (paragraphs 4.13 – 4.22)

24. Please provide comments on the policy proposal for the statutory individual Duty of Candour.

Alternative Policy Proposals (paragraphs 4.23 – 4.35)

25. Please provide comments on the alternative policy proposals for the statutory individual Duty of Candour.

26. If you do not agree with any of the three high-level policy proposals, do you have a preferred alternative policy approach for implementation of the recommendations relating to the statutory individual Duty of Candour? Please provide evidence to support an alternative proposal.



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Scope (paragraphs 4.36 – 4.38)

27. What is your preferred policy approach in respect of the scope of the statutory individual Duty of Candour? Please outline the reasons for your preference, and provide evidence to support your reasoning.

Routine Requirements & Requirements When Care Goes Wrong (paragraphs 4.39 – 4.43)

28. Do you agree with the proposals in relation to the requirements under the statutory individual Duty of Candour? If yes, please provide reasons for your agreement.

29. If not, do you have a preferred approach for the requirements under the statutory individual Duty of Candour? Please provide evidence to support any alternative proposal.

Exemptions (4.44)



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30. Do you have any comments to make on the case for exemptions from the requirements under the statutory individual Duty of Candour? Please provide evidence to support your position.

Additional Feedback

31. Is there any additional feedback that you wish to provide in respect of the policy proposals for the statutory individual Duty of Candour? If so, please provide evidence to support alternative proposals, if possible.



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Being Open Framework (Section 5)

Policy Proposals (paragraphs 5.1 – 5.8)

32. Do you agree with the policy proposals in respect of the Being Open Framework? If yes, please outline your reasoning.

33. If not, do you have a preferred policy approach in respect of openness and candour in health and social care? Please provide evidence to support alternative policy proposals.

Level 1 – Service Users and Carers (paragraphs 5.9 – 5.11)

34. Do you agree with the policy proposals at Level 1 of the Being Open Framework for Service Users and Carers? If yes, please outline your reasoning.



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35. If not, do you have a preferred policy approach in respect of Level 1 of the Being Open Framework for Service Users and Carers? Please provide evidence to support alternative policy proposals.

Level 1 – Staff (paragraphs 5.12 – 5.13)

36. Do you agree with the policy proposals at Level 1 of the Being Open Framework for Staff? If yes, please outline your reasoning.

37. If not, do you have a preferred policy approach in respect of Level 1 of the Being Open Framework for Staff? Please provide evidence to support alternative policy proposals.



Level 1 – Organisations (paragraphs 5.14 – 5.15)

38. Do you agree with the policy proposals at Level 1 of the Being Open Framework for Organisations? If yes, please outline your reasoning.

39. If not, do you have a preferred policy approach in respect of Level 1 of the Being Open Framework for Organisations? Please provide evidence to support alternative policy proposals.

Level 2 – Service Users and Carers (paragraphs 5.18 – 5.19)

40. Do you agree with the policy proposals at Level 2 of the Being Open Framework for Service Users and Carers? If yes, please outline your reasoning.



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41. If not, do you have a preferred policy approach in respect of Level 2 of the Being Open Framework for Service Users and Carers? Please provide evidence to support alternative policy proposals.

Level 2 – Staff (paragraphs 5.20 – 5.21)

42. Do you agree with the policy proposals at Level 2 of the Being Open Framework for Staff? If yes, please outline your reasoning.

43. If not, do you have a preferred policy approach in respect of Level 2 of the Being Open Framework for Staff? Please provide evidence to support alternative policy proposals.



Level 2 – Organisations (paragraphs 5.22 – 5.23)

44. Do you agree with the policy proposals at Level 2 of the Being Open Framework for Organisations? If yes, please outline your reasoning.

45. If not, do you have a preferred policy approach in respect of Level 2 of the Being Open Framework for Organisations? Please provide evidence to support alternative policy proposals.

Level 3 – Service Users and Carers (paragraphs 5.26 – 5.29)

46. Do you agree with the policy proposals at Level 3 of the Being Open Framework for Service Users and Carers? If yes, please outline your reasoning.



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47. If not, do you have a preferred policy approach in respect of Level 3 of the Being Open Framework for Service Users and Carers? Please provide evidence to support alternative policy proposals.

Level 3 – Staff (paragraphs 5.30 – 5.31)

48. Do you agree with the policy proposals at Level 3 of the Being Open Framework for Staff? If yes, please outline your reasoning.

49. If not, do you have a preferred policy approach in respect of Level 3 of the Being Open Framework for Staff? Please provide evidence to support alternative policy proposals.



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Level 3 – Organisations (paragraphs 5.32 – 5.33)

50. Do you agree with the policy proposals at Level 3 of the Being Open Framework for Organisations? If yes, please outline your reasoning.

51. If not, do you have a preferred policy approach in respect of Level 3 of the Being Open Framework for Organisations? Please provide evidence to support alternative policy proposals.

Additional Feedback

52. Is there any additional feedback that you wish to provide in respect of the policy proposals for the Being Open Framework? If so, please provide evidence to support alternative proposals, if possible.



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Consultation & Impact Screening (Section 6)

53. Do you have any feedback or data which may be relevant to the potential impact of the policy proposals within this consultation exercise, in particular in relation to the following areas:

- Equality;
- Human Rights;
- Rural Needs;
- Regulatory; and
- Economic Impact?

54. Do you have any feedback in respect of the potential indicators that could be used in order to measure the effectiveness of this policy?



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55. Do you have any feedback or suggestions on how best to engage and involve stakeholders on the development and implementation of this policy going forward?