

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 Worksream 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.



Department of
Health

An Roinn Sláinte

Máinnystrie O Poustie

www.health-ni.gov.uk

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.

Yes

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.

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.

Yes

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.

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.

Yes

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.

No, the definitions are not clear

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.

No, a verbal response should be adequate.

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.

Yes



Department of
Health

An Roinn Sláinte

Máinnystrie O Poustie

www.health-ni.gov.uk

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.

Yes

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.

These appear adequate on paper, however in a system under pressure opportunity for training and reflective practice suffers

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.

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.

Yes

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.

No

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.

"Do what England did.

If NI is the only part of the UK with criminal sanctions relating to a perceived failure to disclose information, it will become even less attractive to staff"

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.

No

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.

Again, follow England. Why are we different?

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?

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.

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.

Registered professionals

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.

Yes

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.



Department of
Health

An Roinn Sláinte

Máinnystrie O Poustie

www.health-ni.gov.uk

Exemptions (4.44)

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.

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.

Yes

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.

Yes

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.

Yes

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.



Department of
Health

An Roinn Sláinte

Máinnystrie O Poustie

www.health-ni.gov.uk

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.

Yes

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.

Yes

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.

Yes

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.



Department of
Health

An Roinn Sláinte

Máinnystrie O Poustie

www.health-ni.gov.uk

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.

Yes

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.

Yes

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.

Yes

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.



Department of
Health

An Roinn Sláinte

Máinnystrie O Poustie

www.health-ni.gov.uk

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.

Yes

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.



Department of
Health

An Roinn Sláinte

Máinnystrie O Poustie

www.health-ni.gov.uk

Consultation & Impact Screening (Section 6)

53. Do you have any feedback about the possible ways we could measure whether or not this policy is useful?

54. Do you have any feedback or suggestions about how we can engage and involve stakeholders to develop this policy and put it in place?