

## **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](mailto: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](mailto: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.

Yes, a good definition though I would add

“The volunteering of all relevant information to persons who have or may have been harmed by the provision of services [or lack there-of] whether or not the information has been requested or whether or not a complaint about that provision has been made.”

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, it also needs to be provided in a way that the service user understands and be confirmed that the services user understands it. T othat end no jargon oroverly academic speaking nor medical jargon.

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.

Yes.

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.

Yes. Again with the previous request to not use jargon or overly technical terms that obfuscate the reader of the letter.

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, even a formulaic apology is better than no apology and departments can just be expected (by RQAI for example) during inspections to show they are not formulaic.

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, but the legal ramifications of an apology need to be clarified and made clear at the beginning of the process.

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.

Yes. In addition I would make it a requirement that all supervision is conducted by a qualified person outside the staff members usual working environment as using line managers to conduct supervision goes completely against any idea of an open and honest culture. Possibly have a department who only conduct supervision.

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.

yes

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.

yes

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.

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?

No

### **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.

I believe there needs to be a criminal consequence for breaching the Duty of Candour, who that applies to I'm unsure about. if it comes down to some secretary being told to put a file into the 'burn bag' then the authorising person should be held criminally accountable. if it is a case of massaging figures to hide an uptick in deaths then the organisation is accountable but probably not criminally so.

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.

I believe all people employed by an organisation are responsible to be open and honest. This should be the norm and promoted from the top down as a culture. That being the case staff will need training and guidance as to what amounts to a breach of Duty of Candour and how that may work with regards to confidentiality of the individual and

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 I fail to see a reasonable reason not to agree

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.



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### 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. Morally right thing to do

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.

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.

As responded previously, there is a need for supervision to move away from line managers as that impedes an open and honest reflection of the working environment.

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. The problem is that if anyone feels they are going to be disciplined or it (the incident in question), is going to be filed away in the back of a line managers mind for future reference there is a low expectation that people will make a report in the first place.

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.



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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.

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.

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 about the possible ways we could measure whether or not this policy is useful?

no

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?