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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.

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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.

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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. Candour in this context it seems, denotes the (legal) duty of openness whilst the term openness itself can be construed to be more of a culture and way of working and communicating, in everyday practice.

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.

Yes. Health care provision comes in many forms. Patients and families alike deserve open honest communication about care and practice especially when things go wrong. The culture of openness (and legal duty) cannot apply to one aspect of the Heath system and not another…. I therefore agree with the scope of this duty, in order to promote and foster such a culture within all areas of the health service and effect positive change.

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 - if this is not a routine requirement, then a routine culture-shift and a continuation of good practice can not realistically be achieved and importantly, maintained

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 . The distinction between the various ‘harm’ definitions seems reasonable. The duty to be transparent about any incident regardless of the potential for harm that is ‘significant’ or otherwise remains the same however.

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.

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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 absolutely- in my own personal experience I am still seeking explanations, direct and open answers to specific and reasonable questions after 2.5 years , I continue to await these, along with an apology. Rather than being involved in any review of practice - I have found my family to be excluded and ignored and dismissed. The plans outlined above for such proactive openness and support, rather than defensive barriers during a protracted and arduous complaints process - as experienced by my family, are welcomed entirely.

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 -I agree it should be a legislative requirement in the right set of circumstances - and I believe it should further be enhanced - to include a personal statement of apology by the caregiver/s in question at the heart of the incident - whose commission/omission caused the deemed ‘harm’. This would ensure a personalised apology is provided, rather than a standardised ‘clinical’ offering.

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. The current culture seems to be - don't admit, don't accept fault, don't apologise - and the answers are hiding behind the legal weight of an opaque complaints process which is designed to exhaust people into abandoning their quest for answers and apologies. The sense that the avoidance of a claim is paramount - is tangible. Whether clinical negligence in law, is or can be established , is incidental to many people seeking answers and redress and recognition and regret….. the current process is devoid of 'person centred care' and Heath care workers should be supported to be open and transparent- to actually deliver on this empty promise of 'person centred care'.

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. Support, guidance, systems, reflection through monitoring and review of policy and practice - are all essential for any system of working/ organisational culture to be established and upheld routinely. Staff need to feel clear about their individual duty and the framework of the organisational duty needs to support them to be knowledgeable, capable and confident in carrying out their duty and in being an integral part of the organisation's culture of openness, as a whole.

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.

Absolutely- this is no different for example, to health and safety/ risk assessment practice and the measures in place to assess/ monitor/review practices which come under such legal duties. Quality assurances are required and part of the process of openness is reporting the performance of any organisation in adhering to such requirements.

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. The nature of a health. Are providers role places them in a position if power and besties upon them the duty of care (and candour) towards the patients/ service users who are the vulnerable individuals in such relationships. The gravity of the offence when withholding, falsifying information or misleading patients/ service users/ the public is such that I believe the criminal sanctions are appropriate, and should hopefully act as encouragement - for staff to uphold the duty of candour in practice.

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

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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.

This seems reasonable as the threshold for criminal offence/sanctions is based on evidence beyond reasonable doubt and deliberate intentional actions….this would certainly be a proportionate measure. Furthermore, the onus upon organisations to fully train and support staff is again proportionate and fair, as staff would naturally require assurances and wish to feel protected and supported, in discharging their duties.

Alternative Policy Proposals (paragraphs 4.23 – 4.35)

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

Alternative proposal b seems to provide sufficient individual responsibility - with consequence, as it is not criminalisation of mistakes - which could understandably impact staff morale and job uptake / retention negatively, but rather criminalisation of ethical duty failures - bestowing responsibility for candour, and accountability for breaches upon staff and sanctioning them when deliberate and intentional efforts to hide/ alter or destroy information which would be helpful to an inquiry are found to be present (or conspiring to assist in this activity).

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.

Everyone should be subject to the statutory duty - with the onus on an organisation to sufficiently train and support all staff to understand and carry out their duty and promote the culture of openness across the organisation and greater health service.

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.

Absolutely. It is important to have a balance between support and statutory duty/ expectation - if a staff member becomes aware of an outcome caused by a notifiable incident that falls under the duty to report within this policy proposal - they should be protected (as with whistleblower policy in the case of another staff member/s actions) and also supported to be open and transparent in the event of a personal

error which has led to harm. Furthermore - based on personal experience, I believe the duty to be honest in responding to a complaint or in the conduct of a review/ inquiry or a morbidity and mortality meeting is PARAMOUNT. This is the type of situation where the opportunity to clarify and scrutinise the evidence openly, and conclude matters more expediently, with a patient centred approach is so often missed. The legal duty of candour should provide the framework to ensure this opportunity is seized and prompt, satisfactory outcomes are reached - and apologies issued where appropriate.

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)

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.

The suggestion of certain exclusions does not seem in keeping with the intentions of this legal/policy change. There is insufficient information or examples provided for in depth consideration.

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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.

"I wholeheartedly agree. If the ethos of openness on a day to day basis was upheld across the health service so much time and resources could be saved by avoiding protracted complaints processes. If staff were supported to be open and honest to enable and improve learning across organisations for the greater good of patients and service users this could help avoid future incidences of serious harm or death, at the other end of the spectrum.

Further - the statutory Duty of Candour states an organisation should give information within an appropriate time - I am still waiting on a Trust to provide a 'full and honest explanation of the circumstances' in relation to my family complaint.. No family should be left with questions that remain unanswered after YEARS. I hope this statutory framework addresses this issue and saves other families from the experience we have had."

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. The patient / service user's involvement in care / treatment decisions is a true indicator of patient centred care. The culture of proactively providing information and offering explanations etc to assist with patient understanding is fundamental- if the nature of care is going to change to give responsibility, contribution and control to patients/ service users during their care experience.

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. Staff should be able to expect senior staff to lead by example in being open and candid. Staff should be consistently encouraged to maintain a culture of openness on a daily basis through regular training, opportunities to reflect on practice and give/ receive feedback that encourages honesty and demonstrates the benefit of this going forward. Staff should be instructed on a continual basis to proactively share information openly and honestly with their patients and service users, as a minimum standard of service provision.

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.

Yes. An organisational culture can not develop and thrive if it is not introduced and maintained 'by osmosis' - through every grade, every department, every structure within the organisation being subject to it - and being supported to understand it, value it and conduct themselves in accordance with it.

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.

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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.

I cannot agree more. My personal experience is the opposite to this - if my family was ‘ listened to and supported’ as we repeatedly tried to let them know where harm was suspected / being caused, our outcome might have been very different. I relate to this requirement more than I ever would have wished to - the involvement of service users/ families in learning would also give a more meaningful resolution to alleviate concerns about future mistakes and practices that could cause harm.

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. These measures will minimise risk of harm and embed a culture of openness in learning from experience in practice - whilst instilling more confidence in patients and service users that the HSC is committed to improving quality of service and putting the needs of the patient/ service user first.

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.

Yes. A practice of enabling prompt and open disclosure of near misses or mistakes that cause harm and where staff feel protected and confident in the support they will receive upon doing so, is essential. Obvious learning and implementation thereof, through reflection and review with subsequent changes being effected in practice, demonstrating the positive benefits of open and candid working needs to underpin this policy.

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.

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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.

"This policy proposal is absolutely critical to change the current perceived culture of "shutting down questions' and keeping information from patients/ families or omitting to disclose all pertinent information, by way of misleading service users to avoid blame or liability.

The stance whereby the HSC. will proactively offer support and guidance and explanations to assist with this process and work to ensure an apology from the right people, in a timely manner is conveyed where appropriate - is very welcome. The opportunity to provide feedback at the end of the process - so as to ensure the HSC continues to reflect on their processes, with a view to continuous improvement - is also welcome."

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. Patients and families should not be kept in the dark- relevant facts and honest open communication should not be withheld in an attempt to avoid blame or consequence. The duty of candour emphasises this ethical and legal duty and I hope it will change the culture of reluctance to offer information and the tendency to remain silent until pushed to engage through complaints processes or inquiries - if this changes then patients and families will be spared further distress and frustration.

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.

Wholeheartedly. These measures, steps and processes rely on the initiation of proactive, open and candid communication which in turn facilitates the progression of stage 3 proposals. The proposals for appointing the senior liaison and offering a range of supports throughout the stages is exactly what is needed. If the HSC doesn't approach incidents in this manner- they are further frustrating families efforts to gain answers, they are compounding distress and they are disrespecting patients, their families and their memory. I welcome this and only wish it was implemented much sooner.

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.

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?

Regarding Human Rights- this policy proposal upholds the rights of every individual to expect a high standard of healthcare that is underpinned by the duty of care . Likewise, staff in HSC settings have the right to be supported in their role and not feel victimised by a system of working - that scapegoats individuals. I believe these proposals uphold both of these sets of rights and as Francis suggested - staff who don't do any reckless/ deliberate / intentional wrong - have nothing to fear from this framework, whilst patients and their families can expect to face acknowledgment , honesty, support and closure regarding incidents that have far-reaching consequences.

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?

It would seem that the establishment of department led ‘improvement teams’ - to initiate the practice of planning , training, pilot implementation, with an agreed schedule for continuous reflection, underpinned by prompt and public disclosure of findings and further consultation - would be a thorough and meaningful engagement process. The more ‘groundwork’ involving staff, service users etc. Prior to roll-out of these proposals, the more chance of the culture being accepted, adopted and embedded routinely within our health service.

I would also suggest complainants with experience such as myself, should be offered the opportunity to contribute to this process as a meaningful way of participating in positive changes, based on lived experience. This would go some way to demonstrating the true intentions - to effect positive change and improve services.