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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.

I agree with the term Candour, it denotes truthfulness, openness as stated relates to culture and again I agree with the use of this terminology.

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 I agree with the scope of statutory organisational duty of candour however there needs to be more clarity on exact provision of care that RQIA regulates, are there any holes in this regulation? do they cover all aspects of healthcare particularly those provided by NHS trusts?

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 I agree with routine requirements of statutory organisational duty of candour, I have no evidence to provide other than it should be a given that patients and families are told the truth, also if the provision of care is likely to be of a poor standard due to influences such as budgets, beds and staffing, patients and families should be made aware.

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 I agree, a notifiable event which resulted in serious harm or death in my view should be investigated independently, this in itself would assist in consolidating the duty of Candour "fresh eyes" so to speak, as it has been found that during in house investigations colleagues have been involved in an investigation leading to bias.

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 I agree, it is imperative that service users and family are involved from the outset, particularly if an investigation is instigated, terms of reference and a timeline should be made available and an advocate for patients and families provided during the process, preferably someone who has already been through a similar process and independent of the organisation involved, in England they are called Family Liaison officers (FLO's)

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.

I agree that an apology should be issued as soon as possible, I do not believe the reason for debate on this is in relation to an apology not being sincere or genuine, moreover this is in relation to potential litigation and appearing to admit negligence, if this proposal for a statutory duty of candour is ever going to be passed, this process also needs to be open and honest.

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 I agree and accept that an apology is not necessarily an admission of liability but it is imperative that a full explanation of what went wrong is given and if system failures are highlighted it is also important that improvements are made in order to prevent the same happening again, assurances that this will be the case should be shared with service users and their families and those changes/improvements should be demonstrated as being effective.

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.

The above does not go far enough in that a clear support system for whistleblowers should be in place, thus far the introduction of the freedom to speak up guardians office in England has failed to support whistleblowers who are an intrinsic factor in promoting patient safety, responsibility for support in relation to an individuals duty of candour should be placed at the very top of the organisation.

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 I agree, however all other bodies such as regulators must also demonstrate Candour otherwise the whole process is nul and void, from personal experience I have found regulators and the RQIA do not necessarily invoke candour themselves, the whole system needs to be wholly transparent, this needs to be a joint protocol otherwise this consultation is nothing more than a tick boxing exercise with no real teeth.

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 I agree, as is currently the case in other countries within the UK, but this alone (tax payers money) will not be a deterrent if that is what it is meant to be, for example if death has occurred additional referral and investigation by the health and safety executive should ensue in light of a failure in organisational duty of candour. (Obviously if there is a breach of health and safety laws)

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 I agree. Obstructing another in their duty such as a Coroner undermines the Coronial process, the same can be applied to any other organisation such as regulators, these are publicly funded bodies that are there for the publics protection, being dishonest prevents appropriate investigation, prevents learning and allows continuing harm to occur.

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?

Misconduct in public office of those responsible for those who acted dishonesty and who ought to be fully aware of this dishonesty should be implemented fully and wholly, this alone could contribute significantly to a more open culture however the difficulty with this is that it may have the opposite effect, singling out whistleblowers, a pack mentality within the boardrooms, bullying and destroying a healthcare professionals career, this has been found to be the case in England, an example would be Dr Peter Duffy, he is one of many, how might this process be any different to what has transpired in other parts of the UK, if anything Northern Ireland is very insular, but again this also works both ways.

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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.

Criminal sanctions should apply if there is an individual lack of candour, the problem lies in the fact that it is not always in the HSC's interest for there to be such honesty for many reasons therefore any support needs to be independent, preferably independent of Government, this goes back to my previous answer, the risk of staff being singled out, vilified and bullied for fear of the risk of organisational and systemic failures being highlighted. The support offered needs to be robust, if anything this will attract more into the professions of healthcare as it will reassure them that safety is taken seriously.

Alternative Policy Proposals (paragraphs 4.23 – 4.35)

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

Any breach of candour which thus perverts the course of justice and particularly where death or significant harm has occurred should have criminal sanctions imposed, in my view it is not enough to have a fine as a maximum penalty as deliberately altering, withholding or providing false information is an intentional act, it is not a mistake, it is important to draw clear lines along what is an honest error and what is a deliberate act, a honest error in care which leads to harm/death should not in my view impose criminal sanctions, it is the action of cover up after an event which should be punishable, I do not believe a short prison sentence is too harsh, the general public who have perverted the course of justice can face up to 7 years in prison, what makes this any different?

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.

This should include all HSC employees, the reason I say this is because if there is intent to cover up a preventable death it has been known that administrative staff have been included in the web of deception, this will remove that possibility and tighten the reigns.

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 agree but would be interested to know what the exclusions were, no examples have been given, this suggests to me that a loophole of some description is going to be factored into the individual duty of candour giving the option for misuse.

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.

As above, a list of exemptions would have been helpful to understand what exactly is meant. by this.

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.

Yes, it is an absolutely ridiculous question to ask why I think honesty, openness and candour should be part of a being open framework.

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 I agree but again in reality are there options for choice in care? This was the framework many years ago, what has happened that the system has become so backward?

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 I agree, HSC staff and their managers should behave in an open and honest manner and communicate proactively with service users, to encourage seamless care, learning and sharing of information.

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 I agree, it is imperative that senior executives within the HSC lead by example, those who fail to act openly should face criminal sanctions and more thought must be given to who is employed at senior level within the HSC, it is no good having a dishonest CEO training CEO's of the future, the rot needs to be rooted out to make any of this work.

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 I agree, but again waiting lists, staff shortages and lack of service provision effects quality of service, a complete root and branch overhaul of provision of healthcare in NI is the only way to improve quality of care, resources are too thin, too spread out, inefficient and just a recipe for potential disaster, exposing patients and HSC staff. (Bengoa report) Prevention is better than cure, the system cannot continue as it is, of course it is imperative that staff are open and honest but if there is not the capacity service users and their families should be informed, I am particularly referencing mental healthcare where it may be possible for families to find alternative provision, rather than being lead to believe that services are safe, when they clearly are not.

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 I agree, this normally happens in Maternity care, cannot understand why it has not been rolled out in all other areas.

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.

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.

Additional to the above, all statistics should be placed in the public domain, league tables should also be available so that the public can have an informed choice/knowledge of standards.

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.

There is currently research and a pathway being rolled out in England because the current level 3 process has been open to abuse, failing to inform families what to expect, using the investigation as an opportunity to cover up, once the pilot has been rolled out it is hopeful that it will be rolled out across the UK, this will close the ability for service providers and NHS trusts to "misinterpret" the process, it will be available to all parties, including service users and family members, the current process which was rolled out here in 2016 is not adhered to and there is protectiveness and secrecy around the process.

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 I agree with these policy proposals but again more questions in this Consultation than answers, how is it going to be policed? How do the public know that an investigation is being conducted in the correct manner? How do families know if records have been altered or withheld? It really is a case of only if you get caught, if there are any such cases a complete review of cases should be looked at to ensure that there is some form of deterrent and any historical cases are re-investigated if there is any suspicion of cultural cover ups within an organisation.

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.

At level 3 the investigation g team should not be colleagues of those they are investigating, this can lead to bias, a failure to investigate thoroughly, also those involved in doing the investigation should be skilled in the process, time to investigate should be protected, in my view individual teams, seperate from the organisation should be deployed at this level, dedicated investigative teams who have the adequate training to perform this.

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.

That being dishonest is regarded as being a disciplinary offence is quite breathtaking, it poses the question of why regulatory bodies have codes of conduct if they are not even followed, that this is even a question, what input have the regulators given to this consultation? Why has there been so much dishonesty and cover up and the regulators failing to take appropriate action, families need to be listened to, first and foremost, their testimony often disregarded as fantasy, families experience gaslighting, obsfucation, obstruction and untold harm when they are grieving, this framework needs to be watertight, not just an exercise that is disregarded in the future as this appears to be the case when new guidelines such as SAI investigation framework was published in 2016.

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?

Under human rights legislation where harm has caused death any investigation should be wholly independent of the organisation involved.

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?
