

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

CONSULTATION RESPONSE TEMPLATE

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, as well as Easy Read and Plain English versions of the proposals, are 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 the Consultation Response template below and submitting it to:

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


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

Alternatively, an online survey is available to be completed on Citizen Space [here](#), a Consultation Questionnaire is available [here](#), or stakeholders can submit written comments by email or letter to the addresses listed above. Stakeholders do not have to address every question within the consultation, and can instead focus on the questions or issues that are of particular interest.

Data Protection

The DoH will publish a summary of the consultation responses and, in some cases, the responses themselves, but these will not contain any personal data. We will not publish the names or contact details of respondents, but will include the names of organisations responding. For further information on how we will process data and your rights, see the Privacy Notice for this Consultation [here](#).

DUTY OF CANDOUR & BEING OPEN – CONSULTATION RESPONSE TEMPLATE

Name	Michael Bloomfield
Contact Details	Chief Executive Northern Ireland Ambulance Service Site 30 Knockbracken Healthcare Park Saintfield Road Belfast BT8 8SG 
Are you responding on behalf of an organisation? If so, what is the name of your organisation?	Yes Northern Ireland Ambulance Service Health & Social Care Trust

Please provide your comments and feedback on the policy proposals relating to a statutory Duty of Candour and Being Open Framework.
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The Northern Ireland Ambulance Service fully supports the principle that every healthcare organisation must adhere to a practice of being open and honest in all their dealings with patients and the public. Further, that those who die or suffer serious harm (or their authorized representatives) have a right to be informed of the incident and to be given a full and honest explanation of the circumstances, and be allowed to be involved in the process of review.

In recent years the Health & Social Care system has seen significant developments in the regional approach to the review of Serious Adverse Incidents, which are aimed at creating an environment where incidents involving serious risk are harm can be reviewed in an environment designed to encourage learning for individuals, organisations, and the wider healthcare system.

Registered healthcare professionals such as doctors, nurses and paramedics are already subject to professional obligations of candour through their professional codes of conduct, as overseen by the General Medical Council, Nursing & Midwifery Council and the Health and Care Professions Council, although we accept that healthcare organisations employ staff who fall outside professional regulation but who are still involved in patient care e.g. Emergency Medical Technicians, Emergency Control Centre staff, and those in numerous other support and administrative roles.

We therefore agree that each organisation must have an overarching duty of candour, and that all employees must adhere to the organisational policy in respect of this. This is easier where professional regulators already place such an onus on registered individuals, but we would support the amendment of contracts of employment to reflect this expectation of all staff within the organisation, and the standard incorporation of this within new contracts going forward

We would therefore support the introduction of statutory duty of candour for both organisations and individuals, but we would hesitate to support the introduction of criminal sanctions for breaches relating to this, and in particular for individuals.

We are concerned, having worked hard to adhere to the principles of candour and openness through the regional policy on Serious Adverse Incident reviews, that the introduction of potential criminal sanctions for individuals may either discourage individuals to participate in an open and honest review of an adverse incident in a “just-culture” environment, or that fear of prosecution will see them moving to a position where they feel that legal representation will be required in order to do so; this would have the potential to delay the review process considerably.

Furthermore, it may discourage individuals from reporting more minor clinical errors from fear that these may potentially escalate to criminal investigation; we would hold that the open reporting of near misses or minor errors is a vital aid in the early identification of systemic issues which may lead at pace to the development of important safety-related changes across the wider HSC, or indeed addressing the needs of individual staff who require remedial training.

We would instead welcome the introduction of an independent body tasked with leading serious adverse incident reviews which on the one hand could be seen to act as an advocate for the patient or relatives in pursuing the truth following an incident resulting in harm, while also providing assurance of a just-culture approach that would encourage staff to participate freely.

We further believe that the implementation of the individual statutory duty with potential criminal charges would create a disparity with other parts of the United Kingdom and the Republic of Ireland where no such process exists; this discrepancy may act as a potential barrier to recruitment if staff fear that they may be subject to a disproportionate sanction beyond what is already within the remit of professional regulators. Prosecution of organisations already occurs within other

parts of the UK with some cases specifically related to perceived failings in the duty of candour.

It has been proposed that the body responsible for determining the presence or otherwise of evidence of non-compliance or deception should be the RQIA, but as a healthcare organisation in its own right, we would welcome clarity on how such standards would be applied to the RQIA and their own staff, as well as other bodies such as the Public Health Agency and Health & Social Care Board. Further detail on an over-riding authority to allow for appeals etc is also required.

While we note the “bar” for prosecution is described as cases where there is evidence of *willful* or *serial withholding* of information, it is not clear by what process this would be determined, particularly with reference to a single incident. We would be concerned that the complexity of multiple systems across trusts and the wider HSC may make it difficult for individuals or organisations to be certain that all documentation has been located, particularly in historical cases.

We note that numerous health-related bodies contributed to the stakeholder process, but feel there may be merit in considering how similar situations are managed within different public bodies in order to develop best practice. For example, the proposal document makes reference to engagement with the Police Ombudsman, but does not refer to how a perceived lack of candour is managed within other public organisations. We would also suggest that views of the Attorney General and Department of Justice are sought on the proposals for a criminal prosecution process.