

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	School of Nursing and Midwifery, Queen's University Belfast
Contact Details	Maggie Bennett School of Nursing and Midwifery, Medical Biology Centre, Queen's University 97, Lisburn Road Belfast BT9 7BL
Are you responding on behalf of an organisation? If so, what is the name of your organisation?	Yes School of Nursing and Midwifery, Queen's University Belfast

Please provide your comments and feedback on the policy proposals relating to a statutory Duty of Candour and Being Open Framework.

Policy options for the statutory organisational Duty of Candour

- The principle of an organizational duty of candour is accepted by both the staff and students in the School of Nursing and Midwifery. The proposal states unequivocal guidance will be provided by the Department of Health to all Trusts detailing what is required to meet the Duty of Candour, this needs to be shared as part of the consultation, as it will be central to the interpretation and implementation of the legislation.
- The proposed legislation is based on being 'open and honest' with the patients and the public and telling the 'truth', however this is subjective. Safe staffing levels have been consistently raised as an issue of concern by registered nurses and midwives. Patients have a right to be cared for by appropriately qualified and experienced staff however these concerns have

not been 'openly and honestly' shared with the public by organisations and are likely to be a contributory factor when things go wrong. Individual nurses and midwives have unfortunately limited influence on some organisational factors that directly influence their ability to deliver safe and effective care.

Policy options for the statutory individual Duty of Candour

Students and staff voiced their concerns and opposition to the introduction of an individual duty of candour based on the following reasons.

- Health and social care organisations in NI are attempting to move towards an open and honest learning culture, introducing individual criminal liability at this point would be detrimental and counterproductive. This proposed legislation risks introducing a blame culture centred on individuals rather than continuing to build towards organisations learning from mistakes to help improve patient care.
- The perceived 'threat' of criminal liability rather than supporting an open learning culture will promote a climate of fear and defensive, risk adverse practice, which will negatively impact on patient centred care.
- Registrants already have a duty of candour under their professional code. Introducing this additional legislation undermines the professionalism of nursing and midwives and is disrespectful. The focus should be on ensuring the current duty is adhered to.
- It is debatable unfortunately, that this proposed legislation would have changed the action of the individuals who were the subject of previous inquiries and deliberately did not tell the truth.
- Currently there is a workforce crisis in Nursing and Midwifery, exacerbated by the ongoing pay dispute, the current pandemic, low morale and poor retention of staff. The perceived 'threat' of criminal liability may impact on future recruitment and retention of staff.
- The proposal to introduce a duty of candour for all individuals in health and social care organisations, raises particular concerns for nursing and midwifery students. Raising issues and concerns can be difficult for nursing and midwifery students, as they are dependent on registered staff to successfully complete their programme of study. Nursing and midwifery students are vulnerable members of health and social care organisations and will need focused support and protection to enable them to fulfill any legislated duty of candour.

The policy framework for Being Open guidance.

- Both the staff and students in the School of Nursing and Midwifery broadly support the policy framework for Being Open guidance informed by the five

key principles.

- The help and support to promised to staff and patients to exercise and experience openness and honesty routinely in all circumstances will be crucial to ensure successful implementation of the framework