

Annex B

CONSULTATION QUESTIONNAIRE

Question 1 :

Do you agree that the arrangements that should be in place to support an organisational duty of candour should be outlined in legislation ?

Yes No

1. Comments However, as well as the operational requirements summarised at Chapter 8, there should be greater clarity and consistency about the process of serious/critical incident reviews following an adverse event. The experience of the Mental Welfare Commission in relation to suicides and other serious incidents involving people with mental health issues is that current HIS guidance is inconsistently applied, and that CIRs are frequently delayed, lack independence or rigour, or do not fully involve the patient (if still alive) and families.

Question 2:

Do you agree that the organisational duty of candour encompass the requirement that adequate provision be in place to ensure that staff have the support, knowledge and skill required ?

Yes No

Comments

Question 3a: Do you agree with the requirement for organisations to publically report on disclosures that have taken place ?

Yes No

Comments With the proviso that patient confidentiality in individual cases is preserved.

Question 3b: Do you agree with the proposed requirements to ensure that people harmed are informed ?

Yes No

Comments In addition, the arrangements need to make provision for people with mental health issues, learning disability and dementia. This would include provisions to notify welfare guardians and welfare attorneys, where they exist with relevant powers, and also to ensure that consideration is given to reporting to carers or others with an interest in the person in other

cases. In addition, the arrangements for reporting should encompass reporting to the Mental Welfare Commission in appropriate cases, reflecting the guidance on our website – see <http://www.mwcscot.org.uk/good-practice/notifying-the-commission/>. Consideration also needs to be given to formal arrangements for notifying the procurator fiscal, in cases involving death (where a link needs to be made to existing guidance), or cases where an offence (e.g. ill-treatment or neglect) may have been committed.

Question 3c: Do you agree with the proposed requirements to ensure that people are appropriately supported ?

Yes No

- a. Comments Although more detail is needed of what support will be provided, particularly to people with mental disorders or other vulnerability. In some cases, support in understanding the information may be sufficient, but support should also include advocacy and independent advice in other cases, particularly involving serious harm.

Question 4:

What do you think is an appropriate frequency for such reporting ?

Quarterly Bi-Annually Annually Other (outline below)

1. Comments Annual reporting of the overall picture of adverse incidents and how the duty has been met appears appropriate.

Question 5:

What staffing and resources that would be required to support effective arrangements for the disclose of instances of harm ?

1. Comments See response to 3c above. We are not in a position to quantify the overall staffing and resources required, but it must include resourcing for appropriate support to patients and families, including advocacy and advice.

Question 6a:

Do you agree with the disclosable events that are proposed ?

Yes No

b. **Comments** We broadly endorse this. However, the thresholds appear inconsistent – one criterion is ‘injury’ which seems to apply however minor, while the next criterion is ‘prolonged physical or psychological harm’, which is a much higher test. Similarly, the test in 9.11 appears to apply to a much more severe set of circumstances than ‘extra time in hospital’, which is one of the criteria in 9.12. In addition, clarity is needed on how suicides and significant self-harm will be treated. These are not always preventable if people are in contact with services, but we believe they should be the subject of the reporting obligation. We also believe consideration should be given to extending the categories of reporting to include unlawful treatment (for example treatment without consent) and actions which may constitute ill-treatment and neglect, and therefore be in the scope of s315 of the Mental Health (Care and Treatment) (Scotland) Act 2003, and the new offence currently the subject of a separate consultation.

1.

Question 6b: Will the disclosable events that are proposed be clearly applicable and identifiable in all care settings ?

Yes No

a. **Comments** As set out in the response to 6(a), there are particular issues in relation to mental health care, including self inflicted harm and unlawful detention which require consideration

Question 6c:

What definition should be used for ‘disclosable events’ in the context of children’s social care?

Comments We have no comment in response to this question.

Question 7

What are the main issues that need to be addressed to support effective mechanisms to determine if an instance of disclosable harm has occurred ?

1. **Comments** Issues will include not just clarifying definitions, but establishing whose judgement it is that the threshold has been reached, and how to resolve disagreement among clinical and multi-disciplinary teams.

Question 8:

How do you think the organisational duty of candour should be monitored ?

1. Comments Monitoring requires further discussion amongst the regulatory agencies, which should include the Mental Welfare Commission in respect of people with mental disorders.

Question 9:

What should the consequences be if it is discovered that a disclosable event has not been disclosed to the relevant person ?

1. Comments In cases of deliberate and significant breaches of the duty, a criminal offence may be appropriate. In other cases, arrangements for appropriate redress for patients should be considered.

End of Questionnaire