

## 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

Yes we agree that a policy framework should be outlined in legislation that can be applied consistently by relevant organisations to support their duty of candour. This should include clear definitions of harm, risk and what constitutes a disclosable event in general terms. This will minimise the chance of variable interpretations across the country and amongst regulatory staff charged with inspecting or assessing quality. However, the specific detail of such arrangements should be defined by the relevant organisation, in consultation with local stakeholder groups to ensure it is meaningful in the context of other organisational and local policy frameworks. National guidance may be helpful.

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

Yes, we believe that competent, confident practitioners and excellent leadership are key drivers to openness, transparency and organisational cultures that promote continuous improvement and learning from adverse events. Effective staff training, support and good recruitment practices will be essential.

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

Yes  No

We agree that public disclosure is consistent with the notion of a duty of candour. However, we are concerned to ensure that the additional administrative burden of reporting is proportionate and meaningful and does not inappropriately consume valuable organisational resources that are better targeted on improving practice. In this respect, we agree that organisational policies, procedures, training plans etc. should evidence its arrangements for discharging its statutory duty of candour and should be openly available, e.g. via its website and as part of inspection regimes.

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

Yes  No

Yes we agree that respective disclosure to an individual is essential where something has gone wrong with their care and treatment resulting in harm. We agree, as stated in the consultation, that this requires advanced communication skills by staff supported by sound organisational policy frameworks.

Any new statutory duty should be consistent with the principles and spirit of the Adult Support and Protection Scotland Act 2007 and Adults with Incapacity Act as any adult in receipt of care who is harmed is very probably an adult at risk as defined by the above legislation. It should also be connected with guidance/legislation arising from recent proposals to create an offence of wilful neglect or ill treatment in health and social care settings.

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

Yes  No

We would urge, however, that the administrative burden placed on organisations is minimised to ensure scarce resources are not inappropriately targeted on maintaining or producing various forms of evidence that do not specifically improve practice, outcomes for service users or avoidance of further adverse events. For example, we agree the proposals described at 6.1-6.7 are reasonable. We would question the efficacy of 6.8 as a nationally prescribed requirement.

Question 4:

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

Quarterly  Bi-Annually  Annually  Other  (outline below)

We fully support the principles of embedding a culture of candour within health and care organisations and professions. We have concerns, based on experience, about the burden of administration that falls on organisations to regularly demonstrate compliance to various external regulatory bodies, at the expense of targeting time and resources on improving practice and avoiding adverse events in the first place. This is particularly burdensome on small organisations or facilities. It is essential, therefore, that reporting requirements take account of, or replace existing prescribed disclosure arrangements which are already relatively onerous. It will be important that the focus is on spotting patterns and trends in the

way an organisation and its staff care for people since this will highlight issues of culture and leadership, rather than simply counting/reporting numbers of adverse events. We would suggest annual reporting is proportionate, supported by a requirement for regular self-assessment or self-evaluation by organisations that carry the statutory duty.

Question 5:

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

Undoubtedly additional resources will be required for continuous staff training; devising and monitoring policy, maintaining recording and reporting processes and quality control functions within organisations. Public awareness raising; handling appeals and following through with post-event support for all parties will also consume resources. As far as is reasonably possible, these additional arrangements should be aligned or integrated with existing complaints and SCR processes and procedures. The potential for increased financial compensation claims and professional indemnity should be considered.

Question 6a:

Do you agree with the disclosable events that are proposed?

Yes  No

We particularly welcome the recognition that a statutory duty of candour should apply in serious, significant or repeated events that cause permanent or prolonged harm or failure to thrive. This is not a process that should be invoked lightly or following temporary, one off or minor service failures that can and should be addressed through other standard processes already in place, e.g. routine complaints or grievance processes. It will be important that the legislation and supporting guidance clearly articulates this.

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

Yes  No

Yes we support the proposal to extend the duty to all health and social care settings, in the statutory, voluntary or private sectors.

Question 6c:

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

We suggest this needs careful consideration and consultation in its own right and should be consistent with existing aspirations and requirements as set out in child care legislation and policy, e.g. GIRFEC, child protection.

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?

Section 2.9 of the consultation document articulates well the barriers to disclosure. Systems and arrangements that address these barriers should be the main focus, including but not restricted to safe recruitment practices; good public information and high levels of awareness; effective training and internal communications processes; whistle-blowing policies that are used and promoted; health and care providers that are learning organisations committed to self-evaluation, with a focus on avoiding adverse incidents and supporting staff to be caring, confident practitioners.

Question 8:

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

Through existing inspection and performance monitoring arrangements and by streamlining these rather than adding to the burden of regulatory requirements. See comments at 3a, 3c and 4 above. We would again emphasise the importance of a monitoring focus on trends and patterns that can reveal underlying or systemic problems. Monitoring should have a strong focus on service user/patient input and feedback.

Question 9:

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

This requires careful consideration and wider consultation but we believe it is unlikely that financial compensation as a sanction, will promote the spirit or practice of candour amongst professionals and organisations.

**End of Questionnaire**