

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

We broadly welcome this proposal but we do feel greater clarity is needed in the following areas:

Existing Legislative and Policy Frameworks – We would wish to seek clarity in relation to how this new statutory duty will fit into other existing frameworks relating to Adult Support and Protection, Child Protection, professional codes of conduct, professional ethics and organisational policies such as whistle-blowing and grievance.

Definitions of Harm – Introducing an organisational Duty of Candour seeks to bring about greater openness and transparency. It will ultimately increase accountability and bring about consistency and we welcome this. We note that the duty will outline minimum requirements and that in the introductory paragraph instances of physical and psychological harm are referred to. We feel that greater specificity will be needed in relation to what constitutes harm and that subsequent guidance will need to be very explicit when considering all connotations of harm, neglect/harm caused by omission.

The Role of the Patient/Service-user/Carer - We would also wish to seek further clarification in relation to the role of the patient/service-user/carer who may wish to report harm. This may be through invoking a formal complaint or through an Adult Support and Protection (ASP) referral. We would wish to seek further clarity in relation to how the service-user's complaint may fit with the new statutory duty. Any new duty would also need to be accompanied by a public awareness raising campaign similar to that of ASP.

Training and Development – It is imperative that health and social care colleagues are supported to understand the new statutory duty and the accompanying reporting framework but of equal importance is the cultural shift that this new statutory duty seeks to bring about. Colleagues need to feel able to disclose harm within organisations that will support them. This may necessitate further discussion. The duty should be underpinned by organisations being asked to evidence how they are supporting colleagues.

Legal Clarity/Data Protection – Alongside implementing the statutory duty organisations may want to consider providing greater clarity for colleagues in relation to the legal implications that may follow in sharing information through the new duty and arguably in publically apologising to families.

Implications for Individuals - We would wish to seek further clarification in relation to the roles and responsibilities of individual staff members. Though this proposal relates to organisations, what would be the position for a staff member who reports harm, but is aware that their organisation has not followed through on this? This is akin to 'whistle-blowing' and we are aware that there are many reasons that professionals fear 'blowing the whistle' as

evidenced in the consultation paper.

Autonomy – Self-directed support encourages a culture of positive risk taking and recognises that service-users should have the opportunity to take risks. With this in mind, this may make an ‘adverse event’ highly subjective. If, for example a service-user chooses to engage in an activity offered by an organisation that is regulated by the Care Inspectorate and an adverse event occurs, this could potentially make the ‘unintended harm’ highly contestable; unintended harm may be a consequence of *choosing* to take a risk.

So, to conclude, we do broadly welcome this new duty. The principles of openness, transparency and honesty seek to better support service-users, patients, carers and colleagues and from an organisational perspective the duty seeks to drive consistency but we would wish to note that greater specificity is needed in several areas to bring about the changes the duty seeks to realise and to make this truly achievable at ground level.

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

Please note the above comments in relation to training and development. It is vital that colleagues are aware of the procedures for reporting the ‘adverse event resulting in harm’, what actions to take and where they may access support for themselves too. The diverse nature of scenarios across health and social care (adults and children’s services) will bring about wide variations in relation to ‘harm’. Colleagues will need to have the confidence in their own practice as well as their organisations when disclosing harm. A tiered training programme for colleagues working at different levels within organisations will be needed, recognising that the statutory duty will lie with the organisation employing a range of people who may witness/observe harm.

We note 6.4 suggests that specific staff members will have the responsibility for being involved in disclosure communications, presumably akin to those who are Council Officers for ASP investigations. However, if for example a Cleaner on a hospital ward witnesses harm it is important that this person knows to disclose this, how to do so, what actions will be taken etc and presumably the statutory duty to support this Cleaner as an employee lies with the organisation. We would seek further clarification on this point and staff roles/responsibilities in particular.

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

Yes No

We do support the overarching principles underpinning the proposed Duty of Candour but note caution in publically reporting on the disclosures that have taken place bearing in mind that any data shared may be sensitive, people have a right to confidentiality/data protection. This would necessitate further debate, however, we note that in 7.6 guidance will be produced to support organisations in the implementation of the duty.

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

Yes No

Yes, but it is crucial that colleagues are trained to communicate this to service-users/patients/carers in a sensitive manner. For people who lack mental capacity and/or those needing additional support, we would look to the accompanying guidance to recommend that an Advocate/Parent/Legal Guardian or Attorney is present to offer support or indeed a family member or friend deemed appropriate to support the communication. Presumably for children/young people, where appropriate, the person with parental responsibility will support the communication.

It would be important for any accompanying guidance to address the role of the carer/Next of Kin etc in the disclosure process where that person may be offering support but has no legal right to access information per se in relation to the disclosed event.

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

Yes No

Please see the above response.

Question 4:

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

Quarterly Bi-Annually Annually Other (outline below)

We would consider annual reporting to be reasonable but we would agree that all organisations should make available their policies and procedures in relation to openness and honesty (7.3). These may not need to be updated annually of course but should be public documents supporting the principles underpinning the Duty of Candour.

Question 5:

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

If this area of specialism is to be incorporated into existing roles additional staffing will not be needed at ground level but in terms of training and development as well as awareness raising/information amongst patients/service-users and carers additional resources will be needed at the outlay. It will be imperative that consistency of approach is achieved and that colleagues involved in the disclosure process are aware of their legal duties as well as the rights of service-users/patients and carers, particularly in relation to data protection.

Question 6a:

Do you agree with the disclosable events that are proposed ?

Yes No

The definitions of 'unintended', 'unexpected', 'prolonged physical or psychological harm' are broad and we would wish to see greater clarity given here in any accompanying guidance to support organisations, colleagues, service-users/patients and carers. As the disclosable events read, this is arguably too open to interpretation and consequently the robustness of the proposed duty is weakened. The subliminal sub-text is one of 'neglect' and we would wish to see this made explicit in the list of disclosable events.

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

Yes No

The health and care settings to be included were outlined in 5.1. With the introduction of self-directed support we may see more independent/Third sector organisations delivering care, presumably many of these will be regulated care services under the Care Inspectorate but we would want to seek clarity on this point should any fall outside of this list in 5.1. We would also wish to seek clarification as to whether Personal Assistants would fall under this Duty in any way.

We would note caution in relation to 9.12. Whilst many of the issues listed in relation to NHS care could lead to harm, it should be recognised that this list is perhaps too inclusive. It is not just the event but the context/gravity of the event that needs to be considered.

Question 6c:

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

This necessitates further discussion in relation to children and young people who experience harm and again, it is not clear where the overlap between any Child Protection/Child care concerns may lie. Harm could be defined as broadly as anything that is not in the best interests of the child/where SHANNARI indicators are not being met. It is important that children and young people are supported to understand the Duty of Candour and their rights in relation to it.

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 ?

- Emotionally colleagues should feel confident and competent in recognising harm, responding to it and reporting it
- Practically, colleagues will need to be trained and supported through the Duty of Candour
- Service-users, patients and carers will need to be made aware of the new law and how it can support them
- Organisations will need to ensure that accompanying policies and procedures are robust and that staff are aware of their duties in relation to the new law as well as the implications of data sharing/data protection
- Clear definitions are needed in relation to disclosable harm

Question 8:

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

It should be monitored through organisations' respective performance management systems. The Care Inspectorate and Healthcare Improvement Scotland could monitor the Duty of Candour responsibilities as they have scrutiny functions with the former having enforcement powers. However, we would look to a joined up approach by both organisations to avoid any inconsistency. Through the integration of health and social care, there may be the possibility to develop a joint Quality Assurance Team and they could also monitor the disclosure process at an organisational level to bring about consistency.

Question 9:

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

The Duty of Candour has to be enforceable if it is to meet its aims. If an organisation is found to be in breach of its legal duties under this new Act then action should be taken and suitable sanctions imposed. As with care homes who do not comply with their regulatory duties, they may be subject to enforcement procedures. For large organisations such as local authorities/NHS Boards this will require further detailed discussion.

End of Questionnaire