

NMC response to the Northern Ireland Department of Health call for evidence on a statutory Duty of Candour

Introduction

- 1 We are the independent regulator for nurses, midwives and nursing associates. We hold a register of the 690,000 nurses, midwives and nursing associates who can practise in the UK.
- 2 Better and safer care for people is at the heart of what we do, supporting the healthcare professionals on our register to deliver the highest standards of care.
- 3 We make sure nurses, midwives and nursing associates in England have the skills they need to care for people safely, with integrity, expertise, respect and compassion, from the moment they step into their first job.
- 4 Learning does not stop the day nurses, midwives and nursing associates qualify. To promote safety and public trust, we require professionals to demonstrate throughout their career that they are committed to learning and developing to keep their skills up to date and improve as practitioners.
- 5 We want to encourage openness and learning among healthcare professions to improve care and keep the public safe. On the occasions when something goes wrong and people are at risk, we can step in to investigate and take action, giving the people affected, patients and families a voice as we do so.
- 6 We welcome the opportunity to respond to this call for evidence on the introduction of a duty of candour in health and social care in Northern Ireland.
- 7 The duty of candour is at the heart of professionalism and patient safety. We therefore strongly support measures to introduce a statutory duty of candour for healthcare organisations. Where professionals and leaders are supported to be open and honest when things go wrong, we are better able to investigate and act swiftly to make sure errors or mistakes do not happen again. It is a key part of our standards and the cornerstone of our new approach to resolving complaints about nurses and midwives.
- 8 However, we are concerned that introducing a statutory duty of candour for individual healthcare professionals, with criminal liability attached, might have the opposite effect to that intended. It risks the creation of a culture of blame in which individuals involved in an error focus on avoiding punishment, rather than acknowledging weaknesses in their practice. This would make it more rather than less likely for errors to happen again and therefore poses a risk to public protection.
- 9 In our response we share our experiences as a regulator and details of existing research that support our position.

How we promote openness

- 10 Healthcare professionals must be open and honest when things go wrong. This is known as ‘the duty of candour’. As well as ensuring that people affected, patients and members of the public receive the explanation and apology they deserve, it is also important for encouraging learning and preventing errors from being repeated.
- 11 We recognise that raising awareness of the professional duty of candour is critical for achieving our goal of better and safer care for the public. This is at the heart of how we engage with nurses, midwives and nursing associates, from the start of their education and throughout their careers.
 - 11.1 **Our new nursing education standards** were introduced in January 2019. They make specific references to the Code and the professional duty of candour. These new standards will strengthen the link between how students are educated and what will be expected of them once they begin practicing, and promote the need to act openly and honestly.
 - 11.2 **The Code** contains the professional standards that those on our register commit to uphold when they join the register and when they renew.¹ In 2015 we updated the Code to make it explicit that being open and candid is a core element of professional practice for nurses, midwives and nursing associates. As part of the revalidation process, everyone on the register must consider how the Code applies to their everyday practice, including their professional duty of candour.
 - 11.3 **Our new Fitness to Practice strategy** sets out our approach for investigating concerns about people on our register.² One of its 12 key principles states that deliberate concealment amounts to a significant breach of professional standards and should be taken extremely seriously. As we have stated, the duty of candour is a key part of how we will approach resolution of complaints about nurses and midwives as part of our new strategy.
 - 11.4 We also **work closely alongside other regulators** to provide a consistent approach to promoting openness and honesty across the healthcare workforce. In 2014 we published a joint statement with all of the healthcare regulators in which we set out a common duty of candour for all of the professionals registered with us, and described how we would work with regulators, employers, commissioners and our registrants to help develop a culture of openness.
 - 11.5 In 2015 we worked with the General Medical Council (GMC) to develop and publish joint guidance on the professional duty of candour.³ Alongside this,

¹ [NMC \(2015\) *The Code: Professional standards of practice and behaviour for nurses, midwives and nursing associates*, p13-15.](#)

² [NMC \(2018\) *Ensuring public safety, enabling professionalism*.](#)

³ [NMC and GMC \(2015\) *Guidance on the professional duty of candour*](#)

we also worked with nurses and midwives to produce a series of case studies to help people on our register better understand their duty of candour and how they can meet it in a different situations they might face.

- 11.6 We have a Joint Working Protocol with the Care Quality Commission (CQC) in England which outlines the requirements for the duty of candour, and describes how this relates to healthcare professionals, providers and NMC staff.⁴ We also work closely with systems regulators in the other UK nations.
- 12 As outlined above, we have undertaken several initiatives to embed the professional duty of candour among professionals on our register and across the wider healthcare workforce. We are one of a number of important actors who share responsibility for supporting healthcare professionals to meet their duty of candour. We believe it is paramount that professional regulators, system regulators, employers, and departments of health should continue to work together to foster a culture of candour and learning in the interest of patient safety.

Introducing a statutory duty of candour in Northern Ireland

- 13 We strongly support the focus on the duty of candour in the recommendations of the Inquiry into Hyponatraemia-related deaths,⁵ which will further promote the importance of candour in delivering safe and effective care and help promote a culture of openness and honesty. We also welcome the introduction of a statutory duty of candour for organisations as this would bring regulations in Northern Ireland more closely in line with those in England, Scotland and Wales.

Our position on an individual statutory duty of candour

- 14 The Inquiry report identified that the tragic events which led to the Inquiry were not handled with appropriate candour. The impact of this on the families concerned has been very significant and opportunities for learning were lost. We agree that this warrants careful consideration of how individuals, as well as organisations, can be encouraged to be open when things go wrong.
- 15 In recent years, a number of changes have since been made by regulators to embed the duty of candour as a key component of professionalism. As set out above, we have taken a multifaceted approach to promoting candour among nurses, midwives and nursing associates and we are clear that failure to meet the duty of candour is taken extremely seriously. Recent research by the Professional Standards Authority (PSA) outlines the progress made by professional regulators to embed candour across the wider health and social care system.⁶
- 16 We believe these initiatives have had a positive effect and the feedback we have had from stakeholders generally supports this. Beyond this, we are not persuaded that an individual statutory duty of candour, supported by criminal sanctions, would lead to greater candour and better care for patients.

⁴ [NMC and CQC \(2017\) Updated Joint Working Protocol](#)

⁵ [Department of Health \(2018\) The Inquiry into Hyponatraemia-related Deaths](#)

⁶ [PSA \(2019\) Telling patients the truth when something goes wrong - Evaluating the progress of professional regulators in embedding professionals' duty to be candid to patients](#)

Unintended consequences

- 17 We believe that there is a much stronger case that attaching criminal liability to individuals would risk creating an environment where staff are less rather than more likely to act openly and honestly when things go wrong. This would be counterproductive and would not be in the interest of patient safety.
- 18 We recognise that registrants and employers are more likely to positively engage with our investigations if they see it as an opportunity to learn and reflect on their practice. The introduction of individual criminal liability may lead to a culture of blame and punishment, which is likely to encourage fear, disengagement and denial. The case that punitive measures and a culture of blame create a barrier to candour is supported by a range of research and reports listed in annexe 1.
- 19 Given the risk that introducing criminal liability would engender a culture of fear, we believe that consideration should also be given to the impact this would have on recruitment and retention of healthcare professionals in Northern Ireland.

Impact on our fitness to practice processes

- 20 Introducing criminal liability to breaches of the professional duty of candour could cause delays to our own fitness to practice investigations, for example if there are lengthy criminal investigations. One of the key principles of our fitness to practice strategy is that decisions should be made and communicated to those involved as quickly as possible. This means that lessons that arise from decisions can be learned quickly to help prevent errors from being repeated. Long delays to communication with patients or families could also be taken as a lack of openness.

Creating inconsistent approaches

- 21 Placing the professional duty of candour on a statutory basis with criminal sanctions would create large discrepancies between this particular professional standard and the other principles that our registrants commit to which are not legally enforced. This would risk undermining these other professional principles without a clear rationale for such a variation.
- 22 It would also create inconsistencies with how the duty of candour is legally enforced in health and social care across the other three countries of the United Kingdom. As the research published alongside this call for evidence found, an individual statutory duty of candour has been considered at length and rejected by administrations in England and Scotland, while the Welsh Government is yet to announce the outcome of its 2017 white paper.⁷

⁷ [Welsh Government \(2017\) *Services fit for the future*](#)

Annexe 1: Reports in support of the case that a culture of blame is a barrier to candour

[Berwick, D \(2013\) *A promise to learn - a commitment to act: improving the safety of patients in England*](#)

[Donaldson \(2002\) *An organisation with a memory*](#)

[Francis, R. \(2013\) *Report of the Mid Staffordshire NHS Foundation Trust public inquiry: executive summary*](#)

[Kennedy \(2001\) *The Report of the Public Inquiry into children's heart surgery at the Bristol Royal Infirmary*](#)

[McGivern and Fischer \(2010\) *Medical regulation, spectacular transparency and the blame business*](#)

[McGivern et al \(2015\) *Exploring and explaining the dynamics of osteopathic regulation, professionalism and compliance with standards in practice*](#)

[PSA \(2013\) *Candour, disclosure and openness: Learning from academic research to support advice to the Secretary of State*](#)