PSA Duty of Candour – Regulator Consultation

1. **We enclose a table of the candour and honesty related standards we have identified in yours and the other regulatory bodies current codes of practice/standards/guidance. Please can you confirm that we have identified the correct standards for you? Please tell us if you consider any of your other standards implicitly requires registrants to be candid, open, transparent and/or honest about treatment or care that has gone wrong or incidents that caused harm or nearly caused harm.**

We have attached a complete list of all the relevant sections of the *Code: Standards for conduct, performance and ethics for nurses and midwives* (the Code) and other standards/guidance that relate to candour. These were included in the NMC's response to the Francis Report.

2. **Do you require registrants to declare they will follow your code of practice/standards/guidance:**

    a) **when they register initially; and**
    b) **each renewal/retention thereafter?**

When applying for registration for the first time, or seeking renewal/retention, nurses and midwives are required to sign a self declaration. Amongst other things, the self declaration covers an intention to comply with the entirety of the Code. This is in addition to someone who knows the registrant well declaring that the nurse or midwife is of good health and character.

As stated above in question one, the Code requires all registered nurses and midwives to be open and honest and act with integrity and it also requires them to co-cooperate with internal and external investigations. The Code also places a clear obligation on nurses and midwives to act without delay if they believe that they, a colleague or anyone else, may be putting someone at risk. They are also under a duty to raise concerns if they experience problems that prevent them from working within the Code or if problems in the care environment are putting patients at risk.

A listening event was held by the NMC on the Francis report recommendations, with the introduction of a statutory duty of candour being discussed. While it was recognised that a statutory duty of candour will provide more clarity for nurses and midwives and raise awareness, concerns were raised that criminal sanctions may have the opposite effect to that intended, driving issues underground. The differences of burden of proof for criminal and FtP cases were highlighted. The main discussion points from the listening event are attached (Annexe 2).

3. **How do your education standards and processes encourage education providers to satisfactorily prepare new registrants to be candid?**

Our new Standards for pre-registration nursing education (the education standards) were set in 2010. The previous 2004 standards were updated and strengthened as a result of the findings of the first Francis Report and emerging evidence at that time. The new education standards have been gradually introduced by universities since September 2011 and all of them must be compliant by September 2013. The first intake of student nurses to have completed these new programmes are expected to register with the NMC in September 2014.

The education standards on selection and admission are values based, specifically focusing on good character. This priority continues throughout their studies, as students cannot pass each of the three progression points during the course unless they can demonstrate safety, safeguarding and protection, professional values, expected attitudes and the behaviours that must be shown towards people, their carers, families and others.

We are now planning a robust evaluation process for our new education standards. We will be establishing an Education Advisory Group in November 2013 to advise on the methodology and scope of our evaluation, with particular regard to the new issues raised in the Francis Report report and any further developments. The methodology will be scoped and agreed with the Education Advisory Group by March 2014 and the first phase of the evaluation based on the agreed methodology will be completed by June 2014. This is likely to be focused on the areas of admission and aptitude as the first students will not yet have completed their courses. We will report to Council on first phase in September 2014. Thereafter, further evaluation work will be undertaken.

4. **The Department of Health would like to understand the outcomes and frequency of fitness to practise hearings involving an allegation that a registrant has failed to be candid/open/honest about treatment or care that has gone wrong or incidents that caused harm or nearly caused harm. To assist with this please can you name any such cases decided at a final hearing since 1 January 2009? (This is the timeframe the Department of Health has requested information for.)**

The NMC does not specifically record this information on our case management system. As such, we are unable to provide any statistics regarding the number of FtP cases that involve an allegation of lack of candour.

Dishonesty allegations are recorded in our case management system, however these may include other matters as well.

It should also be noted that the referral type for allegations is recorded at the time the allegation is received and may not accurately reflect the allegations at a final hearing once the case has been investigated.

The NMC recognises that we need to improve our data gathering and intelligence sharing. We are in the process of developing a data strategy that will improve the available data sets for analysis in the medium to long term, increasing our ability to share useful and significant data with the public and other regulators.

5. **How frequently do you receive fitness to practise complaints/referrals about candour failures? What proportion of these is closed in the earlier stages of your FtP process (i.e. any stage before the final hearing stage)? It would be helpful if any data you can provide is organised by calendar year, from 2009 onwards. We appreciate that a full analysis of this nature may be difficult to deliver in the time available, so please state any caveats relating to the data you can provide.**

See the above response to question four. The NMC does not currently record this information. As such, we are unable to provide any statistics regarding the number of FtP referrals that involve an allegation of lack of candour.

6. **In your experience, what proportion of candour failure/allegations is about a registrant's failure to be open with an employer or regulator? And what proportion is about a failure to be open with a patient, service user or carer?**

See the above responses to question four and five. The NMC is only able to obtain this data through a manual process. We may be able to try and provide a number of examples of such cases if the PSA considers this would be helpful.

7. **In your experience how frequently are candour failure allegations/complaints accompanied by an allegation/complaint of professional incompetence and/or deficient performance?**

See the above responses to questions four, five and six. Given the nature of a failure in relation to a duty of candour, we would expect that the majority of such cases would also include some element of professional incompetence and/or deficient performance.

This assumption is supported by our analysis of a small sample of non-clinical cases where dishonesty was an allegation. A large majority of these cases involved allegations of other professional misconduct or deficient clinical performance in addition to the dishonesty allegations.

8. **Are there any general comments, feedback, observations you wish to make? In answering this question you may want to address the questions in the attached Call for Information which will be published on our website and circulated to other stakeholders in the next few days.**

We are committed to ensuring that in any future revised Code the importance of these duties are highlighted. We recognise that we need to do more work to ensure that these duties are understood by nurses, midwives, employers and the public. We also agree that a lot of work still needs to be done across the NHS and the wider healthcare environment to ensure that any cultural, systemic and other barriers to compliance with these duties by front-line staff are removed or reduced.

We understand that the recommendations relating to a new statutory duty of candour and related criminal liability for individuals are being considered by the Don Berwick safety review and we await the conclusions of that review with interest.
Whilst the need for candour is clear, any such legislative steps will have profound implications and the benefits and impact need to be fully explored. In particular, it is important to ensure that patient safety will be enhanced and that the other key

recommendations about the need for a new culture of openness and organisational learning across the NHS and beyond are not undermined.

At the listening event held for a large group of our stakeholders in relation to this issue, there was broad agreement on the need for more openness and candour but diverse views on how this is best achieved. There was some support for a statutory duty of candour but considerable concern about the consequences of introducing criminal sanctions.