

## The Nursing and Midwifery Council's response to the consultation on policy proposals for the duty of candour and being open in Northern Ireland

### About us

- 1 Our vision is safe, effective and kind nursing and midwifery that improves everyone's health and wellbeing. As the professional regulator of almost 732,000 nursing and midwifery professionals, we have an important role to play in making this a reality.
- 2 Our core role is to **regulate**. First, we promote high education and professional standards for nurses and midwives in Northern Ireland and across the UK, and nursing associates in England. Second, we maintain the register of professionals eligible to practise. Third, we investigate concerns about nurses, midwives and nursing associates – something that affects less than one percent of professionals each year. We believe in giving professionals the chance to address concerns, but we'll always take action when needed.
- 3 To regulate well, we **support** our professions and the public. We create resources and guidance that are useful throughout people's careers, helping them to deliver our standards in practice and address new challenges. We also support people involved in our investigations, and we're increasing our visibility so people feel engaged and empowered to shape our work.
- 4 Regulating and supporting our professions allows us to **influence** health and social care. We share intelligence from our regulatory activities and work with our partners to support workforce planning and sector-wide decision making. We use our voice to speak up for a healthy and inclusive working environment for our professions.

### Summary

- 5 We value the opportunity to respond to the [Department of Health's consultation on policy proposals for the duty of candour and being open in Northern Ireland](#).
- 6 The inquiry into the deaths of children with hyponatremia in Northern Ireland focuses on the devastating tragic events rooted in the lack of being open and honest. In preparing our response to this consultation we are deeply conscious of

the continuing impact on the families who have experienced such devastating losses. Open cultures are fundamental to patient safety and we want to work with all our partners in the health and social care system to foster these.

- 7 Our response to this consultation is built on five principles of professionalism we have determined to guide our response:
  - 7.1 Valuing openness and learning
  - 7.2 Promoting a positive working environment
  - 7.3 Moving away from a culture of blame and fear
  - 7.4 Encouraging a just culture to balance fairness, openness and learning
  - 7.5 Working together
- 8 We support the statutory organisational duty of candour, because organisations are responsible for culture and so it is right that there should be a duty on them.
- 9 We do not advocate the statutory individual duty of candour with either criminal sanctions or criminal offences because we think they run contrary to having open cultures. We also think that it would expose professionals in Northern Ireland to criminal sanctions that they are not exposed to elsewhere in the United Kingdom, which has workforce risks for Northern Ireland.
- 10 We already have the professional duty of candour which we use to hold individuals to account. We can see how having a statutory duty (without criminal sanctions) could strengthen and amplify that by creating a clear expectation in law in Northern Ireland. We would welcome working with the Department of Health to ensure that the drafting and implementation reflects our shared interest in this important issue.
- 11 We have responded to the questions from the consultation that are relevant to us, to identify where we can offer our support.

### **Terminology (paragraphs 2.25 – 2.27)**

**Question 1: Do you agree with the terminology and definitions adopted by the Workstream in respect of “openness” and “candour”? If yes, please provide any additional information and / or insights.**

- 12 We agree that the proposed definition of openness as a culture that enables concerns and complaints to be raised without fear would seem to be the right approach for organisations as they are responsible for culture. It will be important to clarify how this openness will be achieved. We would caution against defining openness with performance as this might move the focus onto targets rather than successful outcomes.

- 13 We agree that candour is about being open and honest when something goes wrong, and organisations should create a culture to encourage staff to be candid at all times. However, we think that if candour is to be defined as volunteering all relevant information and in the provision of services, the circumstances in which this would apply will need to be clear.
- 14 We would welcome working with the Department of Health to explore the definition that would work for a statutory individual duty of candour (without criminal sanctions) to complement the existing professional duty of candour and other professional standards and behaviours that we regulate. For example, if a concern is raised about candour there may be other issues that we would consider such as diagnosis, observation and assessments of patients.

### **Statutory Organisational Duty of Candour (Section 3)**

#### **Scope (paragraphs 3.8 – 3.9)**

**Question 3. Do you agree with the proposed scope of the statutory organisational Duty of Candour? If yes, please provide any additional information.**

- 15 We support a statutory organisational duty of candour and we would welcome working with the Department to gain further clarity on how it will complement the professional duty of candour. The proposed scope is wide and we can share our experience of how we have designed our standards to apply to all nursing and midwifery professionals who work in a range of settings.

### **Statutory Individual Duty of Candour (Section 4)**

#### **Policy Proposal – Statutory Individual Duty of Candour with criminal sanction for breach (paragraphs 4.13 – 4.22)**

**Question 24. Please provide comments on the policy proposal for the statutory individual Duty of Candour.**

- 16 We would not advocate a statutory individual duty of candour with criminal sanction for breach, as we think this conflicts with our shared aim of encouraging open cultures. It would also expose professionals in Northern Ireland to criminal sanctions, which they are not exposed to elsewhere in the United Kingdom.
- 17 This could add to existing workforce pressures that have increased with the coronavirus pandemic. Workforce pressures is one of the top reasons for nursing and midwifery professionals leaving the NMC register in our most recent annual leavers' survey.<sup>1</sup> In Northern Ireland this was cited by 23% of people who responded.

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<sup>1</sup> [Leavers' survey](#) pdf, [NMC, 2021]

- 18 We acknowledge the concerns Justice O’Hara identified about the effectiveness of the existing system, as set out in the [report on the Inquiry into Hyponatraemia-related Deaths](#). We have strengthened our approach to the professional duty of candour, with explicit requirements in our:
- 18.1 Revised [standards framework for nursing and midwifery education](#) in all of our approved programmes.
  - 18.2 Standards of proficiency for [nurses](#) and [midwives](#) that individuals are required to demonstrate at the point of entry to the register and throughout their professional practice.
  - 18.3 [Code](#) for all nursing and midwifery professionals on our register.
  - 18.4 For the [revalidation process](#), every registrant must reflect on our Code, which has specific reference to the duty of candour.
  - 18.5 Revised [fitness to practise strategy](#) for concerns that we investigate about people on our register.
  - 18.6 [Joint guidance](#) on the professional duty of candour with the General Medical Council, of which we are currently undertaking a factual review.
  - 18.7 [Series of case studies](#) illustrating what it means for nursing and midwifery professionals in practice and how this can be met in a range of scenarios.
- 19 We are committed to working with the Department of Health and employers in Northern Ireland to strengthen the system further.

#### **Alternative Policy Proposals (paragraphs 4.23 – 4.35)**

#### **Question 25. Please provide comments on the alternative policy proposals for the statutory individual Duty of Candour.**

- 20 We support a statutory individual duty of candour without criminal sanctions attached for breach (alternative proposal A) as we can see how this could strengthen the existing professional duty of candour, which we use to hold individuals to account. This approach would create a clear expectation of this in law in Northern Ireland. We would welcome working with the Department of Health to ensure that the drafting and implementation reflects our shared interest in this important issue.
- 21 We do not support a statutory individual duty of candour without criminal sanctions for breach, but with separate criminal offences for withholding information, destroying information, or providing false or misleading information (alternative proposal B). Whilst the consultation mentions that these sanctions already exist in England with the Care Act, our understanding is that they are predominantly aimed at care providers and effectively amount to a corporate offence rather than a wider

individual criminal sanction. We therefore believe alternative proposal B raises similar concerns to those noted above for criminal sanctions for breach.

#### **Exemptions (paragraph 4.44)**

**Question 30. Do you have any comments to make on the case for exemptions from the requirements under the statutory individual Duty of Candour? Please provide evidence to support your position.**

- 22 In some instances, patients may not want to know the details of what has gone wrong. Our [joint guidance](#) with the General Medical Council on the duty of candour for doctors, nursing and midwives professionals addresses this issue as follows: ‘Patients will normally want to know more about what has gone wrong. But you should give them the option not to be given every detail. If the patient does not want more information, you should try to find out why. If after discussion, they don’t change their mind, you should respect their wishes as far as possible, having explained the potential consequences. You must record the fact that the patient does not want this information and make it clear to them that they can change their mind and have more information at any time.’ It will be helpful for any statutory duty of candour to ensure that this issue is appropriately addressed.

#### **Additional Feedback**

**Question 52. Is there any additional feedback that you wish to provide in respect of the policy proposals for the Being Open Framework? If so, please provide evidence to support alternative proposals, if possible.**

- 23 We would welcome working together to promote positive working environments, and to provide insight on how we encourage open cultures through the way that we regulate nursing and midwifery professionals. We work with organisations to promote a just culture, where this balances fairness, openness and learning. This supports professionals to share learning, and organisations to consider wider action. Working with employers on organisational culture is important as the culture they foster, either safety or blame, is influential.<sup>2</sup>
- 24 We work closely with other organisations and regulators to promote best practice and share data insights and intelligence. We share intelligence with other professional regulators and system regulators on education quality assurance, to enable safe learning and practice.
- 25 We have recently signed an updated memorandum of understanding with the Regulation and Quality Improvement Authority (RQIA), to share concerns and intelligence, support regular contact and partnership working to promote quality and safety within our regulatory remits.

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<sup>2</sup> [Candour, disclosure and openness – Learning from academic research to support advice to the Secretary of State](#) pdf, [PSA, 2013]