

**General
Dental
Council**

GDC consultation response

**Public consultation on the introduction of a
statutory Duty of Candour in Northern Ireland**

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Introduction

The GDC welcomes the opportunity to comment on the Department of Health's consultation on the proposed Statutory Duty of Candour in Northern Ireland. As the UK-statutory regulator of around 115,000 members of the dental team, our primary purpose is to protect patient safety and maintain public confidence in dental services.

Trust underpins the relationship between healthcare professionals and their patients and, when it is lost, it is very difficult to win back. Candour and openness are key expectations that members of the public have for both organisations and individuals who provide care. It is evident from some of the most significant failings in the provision of care that, when members of the public have information concealed from them, it can intensify the harm caused when there is a mistake or failure in care. Dentistry inherently carries a lower risk of harm than we saw in the tragic cases uncovered in the Inquiry into Hyponatraemia-Related Deaths (IHRD), but risk is not absent, and the public should expect their dental professionals to be candid when things go wrong.

The GDC sets the [standards for the dental team](#) which lay out the professional responsibilities for raising concerns, listening to patients, and openness and honesty. In addition, in 2016, the GDC published [further guidance for dental professionals on the professional duty of candour](#). These standards and the guidance are already in effect in Northern Ireland, and the other nations of the UK, and we will consider concerns about dental professionals who may not meet the expectations set out in our standards..

While our role includes considering concerns about dental professionals, we have been working in recent years to shift our efforts away from regulatory enforcement and toward fostering professionalism and open learning cultures. This means that we will work with the dental sector to ensure that local complaints are handled effectively to prevent them escalating. We have also changed our approach to handling the concerns we do receive, such as through the introduction of case examiners, to support timelier and more proportionate decisions about concerns. We are working now to gather evidence and make changes to our standards, guidance and the regulatory framework to take further steps to shift the balance of our effort in the ways described in our [Corporate Strategy for 2020–22](#).

Our experience tells us there is a careful balance to be struck around powers for enforcement, and the promotion of open learning cultures. Often dental professionals tell us that the legal framework surrounding them can be a driver of defensive behaviours and practice. Criminal offences, in particular, can have perverse effects on the behaviour of individuals within organisational cultures, sometimes leading to under-reporting. While it can only be right that organisations are held to a statutory duty of candour in Northern Ireland as they are, or will be, in other nations in the UK, the proposal for the individual duty which does not include a criminal sanction is more likely to support an open learning culture.

Moreover, as a matter of fairness, having a consistent approach across the UK will mean that health professionals are treated equally wherever the concern may have arisen. We are currently working with the Department of Health and Social Care, devolved administrations and other regulators on a comprehensive programme of reform to health and care professional regulators. The aim is to achieve consistency, where possible, across the complex landscape of health and care professional regulation. We suggest that, although these proposals are solely a matter for Northern Ireland to decide, consistency in this regard would be beneficial in ensuring healthcare professionals and patients in Northern Ireland are

treated equitably in comparison to anyone else in the UK.

How we have responded

We regulate individual dentists and dental care professionals, rather than organisations or dental practices. As such, we have not answered all the questions in the consultation document and instead focussed our responses on the questions which relate to the individual duty of candour and Being Open framework. Where we have responded to questions on the organisational duty of candour, we have focussed on areas that would support the individual duty of candour or equal treatment of dental professionals and members of the public across the UK.

We have divided our response between the four subheadings of Organisational Duty of Candour, Individual Duty of Candour, the Being Open Framework, and Impact and Engagement. Where we have responded to specific questions, we have included the question.

Organisational duty of candour

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

We agree with the proposed scope of the statutory organisational Duty of Candour, which includes the environments in which dental professionals will predominantly be working. The proposals would be consistent with the approach in England and Scotland and, we understand, the intention for implementation in Wales, meaning that dental professionals and members of the public working within, or receiving services from, those organisations across the UK will be treated equally.

15. Do you agree with the proposals for support for staff under the statutory organisational Duty of Candour? If yes, please provide any additional information or insights.

We agree with the proposals for support for staff. Learning from the most significant failings in healthcare suggests that a major component of an open learning culture is the support for staff working in an organisation. Opportunities to reflect, and clear guidance and systems for the dissemination of learning are supportive to effective learning cultures and avoidance of blame.

Individual duty of candour

24. Please provide comments on the policy proposal for the statutory individual Duty of Candour outlined above.

We can see that the individual duty of candour has been considered thoroughly, and very much welcome the approach taken in this consultation document to recognise that a consensus on the proposal has not been reached and, therefore, to test a range of proposals.

We note that the findings from the IHRD, which sits at the heart of these proposals, suggest that the system of professional regulation, at that time, embodied only an ethical duty for openness, rather than a clear legal duty. It is important to consider the measures taken by

the regulators over the course of the IHRD Inquiry and since the publication of its report. The GDC has clear requirements for dental professionals, which have legal status in our regulatory framework, to be open and honest, raise concerns when patients are at risk or harmed, and address complaints through a systematic process. In addition, we produced further guidance for dental professionals in 2016 on their professional duty of candour.

For dental professionals, the consequences of not being open and honest are serious, including investigation, and sanctions that may include removal from our registers and no longer being entitled to work in the profession.

It is for the other professional regulators to explain their arrangements, but we know that they too have made changes to their regulatory framework in a similar way. This suggests that the context in which the findings in the report were uncovered has changed, and we encourage consideration of that new context when making decisions on this subject.

In this new context, not only is the regulatory framework clearer, but we understand better the unintended consequences that criminalisation can have on the population of healthcare professionals who would have previously spoken up. The weight of criminal sanction can have a suppressing effect on openness and therefore lead to the perverse outcome of under-reporting.

Having a genuine culture of openness and learning is more effective. This is where individuals working in extraordinarily complex, high risk and challenging circumstances are supported to reflect, learn, and improve upon how they place patients, carers and families and their needs at the centre of care and decision-making.

For these reasons, we suggest that a criminal offence would be a disproportionate and possibly unhelpful intervention.

25. Please provide comments on the alternative policy proposals outlined above.

Alternative proposal (a), not including a criminal sanction, is in the view of the GDC most likely to support a learning culture, as well as to provide a route through professional regulation to apply sanctions for breaches. Additionally, this proposal would ensure consistency across the four UK nations.

Alternative proposal (b), narrowing the criminal offence to obstructive actions, is less likely to have the negative effects on healthcare professionals' openness, but that is only if it is well understood. It may also lead to parallel processes for investigation and sanction, which can have the effect of slowing down regulatory investigations, hearings, and outcomes.

27. What is your preferred policy approach in respect of the scope of the statutory individual Duty of Candour? Please outline the reasons for your preference, and provide evidence to support your reasoning.

The professional duties on dental professionals apply when they are delivering healthcare but also beyond it, to all forms their practice may take. This means the duties arising from professional regulation for candour and openness can and do extend beyond the scope of organisations or activities under the organisational duty of candour. We suggest that this is a strength of the duty stemming from systems of professional regulation, as it provides protection to a broader range of members of the public receiving services, such as aesthetics, from healthcare professionals.

28. Do you agree with the proposals in relation to the requirements under the statutory individual Duty of Candour? If yes, please provide reasons for your agreement.

We agree with the proposals in relation to the requirements under the statutory individual Duty of Candour that have been laid out. Acting in an open and honest way in relation to the provision of health and social care services to patients and service users is key and this should be a requirement in both routine interactions, but especially when care goes wrong. This is embodied in our standards and guidance for dental professionals.

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.

We are unclear on the circumstances in which an exemption would apply and urge caution in the formulation of any exemptions which are based around a principle that professional or clinical judgements in some circumstances are treated as though privileged. There may of course be legal requirements to protect the information or safety of individuals, however, we understand any duty of candour can only apply in circumstances where the subject of the information, or their proper representative, must be provided with information.

Being Open Framework

The proposals are consistent with the expectations we have for dental professionals in the UK. Supporting healthcare professionals to act in an open and honest way through the right organisational cultures is key to providing the public with the care they need. Clarity, and the confidence of healthcare professionals, is important here and we agree that the guidance needs to make explicit the measures that need to be put in place to ensure that staff are supported and enabled to proactively exercise candour.

We therefore agree with the policy proposals suggested for the Being Open Framework, with the exception of paragraphs 5.36 and 5.37 that set out the proposed criminal offences for individuals. The proposals are consistent with the expectations we have for dental professionals in the UK.

In particular we agree that service users and carers should expect to be partners in their care, participating in decision making about their treatment in as far as they want to be and that, where mistakes have been made, the system will be open about any mistakes and will learn from them and disseminate that learning to prevent the mistake recurring. Similarly, healthcare professionals should be encouraged, facilitated and enabled to work in an open and candid way and should expect to be supported when a mistake has been made, to ensure that the mistake does not recur.

Impact and engagement

53. Do you have any feedback or data which may be relevant to the potential impact of the policy proposals within this consultation exercise, in particular in relation to the following areas:

- Equality;
- Human Rights;

- **Rural Needs;**
- **Regulatory; and**
- **Economic Impact?**

We suggest that some thought should be given to the variation between individual healthcare professionals to help them to meet the expectations of the duty of candour. There are likely to be different factors at play that make it more or less likely for an individual to be candid. The healthcare professions are diverse and include individuals who trained at different times and in different contexts, and they may need additional support to adapt long-held behaviours to the more recent context of candour and openness. The same may be true for individuals who have trained and practised outside of the UK, where the context of professional practice may be different.

54. Do you have any feedback in respect of the potential indicators that could be used in order to measure the effectiveness of this policy?

There is some risk that an increase in openness may be interpreted as an increase in failures in care. Healthcare practice is complex, high risk and often delivered in challenging circumstances, and a learning culture is one that accepts that mistakes can and do happen. It will be important in the understanding of impact to look beyond the mere fact of the number of incidents and instead at the causes of incidents, whether they are repeated, and how the process impacts on the wellbeing of members of the public and healthcare professionals.

55. Do you have any feedback or suggestions on how best to engage and involve stakeholders on the development and implementation of this policy going forward?

It is clear that there has been much engagement up to this point, and the views of stakeholders have been taken into consideration and carefully balanced. There will be a continuing need to involve dental professionals and their patients as these proposals progress. Additionally, the GDC and other healthcare professional regulators will need to continue to be involved to ensure that our standards and guidance reflect the context of practice and the legal framework in Northern Ireland.

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