

Consultation Response submitted by
Association for Real Change, Northern Ireland (ARC NI)
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Duty of Candour & Being Open – Policy Proposals

ARC NI supports 48 cross-sector learning disability providers across Northern Ireland who lend support to people with a learning disability in all aspects of their lives. ARC's Vision is to achieve real change that puts people with a learning disability at the centre of decision-making, and in the heart of their communities.

ARC NI welcomed the opportunity to meet with the Department of Health policy leads to enable providers giving verbal feedback to this consultation. This response was developed in partnership with, and on the behalf of, the membership following that discussion.

1. Definitions

ARC NI is saddened that statute is required to ensure honesty and transparency however acknowledges the volume of evidence, including of recent times, to justify this requirement.

ARC NI welcomes the definitions for both candour and openness and strongly agrees that these are key in developing and maintaining positive relationships that are trustworthy.

2. Organisational Duty of Candour

2.1 Scope of the organisational duty

The importance within any value driven organisation to demonstrate good governance, accountability and transparency within practice are frequently discussed within ARC NI. This in our view should not be limited, nor impacted by, the constitution of an organisation, or guided by the services and support offered to those in need of health and social care.

ARC NI agrees with the organisations listed within the consultation document, including those that are publicly commissioned or contracted health and social care services who do not fall within the scope of RQIA regulation.

ARC NI recommends the inclusion of all HSC service providers, regardless of whether their provision is regulated by RQIA.

Paragraph 3.34 of the consultation document would seem to suggest however that RQIA may hold a monitoring and review role in regards to any mandatory reporting of a Duty of Candour, including enforcement powers (see 2.3 below). This would need to be considered if the scope of the organisational duty includes all HSC providers.

ARC NI recommends that one body is responsible for monitoring organisational duty.

2.2 Routine Requirements

ARC NI agrees with the principle of routine requirements, however we await sight of draft guidance and would advocate the need to co-produce this with the health and social care

sector, including non-statutory providers. This would endeavour to ensure a balance between open and accessible individualised information that is practically able to be proffered without placing hugely administrative burdens on front line services and staff.

ARC NI recommends the guidance is co-produced with all stakeholders, including people who use services, their families and providers of services.

2.3 Requirements – when care goes wrong / Reporting & Monitoring

ARC NI feels the defining threshold for a notifiable incident is clearly articulated within the consultation document. There is however a need to ensure that defining thresholds do not conflict and cause confusion. Within the current Adult Safeguarding policy and procedure in Northern Ireland, self-harm is excluded from the definition of an adult at risk and in need of protection. This policy area has recently been consulted upon and may therefore change.

ARC NI recommends that thresholds of be aligned across all HSC policy areas, including Duty of Candour and Safeguarding (Adult Protection).

Furthermore, it would seem necessary to consider a cross-departmental agreement of defining thresholds of harm. Several notifiable incident requirements are already placed on providers of health and social care e.g., Department of Health; Department for Communities (Supporting People); RQIA.

ARC NI would advocate the benefit of cross-departmental exploration of all reporting requirements that are in existence for providers operating in health and social care that meet this threshold definition and consider how to align reporting systems. This could significantly reduce the administrative burden for providers, reducing time, duplicate reports etc.

ARC NI recommends a shared cross departmental electronic system be developed to report notifiable incidents that also meets GDPR compliance.

ARC NI understands the benefit of organisations transparently publishing reports to evidence their practice however this should not become a tokenistic administrative duty. Annual reporting requirements for adult safeguarding was tested through a non-legislative but contractual requirement by the NI Adult Safeguarding Partnership. Health & Social Care Trusts were unclear whether they wanted sight of each organisation's report as action would be required e.g. monitoring role. This resulted in some cases, of a tick box exercise at annual contract review meetings, where providers were asked to confirm they had an annual Adult Safeguarding Champions Position Report. This disadvantaged the benefit of such a report to monitor regional patterns and trends and in response tackle emerging practice issues.

Paragraph 3.34 of the consultation document would seem to suggest that RQIA may hold a monitoring and review role, including enforcement powers. Whilst this priority focus on 'when things go wrong' is understood by ARC NI, we would advocate the opportunity to proactively promote good practice.

ARC NI recommends that RQIA's responsibility includes a role in increasing best practice through regional learning events.

2.4 Apologies

ARC NI feels that an apology goes hand in hand with any situation where care goes wrong, however acknowledges that this should not be delivered by an organisation in a tokenistic manner or received by the recipient in what feels like a standardised approach.

ARC NI feels strongly that legislating the need to provide an apology dilutes the opportunity to achieve the cultural and value-based change that this legislation intends – that of responsibility, accountability and trust.

However to achieve this cultural shift and embed strong values across the HSC sector, ARC NI recognises the anxiety of providers in seemingly encouraging a litigation culture, particularly those, albeit in the minority, that may be most interested in solely financial recompense.

ARC NI recommends that the legislation does not include the need to provide an apology but outlines the parameters stated within paragraph 3.26 in the consultation.

2.5 Support & Protection for Staff

ARC NI agrees with the need to offer support and protection for staff in a meaningful way to increase their confidence to operate in an open and honest environment as there have been examples of a blame culture being visible.

2.6 Criminal Sanctions for Breach / Obstruction Offence

ARC NI agrees with the proposed criminal sanctions for breach, including wilful obstruction.

Individual Duty of Candour

ARC NI agrees that Duty of Candour should be a requirement for all individuals working across the HSC sector, including auxiliary and administrative roles and those that work in non-regulated services. That said, we also recognise the longstanding challenge the sector has faced in recruiting and retaining staff. Some members highlighted their concern that this individual responsibility must not act as a deterrent to interested applicants or frighten existing staff into leaving. The majority of members felt that duties were already in place for the majority of staff but felt the Departmental-led Workforce Strategy was key to setting a positive scene to new recruits interested in social care. The support and protection of staff, as outlined above is also extremely important at an organisational level.

ARC NI would advocate the same responsibilities and requirements placed on an individual mirror that placed on an organisation and hence would propose no exemptions. This we feel goes some way in integrating the cultural change required to embed open and honest ways of working.

ARC NI recommends the policy proposal of a statutory individual Duty of Candour with criminal sanction for breach.

Being Open Framework

ARC NI welcomes the framework proposed and agrees with the key principles and policy proposals as outlined for Level 1-3 for all stakeholders.