

Response to the Scottish Government consultation: Proposals to introduce a statutory duty of candour for health and social care services

January 2015

1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.
- 1.2 As part of our work we:
 - Promote right-touch regulation and publish papers on regulatory policy and practice
 - Conduct research and advise the four UK governments on improvements in professional regulation
 - Oversee nine health and care professional regulators and report annually to the UK and Scottish Parliaments on their performance
- 1.3 More information about our work and the approach we take is available at www.professionalstandards.org.uk.

2. General comments

- 2.1 We welcome the opportunity to respond to this consultation¹ and wish to express our strong support for the proposed introduction of a statutory duty of candour on health and social care providers in Scotland.
- 2.2 In our view there are immense benefits for the care and treatment of people in the health and care system if it is open, transparent and honest. For many years we have supported the introduction of a statutory duty of candour on organisations that provide healthcare. We have taken this stance because prevailing policy initiatives and regulatory work have not delivered a health and care system that is consistently open, transparent and honest with patients.

3. Definition of 'disclosable events'

- 3.1 We are not aware of any evidence that patients and service users expect Scottish providers to be more or less candid than providers elsewhere in the UK. Furthermore the workforce is highly mobile within the UK as are patients and service users, particularly in border regions. To aid comprehension and

¹ Scottish Government (October 2014). *Consultation on Proposals to Introduce a Statutory Duty of Candour for Health and Social Care Services*. <http://www.scotland.gov.uk/Publications/2014/10/9897>

implementation of the duty we would therefore encourage the Scottish Government to define the threshold for the proposed statutory duty of candour in terms equivalent to the 'notifiable safety incident' threshold recently introduced for England NHS providers²: which we note reflects the significant harm threshold recommended by the Dalton Williams Review. We appreciate this may require some modifications to fit the social care context.

- 3.2 The consultation document does not appear to discuss to whom the proposed duty will be owed. For the aforementioned reasons we would suggest the Scottish Government strives for parity with the 'relevant person' definition included in the England duty.

4. Professional duty of candour

- 4.1 We note the reference to professional regulators in paragraph 4.11 of the consultation paper and wish to correct the misapprehension that the NMC and GMC have been working to develop guidance on candour on behalf of all the regulators. The NMC and GMC are developing joint guidance on candour however this is guidance for their registrants (doctors, nurses and midwives) rather than for the other regulators' registrants.
- 4.2 As you may know the Authority has recently published a report on the progress on candour of all nine of the professional regulators we oversee.³ You may wish to note the progress the regulators have made on strengthening their approach to candour and the further work they plan to do to achieve the common approach outlined in the joint statement eight of them made on the topic in October 2014.

5. Further information

- 5.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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² [The Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#), paragraph 20

³ Professional Standards Authority (November 2014). *Progress on strengthening professional regulation's approach to candour and error reporting - Advice to the Secretary of State for Health*. <http://www.professionalstandards.org.uk/library/document-detail?id=61fb599e-2ce2-6f4b-9ceb-ff0000b2236b>