Department of Health for Northern Ireland

Being Open Framework consultation

A response by the Association of Personal Injury Lawyers (APIL)

March 2025

Introduction

APIL welcomes the opportunity to provide comments on the proposed Being Open Framework. APIL is supportive of an open and transparent culture across all healthcare providers, where there are admissions to patients when things have gone wrong. It is essential that full information is given to patients and their carers or representatives about any act or omission affecting their medical treatment and care which has caused harm. Often, people who have been injured by medical mistakes simply want to know what went wrong and why, and that lessons have been learned for the future.

We support the introduction of this framework and recognise that legislation alone does not create cultural change. The Being Open framework is a step in the right direction towards an improved culture of openness, just culture, and improved training and awareness for healthcare staff and leaders. However, we believe the introduction of a statutory duty of candour in Health and Social Care Northern Ireland (HSCNI) is long overdue.

We believe transparency within the HSCNI must be statutory and apply uniformly across all providers. All healthcare providers must be placed under the same obligation to ensure consistency. A new statutory duty would establish a clear standard for what is expected from healthcare staff, managers and trust leaders in relation to candour, explanations and apologies. It would also provide a well-defined threshold for reporting, as well as clear guidelines and obligations for monitoring. The enforcement measures within the duty, if applied effectively, are also key to deterring breaches.

We maintain our position in previous consultation responses to the Department of Health concerning the duty of candour.[1]

Consultation questions

Understanding Openness and Culture

Q1 The framework looks at openness at three levels:

- **Routine openness:** Being honest in everyday care and communication.
- **Learning from mistakes:** Reflecting on errors to improve and avoid repeating them.
- **When things go wrong:** Clear communication and accountability when harm is caused.

[1] APIL response to 'Duty of Candour and Being Open – Policy Proposals' July 2021 https://www.apil.org.uk/files/pdf/ConsultationDocuments/4004.pdf

Q2 The framework focuses on three areas of culture in an organisation:

- Infrastructure (e.g., policies and systems to support openness).
- Behaviours (e.g., how staff interact and communicate).
- Beliefs and stories (e.g., shared values and lessons from the past).

APIL supports both proposals. However, as mentioned above, we question the effectiveness of the Being Open framework alone to change the deep-rooted cultural issues in healthcare. A statutory duty of candour would establish clear legal obligations for clinicians, managers, and senior leaders regarding candour. There is a risk that this framework will not improve openness due to the lack of enforcement measures to ensure accountability and deter non-compliance. The Inquiry into Hyponatraemia-related Deaths (IHRD) recommended the introduction of a statutory duty. The report clearly states that: "*Health service guidance for 25 years and more has repeatedly recommended transparency and openness in the interests of the patient. This has proved inadequate to the problem which is why this Report must recommend a statutory duty of candour in Northern Ireland.*" APIL strongly agrees with this. While we understand that cultural issues must be addressed, we believe that a framework enshrined in law with clear obligations is needed.

Supporting openness in everyday care

Q3 To support staff in being open it is proposed that organisations:

- Provide regular training for staff to promote openness.
- Share real-life examples of openness and what was learned.
- Recognise and celebrate examples of good practice in being open.
- Provide supervision that is supportive of openness.

Do you agree with these will help staff be open and honest every day?

Yes, APIL agrees with the proposals. Additionally, meaningful changes in patient safety require fair treatment of staff and leadership adherence to openness and honesty. Staff involved in errors, near misses and incidents must be treated fairly so that they feel safe to report the incident and be open and honest to the patient and their family. We agree that these issues can be tackled through further education for clinicians and healthcare teams, practice managers, senior health leaders and health service commissioners.

Openness with a focus on learning

Q4 To improve learning it is proposed that organisations should:

- Encourage staff to talk openly about mistakes without fear of unfair retribution.
- Understand the circumstances that may contribute to failures and mistakes.
- Share lessons across teams to improve safety and care.

- Make improvements visible to the public, so people know what has changed.

Do you agree that these will improve learning from experience?

Yes, APIL agrees with this. As mentioned above leadership accountability and training will be key to improving learning from mistakes. The focus on defending a possible claim or hiding the incident hinders learning opportunities. The identification of learning opportunities should not fall on the clinicians only. The trust board should implement clear strategies to identify improvements in patient safety.

Openness when things go wrong

Q5 When things go wrong, it is proposed that organisations immediately:

- Inform patients and families as soon as possible after an incident.
- Offer apologies and explanations early.
- Provide emotional or therapeutic support to all those affected (patients; carers; staff).

Do you agree with the proposals for when things go wrong?

Yes, APIL strongly agrees with this. When things go wrong, the focus must be on addressing the issue, informing patients, providing explanations and support, and offering apologies. Everyone involved in care must be made aware of the significant psychological burden that injured people face after a patient safety incident. These people will be dealing with potentially life-changing injuries and will be left distressed and unable to move forward should trusts refuse to accept responsibility and provide an explanation of what has gone wrong.

The IHRD identified several failures in the leadership of medical directors, boards of trusts and chief executives. The inclination not to draw attention to shortcomings in care was found to be encouraged by underdeveloped internal controls, poor leadership and the complicity of medical colleagues. We strongly believe that the duty of candour, when introduced, should apply across the board from clinicians to those in leadership. Accountability and monitoring of outcomes are key to improvements in care.

Q6 For all involved in serious incidents, it is proposed that they have:

- Timely access to information about the incident.
- Regular updates on progress and outcomes of any investigations.
- Counselling or emotional support as and when needed for all involved.
- Debriefs to discuss what happened and how to improve.

Do you think all involved in serious incidents should receive support?

APIL strongly agrees with this. Too often, those who are injured feel left in the dark about what has happened or what action has been taken to address it. There should be a tailored

approach to the individual's needs, including the provision of emotional support and counselling for patients and families.

In addition to the requirements proposed, access to an independent advocate would help address the power imbalance between organisations and patients and their families. Many would benefit from speaking to an independent advocate who can understand their needs and offer detailed advice and guidance. This would be fundamental to ensure that they are able to engage meaningfully in discussions about what happened and what is being done to prevent similar incidents in the future.

Duty of Candour to support Openness

Q7 Do you think that the introduction of a statutory organisational Duty of Candour would support organisations in their development of a more open culture?

Q8 Do you think that the introduction of a statutory individual Duty of Candour would support individuals to be more open?

APIL believes that the introduction of an organisational duty of candour alongside an individual duty would support individuals to be open and honest. The IHRD identified a repeated lack of honesty and openness in healthcare, as well as failures in relation to compliance with the professional ethical duty, and recommended the introduction of both an organisational and individual duty in 2018. We believe that the establishment of a statutory duty of candour in Northern Ireland should be prioritised to provide a clear framework with obligations regarding honesty and openness, explanations and apologies and learning from mistakes. The IHRD report also found that without scrutiny, some doctors and nurses became defensive to criticism, protective of reputation and tolerant of less-than-best practice. We believe that a duty of candour, coupled with the Being Open guidance, would address this issue more effectively.

An individual duty with sanctions for non-compliance is necessary, to avoid the duty of candour simply becoming a "tick box exercise" for organisations. Lessons should be learnt from the introduction of the duty in England and Scotland, where compliance remains inconsistent despite the organisational duty. The duty was not imposed upon clinicians in England on the basis that they are already placed under an ethical duty of honesty by their professional organisations. However, as mentioned above, the IHRD revealed weakness in compliance with the professional duty and recommended placing the statutory duty of candour on the organisation and the individual.

Organisations and individuals must be held to account for non-compliance. Sanctions must be proportionate to the breach and used to their full effectiveness, something which does not currently happen in England or Scotland.

Q9 Do you think that including a "Duty of Candour" clause in staff contracts will improve openness?

Yes, APIL supports this proposal. There are already protections for those who make a formal disclosure in the public interest ("whistleblowers"), and these should be referred to in the employment contract alongside changes relating to the duty of candour. Guidance must be

available to employees on how to make a disclosure in a manner which will protect against job loss and victimisation. There has been substantial research on the reasons why clinicians do not report mistakes. Many of these studies concluded that organisational pressures from leadership, reputation consequences and impact on career were the main challenges to openness. We believe contracts should be amended to ensure that speaking out when things have gone wrong does not automatically lead to disciplinary action.

Leadership and oversight to promote Openness

Q10 Should Boards of organisations and Chief Executives, through their Board Patient Safety and Quality Committee, be held responsible for creating an open culture?

We strongly agree with this. Throughout this response, we highlight the importance of leadership support and accountability. The IHDR concluded that too many people in the health service place reputation before honesty and avoidance of blame before duty.

Q11 Proposals for monitoring openness in organisations

- Organisations should report and publish regularly on their progress in being open.
- Organisations should be held accountable for supporting openness by the Department of Health and regulators.
- Independent audits should assess whether organisations are meeting openness standards.

Do you agree with the proposals to monitor openness?

Yes, we agree with this. However, we believe that these requirements must be enshrined in law. The duty of candour should include an obligation to publish an annual report which assesses the organisation's performance, how many incidents have triggered the duty, as well as information about what processes the organisation has put in place.

Concerning accountability to regulators, we have concerns that, again, if this is not a legal requirement, organisations may be able to satisfy the requirement to be truthful but put out statements in such a way as to disguise the full extent of the failures in care. Statements made to the regulator must be truthful and not misleading by omission, and any public statements about the organisation's performance must be truthful and not misleading by omission.

Q12 Would the introduction of an Independent Patient Safety Commissioner improve openness and patient safety? (Further information is provided in Section 6.2).

APIL agrees with this. However, we note that section 6.2 mentions the role of the Patient Safety Commissioner in England. If introduced in Northern Ireland, we believe the role of the

Patient Safety Commissioner should be broader to ensure consistency and coordination in patient safety strategies. It should not be limited to medicines and medical devices.

Training and education to support openness

Q13 Organisations should support and train staff in being open in different situations so they can:

- Be open and honest in everyday care.
- Learn from mistakes and failures to share lessons.
- Support patients and families when things go wrong.

Do you think all staff should be trained for these purposes?

APIL agrees with this. There is more work to be done around education and training to support an open culture. As mentioned in question 3, we believe that managers and directors should receive training on the importance of being open and fair treatment to support their clinicians in being more honest with their patients. Clinicians must feel supported by those in leadership. Training is also essential for all healthcare professionals, so they feel confident in being open and honest in everyday care, learning from mistakes and sharing lessons, and supporting patients and families when things go wrong. They must be capable of delivering bad news compassionately to preserve a strong professional relationship between clinician and patient.

Q14 Organisations should provide support and train staff at different times using a range of training methods

- Training for openness at induction and as refresher training for all staff.
- Provision of a range of different opportunities for learning such as online or in person.
- Provision of support through mentorship, coaching and supervision.
- Learning provided in way appropriate to the staff role and the most effective training method.

Do you think all staff should be trained for in these ways?

APIL agrees with this.