

Duty of candour consultation  
c/o Jeremy Nolan  
Room 2E11  
Quarry House  
Quarry Hill  
Leeds  
West Yorkshire  
LS2 7UE

23 April 2014

Dear Mr Nolan,

### **Duty of candour consultation**

On behalf of the Institute of Chartered Secretaries and Administrators (ICSA), I am pleased to respond to your consultation document regarding the proposed new offence of ill-treatment or wilful neglect in health and social care institutions.

ICSA is the professional body qualifying and supporting corporate governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, HR, company law, administration and governance, which enables them to add value to any organisation.

ICSA has an extensive pedigree in the governance arena, acting as adviser to government and regulators on company law and corporate governance; able to access a variety of applied experience in order to provide pragmatic insights into effective practices across a range of organisations. A number of our members are involved in the health and social care sectors, and all will be familiar with the importance of recruiting and developing strong boards for all types of organisations and their role in setting the culture and values of an organisation – and the impact that has on developing an environment of candour. This wealth of expertise and experience has informed our response to this consultation.

Comments on harm threshold:

Attempts to apply the same threshold of harm in any duty of candour are to be welcomed to provide consistency and avoid confusion for care professionals and patients alike. The consultation document however, identifies differences in the levels of harm between CQC registration, the NHS standard



contract and adult social care. In pursuit of consistency and clarity of understanding it would be helpful resolve those differences, as any divergence is likely to be used as a technical 'loophole' for those not fully committed to endorsing and adopting a culture of openness and candour.

Any lack of consistency is also unlikely to be as helpful to patients and their carers as would be expected or desired from introducing such a duty and attendant definitions of harm.

Comments on reporting requirements:

The requirement for a service provider to provide information as to what has happened when the level of harm has been breached appears appropriate. In addition to the apology, the service user, and their relatives, would gain more assurance from knowing what the provider has done to ensure a similar mistake will not arise again causing another individual to suffer from an unacceptable level of harm.

Any duty of candour that aims to promote safety, learning and improvement must be accompanied by a culture that is willing to learn from mistakes and apply those lessons. While sharing that information will not reduce the distress experienced by the patient in such circumstances, knowing that practices have been improved as a result may provide some consolation.

Furthermore, publishing selected learnings for all interested parties to use will add to a prospective patient's understanding of the healthcare setting and the organisation's ability to learn from mistakes and make improvements in the standards of care provided. Anonymised extracts should prove useful without adversely impacting on a patient's right to confidentiality. Such a report should not prove unduly burdensome for the organisation as such incidents are likely to be reported to the board of directors as part of their oversight and governance functions.

ICSA appreciates the opportunity to comment on the Department of Health's thinking in developing the duty of candour. Should further information or clarification be required, please do not hesitate to contact me.

Yours sincerely,

**Louise Thomson**

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