

## Annex B CONSULTATION QUESTIONNAIRE

Question 1 :

Do you agree that the arrangements that should be in place to support an organisational duty of candour should be outlined in legislation ?

Yes  No

We welcome the proposal and believe it supports Scotland's National Action Plan for Human Rights, demonstrating the principles of a human rights based approach. We would like to raise the opportunities to link the duty of candour with the work of Scotland's National Action Plan on Human Rights and the work of the Health and Social Care Action Group which we co-convene with the Alliance. This could contribute to developing an understanding of rights in both the public and staff and by developing a human rights based approach by health and care services towards responding to the duty of candour. We believe that this will contribute to developing an organisational culture to support the transparency and accountability that this duty requires.

We consider a legislative requirement will support the participation and empowerment of those affected and demonstrates clear accountability of organisations. It positively supports the right to life and the right not to be tortured or treated in an inhuman or degrading way (Articles 2 and 3, Human Rights Act 1998) which place duties on public authorities to investigate cases of unexpected death and mistreatment, and to seek remedy with those affected. It also supports the right of everyone to the highest attainable standard of health (International Covenant on Economic, Social and Cultural Rights). We would welcome explicit incorporation of human rights into the duty.

We would also welcome the opportunity to comment on your equality impact assessment to ensure that the duty does not have any unintended consequences on particular groups of people, including staff. We would also recommend that a human rights impact assessment is incorporated. You may wish to refer to [health inequalities impact assessment](#), which brings equality, health and human rights together. We are happy to discuss this with you further.

Question 2:

Do you agree that the organisational duty of candour encompass the requirement that adequate provision be in place to ensure that staff have the support, knowledge and skill required ?

Yes  No

Staff involved in disclosure should be supported in order to oversee the process with confidence and treat the affected persons with respect, dignity

and with the knowledge and skills required. There is the opportunity to link this with an understanding of human rights.

Staff involved in the adverse event should be supported to identify causes and potential risks to future practice, and provided with any relevant training to improve their practice.

This could support a culture of improvement and non-fear of disclosure.

If staff are involved in disciplinary hearings they have a right to a fair trial (Article 6, Human Rights Act 1998) – to be heard, procedural fairness.

Question 3a: Do you agree with the requirement for organisations to publically report on disclosures that have taken place ?

Yes  No

This supports the organisation to be accountable and should encourage organisations to ensure those involved in the adverse event participate in any review, ideally giving more transparency to the organisation and leading to greater public confidence and empowerment of individuals to seek appropriate care.

Question 3b: Do you agree with the proposed requirements to ensure that people harmed are informed ?

Yes  No

Under Article 8, Human Rights Act 1998, Right to respect for private and family life, people have a right to participate in decisions and access to personal information. As stated in Q1, organisations have a duty to investigate and seek remedy to breaches of Articles 2 and 3, and in doing so, a human rights based approach would involve the people harmed as key participants.

Question 3c: Do you agree with the proposed requirements to ensure that people are appropriately supported ?

Yes  No

This should include those harmed and the relevant people to them, as well as staff involved in the adverse event and staff involved in the disclosure.

Question 4:

What do you think is an appropriate frequency for such reporting ?

Quarterly  Bi-Annually  Annually  Other  (outline below)

No specific view

Question 5:

What staffing and resources that would be required to support effective arrangements for the disclose of instances of harm ?

As suggested above, we think there are opportunities to link the duty with training and understanding of Human Rights, the right to health and a human rights based approach.

Question 6a:

Do you agree with the disclosable events that are proposed ?

Yes  No

Question 6b: Will the disclosable events that are proposed be clearly applicable and identifiable in all care settings ?

Yes  No

Comments

Question 6c:

What definition should be used for 'disclosable events' in the context of children's social care?

No specific view

Question 7

What are the main issues that need to be addressed to support effective mechanisms to determine if an instance of disclosable harm has occurred ?

Clear definition of harm agreed by all stakeholders.  
Establish a culture where there is no fear of disclosure

Question 8:

How do you think the organisational duty of candour should be monitored ?

There needs to be the correct governance processes in place for

organisations to ensure that the duty is monitored and implementation supported. It could also be part of inspection processes.

Question 9:

What should the consequences be if it is discovered that a disclosable event has not been disclosed to the relevant person ?

No specific view

**End of Questionnaire**