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To: Quintin Oliver
Chair, Duty of Candour Workstream

26 March 2019

Duty of Candour - Publication of Research and Call for Evidence

Dear Quintin

The British Dental Association (BDA) is the professional association and trade union for dentists in the UK. Our members work in all spheres of practice including general dental practice, salaried primary dental care services, hospitals and universities and the armed forces and include dental students. BDA is recognised by the Government as representing general dental practitioners in negotiations and consultations.

We are grateful to the Workstream for the opportunity afforded to provide a written submission to highlight any additional research/information we feel is relevant to the Duty of Candour discussion.

The submission that follows offers the dental perspective of what we consider to be the prime considerations that must be factored in if we are to succeed in embedding candour more deeply across health and social care in Northern Ireland. It has been compiled with the added benefit of learning from across the UK, where this issue has been grappled with over recent years, and various approaches put into play.
We welcome the spirit of openness in which the Workstream is conducting its activities. Our response takes a similar candid approach and is intended to give an honest and constructive assessment of some of the work that needs to be done beyond simply introducing a statutory duty. This issue is extremely complex, unnecessarily so we would add.

Finally, we look forward to being involved as these conversations develop over the coming months. Therefore, we would be most grateful if BDA NI’s interest in being apprised of the upcoming workshops would be noted.

We wish the Workstream every success in undertaking this vitally important piece of work.

Yours sincerely

Tristen Kelso
Director, BDA Northern Ireland

Cc: Peter McBride, Chair ‘Being Open’ subgroup
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Michael Donaldson, Head of Dental Services HSCB
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Duty of Candour Workstream Call for Evidence
BDA Northern Ireland submission

The British Dental Association (BDA) is the professional association and trade union for dentists in the UK. Our members work in all spheres of practice including general dental practice, salaried primary dental care services, hospitals and universities and the armed forces and include dental students. BDA is recognised by the Government as representing general dental practitioners in negotiations and consultations.

We welcome the opportunity to inform the Duty of Candour workstream ahead of detailed proposals being drawn up to address the Inquiry’s recommendations focusing on the statutory duty of candour.

The case for change

Firstly, dentists accept and support the case for change towards creating a culture of openness. At the outset, we cannot condone those behaviours that fell short and were revealed by the Hyponatraemia Inquiry. These were described by Justice O’Hara as: ‘defensiveness and deceit’; ‘information withheld’; ‘cover-up’; ‘poor care deliberately concealed’; ‘a reluctance among clinicians to openly acknowledge failings’, and ultimately, the impact this had on the families concerned. Indeed, the Permanent Secretary has referred to, ‘a remnant culture of clinical defensiveness’ when responding to the Hyponatraemia findings.

We fully agree with Judge O’Hara that, ‘a more comprehensive approach for learning from error is needed’.

As we seek to find a way forward in the aftermath of the Hyponatraemia Inquiry, the words of Robert Francis giving evidence to the Health Committee at Westminster ring true:

“we already have a professional obligation, in their codes of conduct...what we lack, except by means of guidance, is an obligation on the part of organisations to be honest with patients. First, the organisation must have that responsibility, and, in practical terms, it is the organisation that needs to organise the telling of the patients quite a lot of the time”;
‘part of a package, that duty of candour should be part of a more general drive towards openness and transparency’. ¹

A statutory duty of candour on organisations, as is the case elsewhere across these islands, should be introduced in Northern Ireland.

The desired outcome

We fully accept the precept contained in the Francis Report that, openness and transparency are crucial elements of patient safety. Moreover, the Dalton/Williams Review² summed up what we agree to be the vital ingredient of success: ‘A duty of candour requires a culture of candour.’

We warn against becoming fixated with introducing statutory duties as being the silver bullet. While a strong case can be made in favour of a statutory duty of candour being introduced for organisations, a much wider focus is needed which looks at addressing those significant barriers that stand in the way of realising a culture of openness and culture change.

Former Health Secretary Rt Hon Jeremy Hunt put it succinctly: “we want people to feel that where there is harm, where things go wrong, the normal and right course of action is to be open with everyone about it”³. In a speech in 2016 he went further: “The blame culture doesn’t just create fear for doctors. It causes heartbreak for patients and their families”⁴.

Taking a ‘balanced’ approach

It should be acknowledged that the responsibility to tell patients that something has gone wrong has always been part of a dental professional’s life. The profession has always endeavoured to be open, transparent and candid. The introduction of a professional duty of candour to most professionals was merely the repackaging of a normal professional responsibility that existed previously.

All healthcare professionals have a professional responsibility to be honest with patients when something goes wrong. This is set out in the professional duty of candour which introduces this guidance and which is part of a joint statement from eight regulators of healthcare professionals in the UK⁵.

BDA welcomed the joint statement from the healthcare regulators as a positive step in making good practice explicit. The Professional duty of candour overseen by GDC: ‘Being Open and honest with patients when something goes wrong’⁶ guidance sets out what

¹ https://publications.parliament.uk/pa/cm201314/cmselect/cmhealth/657/657.pdf
² Dalton/Williams Review 2014
³ https://publications.parliament.uk/pa/cm201314/cmselect/cmhealth/657/657.pdf
⁴ https://www.gov.uk/government/speeches/from-a-blame-culture-to-a-learning-culture
⁵ https://www.gdc-uk.org/Newsandpublications/Pressreleases/Documents/Jointstatementon
GDC expect dentists and dental care professionals to do when something goes wrong with a patient’s treatment.

Setting out what is required of professionals and organisations from a duty of candour is one thing; it’s no less important to ensure adequate support mechanisms are there to enable staff and organisations to learn from error and improve their practice. All the literature around this issue confirms that legislation will not on its own bring about a change of behaviour or culture.

The Berwick Review referred to: ‘the balance that must be achieved to support staff and organisations to learn from error and improve their practice, with the need to assure accountability to the patient for egregious acts/omissions that cause death or serious harm. These two approaches are not mutually exclusive, but unintended errors must be handled very differently from severe misconduct’.

It has been pointed out that a lack of regulation and sanctions was not the main problem in Mid Staffordshire; moreover, the Donaldson Report added that, ‘it will be culture, not accountability that increases the reporting of harm and staff’s comfort in talking openly about harm’.

Donaldson also supported a duty of candour on organisations rather than health professionals in aiming to promote a culture of openness. Legislation that brought the threat of criminal sanctions on staff could promote a culture of fear rather than openness, and thereby would be self-defeating.

BDA believes the introduction of a statutory duty of candour on health organisations in Northern Ireland could be an important step in promoting openness and honesty when dealing with patients and families at a corporate/organisational level. This would complement the extensive work already done in recent years at a professional level when it comes to admitting errors and communication with patients and families.

The reality is that ‘human factors’ mean mistakes do happen, no matter how conscientious and well-trained a professional is. What is needed most is a development towards a ‘no-blame’ culture so that proper learning can ensue when things do go wrong.

**Addressing barriers to change**

The responsibility to create a culture of candidness does not rest on professionals alone. Indeed, it is imperative to the success of the Workstream that they are fully aware of the range of barriers that must be addressed if we are to ultimately succeed.

In the dental world, there is a long history of the dental regulator (GDC) taking a punitive approach towards registrants. Every registrant fears legal retribution. This is a significant factor that stands in the way of realising a true learning culture. There is a key role for Regulators in helping the profession develop a much-needed learning culture, and they must be brought into this process.

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8 [https://www.health-ni.gov.uk/publications/right-time-right-place](https://www.health-ni.gov.uk/publications/right-time-right-place)
A punitive approach to regulation has simply resulted in heightening fear and stress among dental professionals, and has led to ‘defensive dentistry’ where professionals do not offer treatments in individual circumstances due to the risk of complaints if something goes wrong.

The clearest barrier to professionals behaving candidly is the fear of being prosecuted and struck-off; there are strong legal impediments at play, not least down to law firms that specialise in ‘ambulance-chasing’ no-win-no-fee approaches.

Professionals are clear that the patient comes first, and they will want to highlight problems when they arise. However, the system often does not support this approach, resulting in immense stress from which professionals now suffer.

Fear of professional and system regulators and threat of complaints is creating a culture of fear starting at undergraduate dental student level. It will take a huge amount of effort to reverse this tide. Convincing the profession that openness alone will prevent any punitive action being taken against them, to feeling empowered to be candid without fear of reprisal.

If the element of fear and punitive reprisal can be removed, then openness will flourish. We have seen this clearly in the revolutionary approach adopted by the airline industry over recent years, which has simultaneously resulted in a considerably improved safety record. The focus has moved away from establishing blame, towards devoting time and attention into learning and improving.

A reporting system that leaves professionals wide open to litigation and the possibility of ultimately losing their livelihoods is a current reality. There needs to be a fundamental shift in approach by the regulators. Ultimately, success will be defined by an increase in the number of reported incidents, a decrease in the number of cases referred to the regulator, and a system which ensures that learning is disseminated in a clear and effective way to the profession.

To sum up for the Workstream, what we have tried to set out is that in the current ‘blame culture’, candour can be extremely complex. This is neither desirable for patients or professionals.

Rarely do professionals cause deliberate harm to those in their care. However, until professionals can relate to the value of a reporting and learning culture, the principles of openness and continuous learning will not be embraced wholeheartedly.

The time and resource pressures professionals are under is another key variable that should be considered. Ensuring sufficient time and resources in the working lives of professionals, rather than placing what may be perceived to be ‘additional’ requirements is an essential practical consideration in making continuous learning around patient safety a reality.

Furthermore, Northern Ireland could learn from the approach put forward by the Public Administration Select Committee in recommending an Independent Patient Safety Service, ‘whose sole objective...should be to prevent incidents and to improve patient safety, and not to apportion blame or liability...a safe space: strong protections to patients, their families, clinicians and staff, so they can talk freely about what has gone
wrong without fear of punitive reprisals...a ‘no-blame’ culture’. Change cannot be imposed from top down; it has got to be cultivated\(^9\).

**The case against introducing a Statutory duty on individuals with criminal sanctions**

We note the IHRD Recommendations on Duty of Candour, consisting of a statutory duty of candour on every healthcare organisation, and every individual working for them, with criminal liability.

While we fully support the desired outcome of ensuring that staff will be open and honest to patients and families about their errors, imposing a legal duty with fear of criminal sanctions on individual professionals is untested anywhere else in the world, and we fear would be wholly counterproductive.

It is telling that the research conducted on behalf of this Workstream could find no example of a government introducing such a duty with criminal sanction for its health service staff. Rather, the approach taken has been to introduce a statutory duty on organisations in neighbouring jurisdictions in recent years, and arguably this is the accepted approach in seeking to create the desired culture shift.

Imposing a statutory duty of candour on individuals at a time when professionals are already bound to a professional duty, where their obligations have been codified by the regulators, and where they face the ultimate sanction of being struck-off for breach, is unnecessary.

We note that the Inquiry report, while recommending such a duty does acknowledge that the issues involved are not straightforward and there are matters for legitimate debate. One such issue that must be considered is the potential legal ramifications, and the potential to prejudice investigations/any judicial process and cause unintended consequences. There are important legal and human rights issues to consider.

Furthermore, it should not be the intention of the duty of candour to promote a culture of fear; however, the perception caused by disregarding existing professional obligations, imposing the threat of criminal sanctions, and applying a position of distrust to professionals would only serve to setback the culture-shift which we all want to see.

Ultimately, we want to move away from a ‘blame-culture’ towards a learning culture that is about supporting professionals to deal with difficult situations, put things right, learn from situations and ensuring that they do not happen again. This requires a more holistic approach, and not least the full buy-in from the regulators because it goes to the heart of patient safety.

BDA, and the dental profession at large are fully supportive of the need to continue to move to a culture of openness; we trust that all stakeholders, not least regulators, will similarly play their part in ensuring this becomes a reality.

**26 March 2019**

\(^9\) [https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/94/94.pdf](https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/94/94.pdf)