Understanding the Duty of Candour

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Between a duty and a culture of candour

• The Duty was / is an important milestone in achieving a culture of candour…

• …But will not achieve that culture in itself.

• Key question: how can the implementation of the duty act as a catalyst for building a culture of candour – and how can that form part of a wider culture of learning and improvement

• None of this is easy!
Context (1): Francis

- In the wake of the Mid-Staffordshire Public Inquiry, the Government introduced a range of measures to reinforce openness, with sanctions for the most serious failings.

- This built on earlier campaigns for openness.

- The statutory Duty of Candour on organisations champions openness and safety across health and adult social care.
Context (2): Safety

• Recognising and understanding failure is a necessary part of improving care and safety.

• The Duty of Candour is ultimately a way of ensuring providers face up to mistakes, so they can be learned from.

• Learning from mistakes starts with being open about them, and that can be hard, particularly in a clinical context.
Context (3): Social Change

- Work on candour a response to Francis and other reports…
- …but also part of a broader historical shift that we are living through: ‘post-paternalism’.
- Contrast: ‘Forgive and remember’ (Bosk) on technical vs normative error (but no place for patients) and the Dalton-Williams review.
- From a duty of candour to a culture of candour: beyond compliance.
- The duty is helpful, but is best seen as a step on a journey rather than a destination.
Statutory AND contractual duties

• A contractual duty has existed for some time.

• The statutory duty was explicitly recommended by Francis, and extends the reach of the duty of candour to other areas (primary, social care)

• Also brings candour under the remit of CQC, with greater consequences for breaches

• Bringing it in to the regulatory system underlines the importance of candour.
Requirements of the new duty

• There is a general requirement that providers must be open and transparent with patients and service users about their care and treatment.

• There is also a harm-threshold above which the formal duty of candour notification procedures must be followed.

• The review led by Sir David Dalton and Sir Norman Williams looked at the threshold question – but also considered the wider issues.
Notification requirements (NHS bodies)

The duty of candour notification requirements arise:

1. Where there has been an unintended or unexpected incident to a patient or service user during the provision of a regulated activity;

2. This incident appears to have resulted in significant harm to the patient, or could still result in significant harm to the patient.
What is significant harm?

• death of the service user, where the death relates directly to the incident;

• severe or moderate harm (mirroring the National Reporting and Learning System definitions);

• prolonged psychological harm (which means psychological harm which a service user has experienced, or is likely to experience, for a continuous period of at least 28 days). This mirrors the relevant definition in the CQC notification regulations.
Notification requirements (other providers)

- Death of a service user.
- Impairment of sensory, motor or intellectual functions.
- Changes to the structure of the body.
- Prolonged pain or psychological harm.
- Shortening of life expectancy.
- Treatment to prevent any of the above from occurring.

Unintended/unexpected incident + One of the above = Must follow notification process
Dealing with patients and families

Following a notifiable incident, all providers must:

• notify the service user in person of the relevant facts.
• apologise.
• provide reasonable support to the service user.
• consider what further enquiries are appropriate.
• then send a written apology to the service user
• Keep a written record
Who is notified?

• The patient/service user, or
• a person lawfully acting on their behalf:
  – on the death of the service user;
  – where the service user is under 16 and not competent
to make a decision relating to their care or treatment;
  – where the service user is 16 or over and lacks capacity
    (as determined by the Mental Capacity Act 2005);
• The duty is not owed to family or friends (unless they are
  the relevant person).
The duty of candour and individuals

The statutory duty of candour applies to organisations and not to individuals. However-

1. Professional regulators have strengthened references to candour in professional regulation standards.

- The successful implementation of the organisational duty relies on the professionalism and commitment of staff: the duty provides a framework, but people will make it work.
What does it mean in practice?

The long-term intention:

• The importance of being open and honest with service users is considered at organisational level as well as individual. Openness and candour are not just personal and professional—a corporate responsibility.
• A shift towards a more open culture, where mistakes are acknowledged and learned from as a matter of routine, everywhere.

The present reality:

• Early days for the policy, and for CQC, so still a lot of questions about thresholds, implementation, legal liability, and demonstrating compliance to CQC. Emerging themes from implementation?
Conclusion: Culture Shift?

• Legislation is a piece in the puzzle, and one that fosters and embeds a greater focus on candour at organisational level.
• The legislation is by its nature precisely worded, prompting debate about terminology, definitions, thresholds.
• We want to see the focus move away from technicalities, on to the underlying principle of openness.
• We intend to carry out further research in this area too.
• A culture of candour, learning and safety the big prize: likely to be achieved iteratively through exploration, discussion and improvement.