



**RESPONSE OF THE PRESBYTERIAN CHURCH IN IRELAND TO THE  
DEPARTMENT OF HEALTH CONSULTATION ON  
DUTY OF CANDOUR AND BEING OPEN  
POLICY PROPOSALS**

AUGUST 2021

**Background**

1. The Presbyterian Church in Ireland (PCI) has around 200,000 members belonging to 535 congregations across 19 Presbyteries throughout Ireland, north and south. The Council for Public Affairs is authorised by the General Assembly of the Presbyterian Church in Ireland to speak on behalf of PCI on matters of public policy. The Church's Council for Social Witness seeks to deliver an effective social witness service on behalf of PCI and to the wider community through the provision of residential care, nursing care, respite care and supporting housing for vulnerable people including the elderly, those with disabilities and those transitioning from the criminal justice system. The Council for Social Witness also oversees safeguarding for children and vulnerable adults for the denomination.
2. PCI responds to the consultation from its experience as a service provider drawing on the professional expertise and background of our staff within the Council for Social Witness. Legislation to improve care for those within the health and social care system should generate openness without fear, recognising that mistakes will happen but reinforcing a culture where coverups are never tolerated.

**Terminology (paragraphs 2.25-2.27)**

3. We agree with the terminology and definitions adopted by the Workstream in respect of "openness" and "candour". However, it is essential that through training, education and other opportunities, these are clearly explained to all staff so that legal definitions actually lead to a more manageable culture of candour in the context of openness. Such openness in the context of the Health and Social Care Sector should result in better care, treatment and services for patients and clients.

### **Statutory Organisational Duty of Candour (Section 3)**

4. We agree with the proposed scope of the statutory organisational Duty of Candour as outlined in paragraphs 3.8 – 3.9. It is essential that all providers of Health and Social Care are included, with very strict protocols in place to ensure that this is reflected in practice. For example, clarity is required regarding ownership of information e.g. a message from a Health Care Professional is given on the phone and entered into a resident's file.
5. In regard to the routine requirements of the statutory organisational Duty of Candour we would emphasise that the questions asked by RQIA of establishments should be fair and consistent.
6. The proposed definition for the significant harm threshold seems proportionate. However, this definition risks excluding poor practices which are numerous and consistent but remain under the threshold for reporting. Within the current climate in Health and Social Care might the denial of treatment due to the length of waiting lists be examples of significant harm?
7. In addition to the proposed requirements under the statutory organisational Duty of Candour, when things go wrong it would also be useful to have confirmation that usual organisational procedures would still be used in these circumstances. Furthermore, things that go wrong are not always significant and harmful. There is the potential danger of causing more stress in bringing up something of which a patient or client has been previously unaware.
8. With regard to a proposed legislation requirement to provide an apology, our preference would be for an apology to be provided in person, by an appropriate member of the organisation, as outlined in paragraph 3.25. This would need to be well set out in the accompanying guidelines. The risks of legislating for an apology outlined in paragraph 3.24 – that it could lead to a standardised or formulaic approach – would mitigate against any sort of positive outcome for the patient, service user, carer or family involved.
9. Support for staff is essential especially in the context of organisational and institutional mistakes or errors. Further information is required on the provision of adequate training in terms of delivery and content. Further clarity would also be necessary regarding how the implementation of an open and just culture within an organisation, including support from leadership, will be assessed.
10. We agree with the reporting and monitoring requirements under the statutory organisational Duty of Candour – it goes without saying that such reporting should be truthful.
11. In regard to the proposed criminal sanctions for breaches, it is vital that these sanctions be linked to cover-ups rather than genuine mistakes, with balance to ensure that sanctions aren't so strict that they discourage openness and honesty. Serial non-compliance and wilful deception should be the exception.

12. We also agree with the proposed obstruction offence under the statutory organisational Duty of Candour. Opting out of a process should be dealt within the legislation, alongside obstruction.
13. The statutory organisational Duty of Candour should be promoted as a good practice tool, and not a judicial sledgehammer. Many of the most serious breaches to date have been related to institutions e.g. hospitals, prisons, health trusts, falling short in their duty of care.

#### **Statutory Individual Duty of Candour (Section 4)**

14. We sit comfortably with the views of other professional bodies like the GMC and BASW NI regarding the discrepancy between the duty placed on social care workers and that placed on healthcare assistants; the need to allow for exceptional instances where it is not possible to be fully open, perhaps due to safeguarding concerns; and the concern that introducing a statutory duty of candour on individual practitioners may have the unintended consequence of mitigating against open and candid behaviour by supporting a climate of fear. Health and social care staff must have confidence that if they come forward to admit a mistake their world won't come crashing down in order to protect an institution. Confidence in the process of reporting and investigation is vital.
15. Introducing a statutory individual duty of candour also has implications for the nature of recording and ensuring that responsibility is correctly attributed. This will require specific guidance and training to be rolled out to ensure consistency across all aspects of health and social care. Without being overly burdensome, as much accurate information should be recorded as possible to ensure that those coming behind can be quickly abreast of a given situation or set of circumstances. This also means that should there be a need to report under this legislation, the relevant information will be obtained easily. Reasonable and practical thresholds are also required so that time and resources can be directed to the serious and necessary, rather than the trivial and unnecessary.

#### **Being Open Framework (Section 5)**

16. It is important that, in responding to a crisis, the intervention does not worsen a situation. We therefore welcome and commend the skills and competencies identified (5.26) for health and social care personnel when engaging with the individual, carer or next of kin, and the acknowledgement that this may require a number of different people to be involved. We particularly commend the inclusion of 'compassion' as a key principle and the emphasis on providing information in a timely matter. This should be true not only for the individual reporting but also the institutions involved.

17. We welcome the focus on a 'Sincere Apology' recognising that further guidance and clarity is required. We commend the proposal that an organisation should appoint a family liaison person (5.33) to support the individual, carer or next of kin. From our experience through numerous pastoral care situations this essential, and a named person would also help to ease the trauma experienced by those involved. This would also bring a more intentional focus to the experience of carers and next of kin, including how they cope with the delivery of bad news.
18. We also commend the framework for providing accurate information to individuals, carers and next of kin, and to other appropriate authorities, when death or harm has been caused as a consequence of an error (5.34). In particular, the requirement to be timely and proactive, with the emphasis on a full and honest approach, is to be welcomed.

A handwritten signature in black ink, appearing to read 'D Kane', with a stylized, somewhat abstract flourish above the name.

**Rev Daniel Kane**  
**Convener of the**  
**Council for Public Affairs**

A handwritten signature in blue ink, appearing to read 'Lindsay Conway', with a large, looping initial 'L'.

**Mr Lindsay Conway**  
**Secretary to the**  
**Council for Social Witness**