

Council, 12 February 2015

Duty of candour – PSA progress report

Executive summary and recommendations

### **Introduction**

The PSA was commissioned by the Department of Health to report on the regulators' progress in implementing a duty of candour for health professionals. The Executive responded to a request for information from the PSA in late summer 2014. The PSA's advice to the Secretary of State for Health was published in November 2014 (appended).

An update about this area was provided to the Council as part of the Policy and Standards Department report at its meeting in December 2014. As noted in the PSA report, the other professional regulators have recently published a statement on the professional duty of candour. The HCPC did not become a signatory to the statement as a result of concerns about the language used, including that it was inappropriate to mandate ('must') an apology (a view unanimously endorsed by the Professional Liaison Group which reviewed the standards of conduct, performance and ethics).

We are implementing the 'duty of candour' by strengthening the standards of conduct, performance and ethics. A revised draft for public consultation will be brought to the Education and Training Committee and the Council for approval at their meetings in March 2015. This will include a dedicated standard requiring registrants to be open when things go wrong, to include informing service users and carers when something goes wrong and taking action where possible to put matters right; apologising where appropriate; and giving a constructive and honest response to complaints.

### **Decision**

This paper is for discussion; no decision is required.

### **Background information**

Policy and Standards Department report, Council, 3 December 2014

<http://www.hcpc-uk.org/assets/documents/10004999Enc07-PolicyandStandardsReport.pdf>

Joint statement from the Chief Executives of statutory regulators of healthcare professionals. Openness and honesty - the professional duty of candour.

[http://www.gmc-uk.org/Joint\\_statement\\_on\\_the\\_professional\\_duty\\_of\\_candour\\_FINAL.pdf](http://www.gmc-uk.org/Joint_statement_on_the_professional_duty_of_candour_FINAL.pdf) 58140142.pdf

Raising concerns and dealing with mistakes, SCPE Professional Liaison Group, 28 July 2014

<http://www.hpc-uk.org/assets/documents/10004791Enc03-ReviewofthestandardsofconductperformanceandethicsRaisingconcernsanddealingwithmistakes.pdf>

### **Resource implications**

None

### **Financial implications**

None

### **Appendices**

- Professional Standards Authority (November 2014). Progress on strengthening professional regulation's approach to candour and error reporting. Advice to the Secretary of State for Health.

### **Date of paper**

30 January 2015

# Progress on strengthening professional regulation's approach to candour and error reporting

Advice to the Secretary of State for Health

November 2014

## About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care<sup>1</sup> promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.

We oversee the work of nine statutory bodies that regulate health professionals in the UK and social workers in England. We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise.

We also set standards for organisations holding voluntary registers for people in unregulated health and care occupations and accredit those organisations that meet our standards.

To encourage improvement we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation.<sup>2</sup> We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce.

We are committed to being independent, impartial, fair, accessible and consistent. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk).

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<sup>1</sup> The Professional Standards Authority for Health and Social Care was previously known as the Council for Healthcare Regulatory Excellence

<sup>2</sup> CHRE. 2010. *Right-touch regulation*. Available at <http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation>

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# 1. Introduction

- 1.1 Part of the role of the Professional Standards Authority (the Authority) is to respond to requests from the Secretary of State for Health for advice on any matter connected with a health care profession in the UK or social workers or social care workers in England.<sup>3</sup>
- 1.2 On 7 March 2014 the Secretary of State for Health asked the Authority to work with the nine regulators we oversee<sup>4</sup> to support progress in introducing a consistent approach to a professional duty of candour as outlined in *Hard Truths* (the Government's response to the *Francis Report*), and to advise the Department of Health on that progress. A copy of the request is reproduced in Annex A.
- 1.3 This report provides the advice requested and builds on the interim notes on progress we provided to the Department of Health in June and September 2014. It should be read in the context of the following background information.

## The Francis Report

- 1.4 On 7 February 2013 Sir Robert Francis QC published the report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (the Francis Report).<sup>5</sup> The themes of openness, transparency and candour are at the core of that report and its recommendations in this area reflect both a need to be open with patients as a matter of course and a specific need to be candid when harm has occurred.
- 1.5 The Francis Report defined candour as follows:

*'Any patient harmed by the provision of a healthcare service is informed of the fact and an appropriate remedy offered, regardless of whether a complaint has been made or a question asked about it.'*<sup>6</sup>

## Patients First and Foremost

- 1.6 In *Patients First and Foremost* - the Government's initial response to the *Francis Report* – the Department of Health committed to work with the professional regulators to understand what more could be done to encourage healthcare professionals to be candid with patients.<sup>7</sup> Subsequently in July 2013 the Department sought advice on this from the Authority.

<sup>3</sup> National Health Service Reform and Health Care Professions Act 2002 (as amended), section 26A.

<sup>4</sup> General Chiropractic Council (GCC), General Dental Council (GDC), General Medical Council (GMC), General Optical Council (GOC), General Osteopathic Council (GOsC), General Pharmaceutical Council (GPhC), Health and Care Professions Council (HCPC), Nursing and Midwifery Council (NMC), Pharmaceutical Society of Northern Ireland (PSNI)

<sup>5</sup> Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry, chaired by Robert Francis QC 2013. <http://www.midstaffspublicinquiry.com/report>

<sup>6</sup> See footnote 5, paras 1.176 and 22.1

<sup>7</sup> Department of Health (March 2013). *Patients First And Foremost: The Initial Government Response to the Report of The Mid Staffordshire NHS Foundation Trust Public Inquiry (Cm. 8576)*, para 2.32.

<https://www.gov.uk/government/publications/government-initial-response-to-the-mid-staffs-report>

## Authority candour advice to the Department

- 1.7 The resulting Authority report identified that as a group, the professional regulators we oversee could be clearer and more consistent in their guidance and standards around candour. We found that only two regulators (the GMC and NMC) made explicit the expectation that registrants should be being open and honest with patients when their mistake or error causes harm. For others, the expectation was less clear and implied through a combination of standards that emphasise different aspects of candour – such as communication, patient centredness, honesty, and raising concerns.<sup>8</sup>
- 1.8 We advised the Department of Health to:
- Work with the regulators to improve the consistency and clarity of their candour standards for registrants and the education standards relating to them
  - Consider asking the regulators to begin working towards a common candour standard and, because this may take some time to deliver, as a short-term measure encourage the regulators to sign up to a joint statement declaring their support for and expectation that their registrants meet a professional duty of candour with a commitment to moving towards a common standard over time
  - Work with the regulators to increase the profile of professional candour standards to registrants and employers
  - Consider providing funding and support for studies that seek to understand the impact of the changes we proposed and others that may be implemented around openness, transparency and candour, thereby helping to build an evidence base for the future.<sup>9</sup>
- 1.9 We observed that changes in professional regulation would not by themselves address the comprehensive and wide ranging candour-related recommendations in the *Francis Report*. Many other agents in the system have a role to play in encouraging candour: employers, service regulators, commissioners, the law, insurers and other organisations. In light of this we also advised the Department of Health to promote a co-ordinated and integrated approach to addressing the candour issues identified by the Francis Report.

## Hard Truths

- 1.10 Shortly afterwards, on 19 November 2013, the Government published *Hard Truths*, its full response to the *Francis Report*. In relation to the professional regulators' approach to candour and errors, *Hard Truths* states:
- 'In addition to candour at the organisational level, it is vital to ensure that individuals live up to their professional obligations to be candid. We are*

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<sup>8</sup> Professional Standards Authority (October 2013) *Can professional regulation do more to encourage professionals to be candid when healthcare or social work goes wrong? Advice to the Secretary of State for Health*, para 7.17. <http://www.professionalstandards.org.uk/library/document-detail?id=c376579e-2ce2-6f4b-9ceb-ff0000b2236b>

<sup>9</sup> See footnote 8, paras 8.3 to 8.10

*working with the professional regulators to strengthen the references to candour in professional regulation. The professional values of individual clinicians are critical in ensuring an open culture in which mistakes are reported, whether or not they cause actual harm. The General Medical Council, Nursing and Midwifery Council and the other professional regulators will be working to agree consistent approaches to candour and reporting of errors, including a common responsibility across doctors and nurses, and other health professions to be candid with patients when mistakes occur whether serious or not, and clear guidance that professionals who seek to obstruct others in raising concerns or being candid would be in breach of their professional responsibilities. We will ask the Professional Standards Authority to advise and report on progress with this work. The professional regulators will develop new guidance to make it clear professionals' responsibility to report 'near misses' for errors that could have led to death or serious injury, as well as actual harm, at the earliest available opportunity and will review their professional codes of conduct to bring them into line with this guidance.'*<sup>10</sup>

### **Inter-regulator candour working group**

- 1.11 In response to this the nine regulators we oversee established a working group to develop a consistent approach to candour. The group first met in February 2014 and the Authority attended part of that first meeting to discuss our previous report on candour and the matters we anticipated we would need to cover in this report on progress. The working group has met several times since then, with secretariat support provided by the GMC and NMC.

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<sup>10</sup> Department of Health (November 2013). *Hard Truths: the journey to putting patients first*, para 1.62. <https://www.gov.uk/government/publications/mid-staffordshire-nhs-ft-public-inquiry-government-response>



## 2. Report on progress

- 2.1 In this section we report on the regulators' progress in introducing a consistent approach to candour and the reporting of errors as outlined in *Hard Truths* and the Department of Health's request for advice (Annex A).
- 2.2 Our assessment is based on information provided by the regulators in response to the questions in Appendix 1. The responses received consisted of an individual response from the HCPC and a joint response from the eight other regulators, all of whom - except for the NMC - also submitted individual supplementary responses.
- 2.3 We have also taken account of information on the regulators' websites, a report prepared by the inter-regulator candour working group for the July 2014 meeting of the regulators' chief executive steering group and the comments and updates the regulators provided after we invited them to review a draft of this report.

### Progress towards a consistent approach to candour

- 2.4 Since establishing a candour working group in February 2014, the regulators have worked together to agree a common approach to candour and a joint statement about it. They have developed the joint statement reproduced in Annex B which has been signed and published by all of the regulators except for the HCPC.
- 2.5 We understand that development of the joint statement – and the approach it reflects – has been shaped by:
- Discussion within the working group
  - Feedback on a draft statement from a patient engagement workshop arranged by the working group and attended by Healthwatch England, Mencap, Action against Medical Accidents (also representing National Voices) and the Private Patients' Forum. The workshop was conducted by an independent facilitator to ensure that patient representatives felt confident that the process was impartial and that all nine regulators were equally engaged. The regulators have told us that the patient groups in attendance at the workshop welcomed the collaborative approach adopted by the regulators. They gave feedback on the wording and intention of the statement and emphasised the importance of regulators providing a strong joint statement, setting out clearly why it was an important step for the regulators. The patient groups also wanted the definition of candour to be as specific in its requirements as possible, to take into account the different needs of patients (for example with regard to capacity) and for it to be explicit that regulators would be taking concrete steps to ensure that the duty of candour is fulfilled by registrants.
  - Feedback from the regulators' discussions with their respective patient engagement groups/forums
  - Updates on developments on candour in Scotland, Wales and Northern Ireland provided by the GMC's devolved offices. This highlighted that

although there has been discussion on candour issues in all parts of the UK, the term 'candour' did not prevail outside England

- Consideration of a paper on relevant equality and diversity issues prepared by the GMC
- Recognition among the working group that certain groups of patients will have different needs with regard to candour, and certain groups of professionals may need additional support to fulfil their duty to be candid. For example, patients with communication or capacity issues may need a family member or advocate to support them
- Consideration of the Authority's November 2013 advice on candour<sup>11</sup>
- Discussion at the July 2014 meeting of the regulators' chief executives steering group.

### ***A strong clear joint statement***

- 2.6 In our view the statement is clear and unambiguous and it meets the expectations in *Hard Truths* that it should:
- Communicate that healthcare professionals have a common responsibility to be candid with patients when harm occurs (whether significant harm or not)
  - Contain clear guidance that professionals who seek to obstruct others in raising concerns or being candid would be in breach of their professional responsibilities.<sup>12</sup>
- 2.7 We commend the joint statement and the working group that developed it. In our view the statement is a positive development because it declares and communicates the signatories' shared approach to a professional duty that is common to the professionals they regulate. This unity will help alleviate the risk of perceptions that candour obligations differ between professions, and the associated confusion and delays in being candid which such perceptions could cause. For this reason it is disappointing that the statement was not agreed by all nine regulators, especially as the non-signatory, the HCPC, is a large multi-profession regulator.
- 2.8 The HCPC has assured us that it agrees with the sentiments and principles outlined in the joint statement and that it is fully committed to ensuring the principles of a professional duty of candour are clearly set out in its standards of conduct, performance and ethics (which are currently under review). The HCPC has explained to us that it was unable to sign up to the joint statement, due to concerns about two aspects of the wording which the other regulators felt unable to amend. The HCPC's first concern was that statement's use of

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<sup>11</sup> See footnote 8

<sup>12</sup> We note that *Hard Truths* (see para 1.10 above) also includes an expectation that the regulators would develop guidance about 'near misses'. We mention this for information only as it is our understanding that the Department of Health did not envisage that the joint statement - or indeed this report - should address this. We are aware that some existing standards and guidance already emphasise that a professional must report near misses as well as harm. For example the GMC guidance *Raising and acting on concerns about patient safety* (2012)

the word '*must*' would set a new HCPC standard and that as such signing the statement would breach the HCPC's legal obligation to consult publically before changing its standards. The HCPC has such a public consultation scheduled for April 2015 and, subject to its outcome, the HCPC has told us that it will revise its standards of conduct, performance and ethics to incorporate the principles of the professional duty of candour in the joint statement. The HCPC's second concern with the wording of the joint statement is that it considers it inappropriate to mandate that an apology '*must*' take place, as this would only raise issues about its sincerity. This was also, it said, the unanimous view of the working group of predominately lay stakeholders the HCPC has established for the current review of its standards of conduct, performance and ethics.

### **Consistency of approach**

- 2.9 We applaud the joint statement and look forward to its eight signatories' achieving all the commitments and plans they have made to promote and enforce their shared concept of the professional duty of candour through their standards and other functions. We welcome the HCPC's commitment to embed the principles of the duty within its standards and we note that it shares the same concept of the duty as the other eight regulators, except that it considers it should encourage apologies rather than require them. In the circumstances it looks promising that, within the next two years, all the regulators' standards will contain clear candour obligations and that they will all be operating a broadly consistent approach to candour. We will use our processes for reviewing the regulators' performance and fitness to practise decisions to check whether or not this does in fact happen.
- 2.10 The regulators have told us that the experience of collaborating on this work has been a positive one. The working group (including the HCPC) has agreed to continue to meet to oversee implementation of the joint statement and to discuss progress and challenges as each regulator embeds the principles of the statement into their own standards and guidance. The working group is eager to ensure that Standards teams across the regulators continue to interact and have an opportunity to discuss similar cross-profession issues in the future. They are looking at the most appropriate way for this to happen. We welcome this continued collaboration between the regulators.

### **Implementing the common approach to candour**

- 2.11 As the joint statement explains the signatories will:
- Promote the joint statement to their registrants, their students, and to patients, ensuring their registrants know what they expect of them
  - Review their standards and, where necessary, strengthen references to the elements of being open and honest set out in the statement
  - Encourage all their registrants to reflect on their own learning and continuing professional development needs regarding the duty of candour

- Work with other regulators, employers and commissioners of services to help develop a culture in which openness and honesty are shared and acted on.
- 2.12 Each of the signatories of the joint statement – apart from the NMC – has provided us with further information about how they will do this. The HCPC has also explained to us how it will strengthen its approach to candour and the reporting of errors.
- 2.13 We have been assured that in progressing this work the regulators will take account of:
- Stakeholders' views and experiences
  - The regulators' statutory equality duties
  - Developments in the four UK countries, the EU and international regulation
  - Learning from other areas of the regulators' work.
- 2.14 The range of work underway or planned is summarised below, together with information about the timescales where this information has been provided to us.

#### ***Promotion of the joint statement***

- 2.15 The joint statement was published on 13 October 2014 and we observed its promotion through press releases issued at that time by all of the signatories.<sup>13</sup>
- 2.16 We understand that in addition to these press releases and associated postings on the regulators' websites, the GPhC has raised awareness of the joint statement in the pharmacy media. Furthermore the GOsC led on the issue of candour in the October/November 2014 issue of its magazine which is mailed to all osteopaths and available on its website. It also plans to reinforce the joint statement in the periodic fitness to practise e-bulletins it sends to all osteopaths.

#### ***Reviews of standards and guidance for registrants***

- 2.17 A number of the regulators are in the process of reviewing the standards of conduct and competence that they set for their registrants and associated guidance documents. Others are planning to commence similar reviews soon. We have been assured that all of these reviews will consider whether and how to clarify and strengthen references to candour and the reporting of errors.
- 2.18 The nature and timing of these reviews is as follows:
- The NMC consulted over the summer on a proposed revised version of its standards of conduct, performance and ethics which it intends to finalise and publish in December 2014. We understand that the consultation events held around the UK included interactive sessions and plenary discussions on candour.

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<sup>13</sup> For example see <http://www.gmc-uk.org/news/25605.asp>

- This autumn the GCC has been consulting on draft new standards of conduct, performance and ethics for chiropractors. It plans to present a finalised version at its council meeting in March 2015
- The GMC and NMC are developing joint guidance on candour for doctors, nurses and midwives which will expand on the advice they give in their core standards and provide enhanced content on near misses and apologies and explain the context of the new statutory duty of candour for health and care organisations in England. A consultation on this began on 3 November 2014. Subject to the outcome of that consultation, the joint guidance will be published in March 2015
- The HCPC began a review of its standards of conduct, performance and ethics in early 2014 and plans to consult on a new version in April-June 2015 with a view to the updated standards being published and effective by January 2016
- The PSNI is reviewing its code of ethics and its guidance about raising concerns. It has carried out some pre-consultation engagement with the public and registrants and expects to consult on its proposals in February-June 2015
- The GPhC launched a review of its core standards of conduct, ethics and performance on 5 October 2014.
- The GOC plans to consult on its proposed new ethics and performance standards in early 2015 and publish the new standards late 2015. A review of its standards for businesses will follow on from this. The GOC also intends to develop supplementary candour guidance including case studies for use in both under-graduate training and continuing education and training purposes, and to ensure the duty of candour is more explicit within the core competencies for both optometrists and dispensing opticians.
- The GOsC will start a full review of the Osteopathic Practice Standards in 2015
- Having published revised standards in Autumn 2013, the GDC plans to do some research with registrants about perceived barriers to candour and apologies. It plans to develop guidance based on the outcomes of this research and consult on a draft next summer with a view to issuing the final guidance in October 2015.

2.19 Two of the regulators (GOC, GOsC) have specifically referred to the fact that indemnity insurance terms and guidance can be a potential barrier to candour and that they intend to hold discussions with insurers to understand more about the challenges and to seek to resolve them.

### ***Reviews of guidance for fitness to practise investigators and panels***

2.20 The regulators provide guidance and training to their fitness to practise investigators and panels. As we have previously stated, in our view, such guidance should clearly explain that a failure to be candid about harm caused

to a patient or service user is a clear failure of professionalism and should be taken seriously.<sup>14</sup>

- 2.21 In July 2014, the NMC introduced new *Guidance for decision makers on insight, remediation and risk of reoccurrence* which deals explicitly with the substance and importance of the duty of candour.<sup>15</sup>
- 2.22 The GDC published new guidance for its investigators in September 2014. The guidance contains a list of matters the GDC views as particularly serious, including ‘a failure of duty of candour in failing to raise concerns about matters which may (or may have) posed a risk to patient or public safety; and/or by inhibiting others from raising concerns which may (or may have) posed a risk to patient or public safety’.<sup>16</sup> The new indicative sanctions guidance approved by the GDC on 30 October 2014 includes a section on candour which makes clear that its fitness to practice panels should ‘take very seriously a finding that a dental professional took deliberate steps to avoid being candid with a patient or to prevent someone else from being so’.
- 2.23 The GMC has just finished consulting about changes to its indicative sanctions guidance, and the role of apologies in its fitness to practise process, for those cases where a doctor has caused harm to a patient. The consultation paper invited views on whether the fitness to practise panels of the Medical Practitioners Tribunal Service should be able to require doctors to apologise where patients have been harmed. The GMC plans to publish a report on the outcome of the consultation in early 2015.
- 2.24 The GPhC plans to begin a review of its indicative sanctions guidance in November 2014. The GOsC, GCC, GOC have told us that they plan to review their equivalent guidance to take account of the duty of candour and other aspects of the reviews of their standards referred to above in para 2.19.
- 2.25 In direct response to the Francis Report, the HCPC revised its indicative sanctions guidance in July 2013 to stress that ‘Registrants are expected to be open and honest with service users and, generally, Panels should regard registrants’ candid explanations, expressions of empathy and apologies as positive steps.’<sup>17</sup>

### ***Reviews of guidance for education providers and students***

- 2.26 In our November 2013 advice on candour we discussed the importance of regulators’ standards and guidance for education providers and students including strong references to the professional duty of candour.<sup>18</sup>
- 2.27 In Spring 2014 the GOsC consulted on draft *Guidance for Osteopathic Pre-registration Education* which contains guidance that student osteopaths should be trained to ‘Disclose and apologise for things that have gone wrong

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<sup>14</sup> See footnote 8, para 5.21

<sup>15</sup> Paras 33 – 34. [http://www.nmc-uk.org/Documents/FtP\\_Information/Remediation%20guidance.pdf](http://www.nmc-uk.org/Documents/FtP_Information/Remediation%20guidance.pdf)

<sup>16</sup> GDC 2014. *Investigation Committee Guidance Manual*, para 128 <http://www.gdc-uk.org/Aboutus/TheCouncil/committeedocs/ICGuidance.pdf>

<sup>17</sup> HCPC 2013. *Indicative Sanctions Policy*, para 14 <http://www.hcpc-uk.org.uk/publications/policy/index.asp?id=80>.

<sup>18</sup> See footnote 7, para 7.18

and take steps to prevent or minimise impact'.<sup>19</sup> The outcome of this consultation is awaited.

- 2.28 The PSNI has informed us that it has incorporated information on candour and raising concerns into the pre-registration training it provides to trainee pharmacists.
- 2.29 On 30 October 2014 the GDC approved revisions to its Standards for Education. Standard 1 (Protecting Patients), requirement six, now reads 'Providers must ensure that students and all those involved in the delivery of education and training are aware of their obligation to raise concerns if they identify any risks to patient safety and the need for candour when things go wrong. Providers should publish policies so that it is clear to all parties how concerns should be raised and how these concerns will be acted upon. Providers must support those who do raise concerns and provide assurance that staff and students will not be penalised for doing so'.
- 2.30 The GMC has informed us that, in early 2015, it will be consulting on revised standards for providers of education which will refer to the professional duty of candour. Subject to the outcome of the consultation, the standards will require that 'organisations...promote and encourage a learning environment and culture that supports learners to be open and honest with patients when things go wrong, in accordance with the duty of candour, and helps them to develop the skills to communicate with tact, sensitivity and empathy'. The GMC tell us this new requirement will enable it to ask medical students and doctors in training how far their environment supports them to comply with the professional duty.
- 2.31 In September 2014 the HCPC began its five-yearly review of its education standards. It plans to conclude this review in 2017 with the new standards applicable to education and training programmes from the 2017-2018 academic year.
- 2.32 The GOC is reviewing its standards for education and training as part of its current standards review. A specific consultation is planned for summer 2015 on the standards of competence and optical education and training. As mentioned in paragraph 2.19 above, the GOC has identified candour as a topic for case studies to be used in both under-graduate education and training and for professional development of existing registrants through continuing education and training (CET) peer review sessions.
- 2.33 The GPhC has told us it will begin a review of its education standards in 2015. It has already incorporated the October 2014 joint statement on candour (Annex B) into the pre-registration training manual for trainee pharmacists.<sup>20</sup>
- 2.34 We have not been informed of any specific plans to make any relevant changes to the education standards and guidance issued by the GCC and the NMC. However we note the commitment they have made within the joint

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<sup>19</sup> [http://www.osteopathy.org.uk/uploads/draft\\_guidance\\_on\\_osteopathic\\_pre-registration\\_education\\_2014.pdf](http://www.osteopathy.org.uk/uploads/draft_guidance_on_osteopathic_pre-registration_education_2014.pdf)

<sup>20</sup> Pre-registration Manual, para 2.3. <http://www.pharmacyregulation.org/standards-of-conduct>

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statement to promote 'the duty of candour' to students, and to review their standards and, where necessary, strengthen references to candour.



## 3. Conclusion

- 3.1 Our overall conclusion is that there has been good co-operation between the regulators which has demonstrated their shared strong commitment to encouraging candour and the reporting of errors and resulted in near consensus on a common approach to candour.
- 3.2 As is to be expected there is, at this stage, still work to be done to fully embed this common approach into the regulators' standards and other functions. We commend the regulators' commitment to support each other in this regard. We will review the regulators' progress against their plans through our 2015/16 review of the regulators' performance, particularly the outcome of the HCPC's review of its standards of conduct, performance and ethics.

## 4. Annex A – The request for advice



Department  
of Health

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Mr Harry Cayton OBE  
Chief Executive  
Professional Standards Authority  
157 -197 Buckingham Palace Road  
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7 March 2014

Dear Harry

### **Request for advice: professional duty of candour**

You will be aware from our response to the Francis Report ('Hard Truths') that the General Medical Council (GMC) and Nursing and Midwifery Council (NMC) are working with other regulators to agree consistent approaches to candour and reporting of errors, including a common responsibility across doctors and nurses, and other health professionals, to be candid with patients when mistakes occur, whether serious or not.

In Hard Truths, we committed to asking the Professional Standards Authority to advise and report on progress with this work. In accordance with section 26A of the NHS Reform and Health Care Professions Act 2002, I am now writing to you on behalf of the Secretary of State to ask the Authority to work with the statutory regulators in whatever way you consider to be appropriate to support progress in introducing a consistent approach to a professional duty of candour as outlined in Hard Truths, and to advise us on that progress.

We ask that you consider:

- Whether there is a clear and unambiguous statement about the common responsibility around candour agreed by all regulators.
- How individual regulators have approached reviewing their guidance to fitness to practise panels.
- How the statement and subsequent adoption has been informed by stakeholders' views and experiences, developments in the four UK countries, EU and international regulation, and learning from other areas of regulators' work.

- How the statement will be adopted by individual regulators, any particular challenges in adopting a common approach and the extent to which it will feature in all relevant guidance and standards, for example those aimed at registrants, education providers, students, panellists, case examiners, etc.
- When the statement will be adopted.
- How the outcome of this will be promoted to registrants, employers, patients and service users, education providers and decision-makers in fitness to practise panels.
- How the process to develop and implement a common approach has fulfilled regulators' public sector equality obligations.

We envisage that the answers to these questions will inform the advice to the Secretary of State and the report on progress.

We would welcome sight of the proposed plan for delivery of this work at the earliest opportunity. I will require written updates, addressing the questions above, every three months (or as appropriate to fit in with key phases of work), and a final note towards the end of 2014.

I am copying this letter to Chief Executives of the nine health and care regulators and to the officials in the Devolved Administrations.

Regards

Marc Thomas

*Deputy Head of Professional Standards*

## 5. Annex B – Joint statement

13 October 2014

### **Joint statement from the Chief Executives of statutory regulators of healthcare professionals**

#### **Openness and honesty - the professional duty of candour**

Health professionals must be open and honest with patients when things go wrong. This is also known as ‘the duty of candour’.

As the Chief Executives and Registrars of statutory regulators of healthcare professionals, we believe that this is an essential duty for all professionals working with patients.

Although it may be expressed in different ways within our statutory guidance, this common professional duty clarifies what we require of all the professionals registered with us, wherever they work across the public, private and voluntary sectors.

We will promote this joint statement on ‘the duty of candour’ to our registrants, our students, and to patients, ensuring our registrants know what we expect of them. We will review our standards and strengthen references, where necessary, to being open and honest, as appropriate to the professions we regulate. We will encourage all registrants to reflect on their own learning and continuing professional development needs regarding the duty of candour.

We will also work with other regulators, employers and commissioners of services to help develop a culture in which openness and honesty are shared and acted on.

#### **The Professional Duty of Candour**

Every healthcare professional must be open and honest with patients when something goes wrong with their treatment or care which causes, or has the potential to cause, harm or distress.

This means that healthcare professionals must:

- tell the patient (or, where appropriate, the patient’s advocate, carer or family) when something has gone wrong;
- apologise to the patient (or, where appropriate, the patient’s advocate, carer or family);
- offer an appropriate remedy or support to put matters right (if possible); and
- explain fully to the patient (or, where appropriate, the patient’s advocate, carer or family) the short and long term effects of what has happened.

Healthcare professionals must also be open and honest with their colleagues, employers and relevant organisations, and take part in reviews and investigations when requested. Health and care professionals must also be open and honest with their regulators, raising concerns where appropriate. They must support and encourage each other to be open and honest and not stop someone from raising concerns.

[CEO signatures (alphabetical by organisation)]

General Chiropractic Council  
General Dental Council  
General Medical Council  
General Optical Council  
General Osteopathic Council  
General Pharmaceutical Council  
Nursing and Midwifery Council  
Pharmaceutical Society of Northern Ireland]

## 6. Appendix 1 – Information requested from the regulators

6.1 On 11 July 2014 the Authority asked the regulators we oversee to respond to the following questions by 3 September 2014, reporting their progress up to that date.

1. How have you co-operated with the other regulators to agree (or try to agree) a common approach to candour and errors and a joint statement about it?
2. Has a common approach and a joint statement been agreed with all of the other regulators we oversee? If yes, please provide details of the approach and statement agreed. If no, please explain what (if anything) has been agreed, your understanding of why full agreement has not been possible, any further work you plan to do to seek agreement and any barriers you consider are likely to prevent or impede agreement.
3. During your efforts to develop and agree a common approach and a joint statement, how have you taken account of the following matters?
  - Stakeholders' views and experiences
  - Your obligations under the public sector equality duty<sup>21</sup> or in the case of the PSNI your equality duties under Northern Ireland law
  - Developments in the four UK countries, the EU and international regulation
  - Learning from other aspects of your work.
4. If a common approach has been agreed (or is expected to be agreed shortly) how and when will you implement this? Please include in your answer information about how it will be promoted in relevant guidance and standards, for example those aimed at registrants, education providers, the public, employers and for decision makers in the fitness to practice investigation and adjudication processes.
5. How have you taken account of the matters listed in question 3 when developing your arrangements for implementing the agreed common approach?
6. If a common approach has not been agreed and you do not expect agreement will be achieved in the near future, are you planning to do anything else to strengthen your approach to candour and/or errors? If so, please provide details and explain how this work will take account of the matters listed in question 3.
7. Are there any other comments you wish to make?

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<sup>21</sup> Equality Act 2010, section 149

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