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Dear Professor Williams and Mr Dalton,

I am writing to thank you for inviting Healthwatch England to offer testimony before the review on the proposed extension of the duty of candour and follow up on some of my key points.

As you will know, Healthwatch England is the consumer champion in health and social care. We have developed a consumer rights-based framework, which informs our recommendations on policy in the fields of health and care. A statutory duty of candour applying to all health and social care staff and organisations is crucial to promoting consumer rights and should be implemented without delay.

- The duty gives effect to the **right to information and education**, a basic and necessary starting point for all consumer rights. Withholding important information from people about their health or care denies them the respect they are entitled to and the control of managing their health and wellbeing.
- Without all relevant information, people are also deprived of their **right to effectively choose** and manage their own treatment and care. It also denies them the ability to seek compensation if they are entitled to it, as well as to obtain emotional closure on a harm suffered.
- Complete information about one's health and care is also necessary to the **right to be involved**, and to be an equal partner in one's health and wellbeing. Candour helps to build an effective relationship between providers of health and care services and consumers by treating people with respect.
- Further, if people cannot feel assured of the candour in health and care, their **right to be listened to** will also be diminished. Organisations and individuals will also not be able to learn from their mistakes if consumers are denied the information needed to take actions when things go wrong.
- Because of these factors, we see candour as an important way of reinforcing the **right to a safe, dignified and quality service**. A lack of candour can effect consumers' health and wellbeing by preventing them from acting as they would have had they been in possession of all information.

implementation of the professional and contractual duties, and we have serious concerns about the potential for differential application of the duty across the professional regulators under the proposed new regime.

Co-production

We urge you to test the definitions used in the duty of candour with health and care consumers. The current contractual duty of candour revolves around reportable patient safety incidents, which are quite medical in nature and focused on the physical harm suffered by the person. Even in the definition of prolonged pain or psychological harm, National Reporting and Learning System guidelines require at least 28 days of pain. However, consumers are likely to find a much broader range of incidents to be harmful: incidents such as unnecessary stays in hospital, restraint or being treated without dignity can all have substantially negative effects on people's wellbeing.

We urge you to co-produce the necessary definitions to learn what people would want to be informed of and what they conceive of as 'moderate harm'. We suspect that a consumer-tested definition would take issues of wellbeing and quality of life into account rather than focusing exclusively on medical harm. Omissions of care should be included, and are particularly significant for health and care managers. When inappropriately low staffing levels or lack of access have caused harm, those failures should be acknowledged to patients, who should receive apologies. We also support an integrated health and social care definition of harm, which would be more useful for people and staff as we move towards an integrated delivery of these services.

Our recommendation for co-production is focused on the principles and top-level definitions which would guide the duty's use. We appreciate that to be most useful for staff members, the duty will also have to be supported by substantial technical detail.

Cultural change

We recognise that the statement of the duty of candour will only be part of the solution: accompanying cultural change will be necessary to fully realise people's rights to full information about their care. We were again struck by the Australian example's multi-pronged effort to realise this cultural change, and would support a programme of education, leadership and support to help the duty to succeed.

Promoting an environment in which learning from mistakes is of primary importance will also be crucial to achieve the needed cultural change. Professor Sir Liam Donaldson offered the mantra 'To err is human, to cover up is unforgivable, to fail to learn is inexcusable', and we fully agree with his point. Consumers understand that even excellent institutions and staff will make mistakes, but they must know that when mistakes happen, people's need to receive honest information will be of paramount importance, and steps will be taken to prevent a similar mistake from happening again.

A universal statutory statement on candour in health and social care encompassing moderate harm events would be a powerful tool for creating the cultural intervention needed to promote greater openness and transparency in health and social care. If you

would like to discuss this further or require any more detail do not hesitate to contact me.

Best wishes,

Katherine Rake

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