



Osteopathic Practice Committee
2 October 2014
The duty of candour

Classification	Public
Purpose	For discussion
Issue	The paper sets out the GOSc's approach to implementing the duty of candour.
Recommendations	To consider the content of the report.
Financial and resourcing implications	Financial implications of this paper have yet to be considered.
Equality and diversity implications	Equality and diversity implications of this paper have yet to be considered.
Communications implications	Contained within the body of the paper.
Annexes	A. Joint statement on the duty of candour. B. References in the OPS to candour.
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Background

1. The Government's final response to the Francis Report¹ said the following with regard to the professional duty of candour:

'In addition to the statutory duty of candour on providers, there is also a professional duty of candour on individuals that will be strengthened through changes to professional guidance and codes. 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 (GMC), the Nursing and Midwifery Council (NMC) 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. The professional regulators will also review their guidance to panels taking decisions on professional misconduct to ensure they take proper account of whether or not professionals have raised concerns promptly.'

2. This paper sets out how the GOsC is responding to this issue.
3. Much of the information in this paper was used to respond, in September, to a request from the PSA for its report to the Department of Health on progress in introducing the professional duty of candour.

Discussion

Regulators' joint statement

4. The GMC and the NMC jointly convened a working group which was given the task of producing a joint position statement on candour. The GOsC's Head of Policy and Communications sat on the working group and the final version of the statement was agreed by Chief Executives. The statement can be found at Annex A.
5. The development of the statement was informed by discussions with patient groups who felt it was important that the statement was unequivocal that

¹Hard Truths: the journey to putting patients first https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270368/34658_Cm_8777_Vol_1_accessible.pdf

healthcare professionals must abide by the duty of candour. However, while supportive of the statement, they were more concerned about what regulators will actually do to implement the duty of candour.

6. Not all of the regulators felt able to support the statement, believing that the language was such that it automatically became a binding standard that would apply to all registrants and thus require full consultation. We take the view that the statement simply establishes a principle that should underpin our work in this area, and have agreed to sign it.

Implementation activities

7. While the duty of candour is common across healthcare professions, it is recognised that different professions and their regulators work in different ways. For example, the management and working relationships in osteopathic practice settings are very different from those within NHS hospitals. In addition, all of the regulators have standards that are bespoke to their professions and which have been developed at different times. For example, the GMC has only recently published a new edition of *Good Medical Practice*, while we will embark on a full review of the *Osteopathic Practice Standards* next year. Finally, the way in which regulators interact and communicate with their registrants varies considerably.

Promoting the statement

8. Publication of the statement will give us the opportunity through the autumn to raise the subject of candour with registrants in a 'soft' way, e.g. in *the osteopath* magazine, fitness to practise e-bulletin, presentations to regional groups, in advance of a more formal consultation on any changes to guidance.

The Osteopathic Practice Standards

9. The *Osteopathic Practice Standards* contain multiple references to the need for registrants to be candid. These are set out in Annex B.
10. The standard that is most relevant to the duty of candour as it relates to patients is D7: 'Be open and honest when dealing with patients and colleagues and respond quickly to complaints'. However, our view is that the guidance that underpins this standard is primarily concerned with the handling of complaints and is passive in nature. The duty of candour needs to be seen as proactive, where there is an obligation on the osteopath to let the patient know when something has gone wrong, rather than simply respond to complaints.
11. Therefore, while Standard D7 in itself may be adequate, the underpinning guidance needs to be strengthened.
12. We intend to undertake a fundamental review of the *Osteopathic Practice Standards* in 2015-16, which will be the appropriate time to make major changes. In the meantime, it is our intention to draft additional guidance which would then be subject to consultation.

13. Prior to the drafting of that guidance, we intend to hold a focus group discussion with registrants to explore scenarios where the duty of candour would apply, with the aim of identifying issues or difficulties that might arise. This will assist us in the drafting of suitable guidance for consideration by Council.
14. Separately, we have recently consulted on supporting *Guidance for Osteopathic Pre-registration Education*. The draft guidance contains the statement 'Disclose and apologise for things that have gone wrong and take steps to prevent or minimise impact.' We have yet to discuss the implications of this statement as part of our post-consultation working group discussions, however, the inclusion of such a statement ensures that the issue is live and discussed amongst students and educators as well as the registrant population more broadly.

Indicative Sanctions Guidance

15. There is an expectation that alongside a review of our standards, that there should also be a review of our *Indicative Sanctions Guidance*² (ISG), the guidance that is provided to members of the Professional Conduct Committee when considering the appropriate level of sanctions.
16. The ISG has two references to candour. A factor involved in considering a conditions of practice order is whether 'The osteopath has shown willingness to be open and honest with patients if things go wrong'. Also, in relation to removal, a factor is 'A serious level of dishonesty (especially where persistent or covered up)'.
17. Although we need to look at all aspects of the ISG, in relation to mitigation, the degree to which the osteopath had been candid with the patient/complainant, is likely to be an important consideration.
18. As part of the process of identifying any changes to the ISG, we will discuss with other regulators any intended changes to their guidance, in order to inform our thinking and ensure a consistent approach.

Engagement with professional indemnity insurance providers

19. Concern has been raised among the regulators about whether there may, in some circumstances, be a conflict between the duty of candour and the guidance provided by insurers in relation to claims. We are aware of guidance that is sometimes given to healthcare practitioners by insurers that they should not admit liability in the event that a patient seeks to make a claim.
20. We have raised this issue informally with providers of indemnity insurance to osteopaths, but it is our intention to explore this more formally. We will do this as part of our consultation on any changes to our guidance.

² http://www.osteopathy.org.uk/uploads/pcc-indicative_sanctions_guidance.pdf

Learning from adverse events

21. Alongside a renewed emphasis on the duty of candour (and any necessary changes to our guidance), we have been supporting and encouraging a growing willingness within the profession to better understand why and when adverse events may occur in osteopathic practice. A culture of openness and honesty within the profession itself on clinical and professional matters goes hand-in-hand with candour towards patients.
22. The National Council for Osteopathic Research (NCOR) is engaged in the development of an online Patient Incident Learning and Reporting System (PILARS), designed to enable osteopaths to report anonymously, share and discuss challenging clinical incidents, patient safety, practitioner safety or adverse events associated with osteopathic care.
23. The information gathered from these reports will be analysed only by the NCOR research team, in order to identify trends. Findings will be fed back to the osteopathic profession to improve patient care, and highlight any recurring issues about which osteopaths should be aware. We hope that osteopaths will learn from each other, share helpful experiences of their own, and become more aware of situations and circumstances that may lead to the occurrence of adverse events or difficult incidents in practice.
24. The GOsC supported the development of PILARS with a grant that forms part of the 'development of the profession' project. However, we are at pains to maintain our distance from the operation of the PILARS project, so that its use is genuinely seen as an educational tool for the profession and not an additional regulatory mechanism operated by the GOsC.

Advice and support for registrants

25. One of the issues that we have been considering is how best to provide advice and support for registrants in relation to raising concerns or discussing problems that have arisen in practice.
26. We have discussed with the GMC how they operate their confidential helpline, its relationship with fitness to practise investigations and the additional support that they provide to registrants through a contract with the charity Public Concern at Work.
27. Replicating a service of this nature within the GOsC would be challenging with limited staff resources and money. Nevertheless, this is an area to which we intend to give further consideration over the coming months, including whether such a service could be linked to the PILARS project described above. We will also discuss with the Institute of Osteopathy the nature of the support that they provide to registrants and the training needs of those providing the support.

Whistleblowing

28. Council approved a draft whistleblowing policy at its May meeting and this is now subject to consultation. The final policy is due to be considered by Council at its November meeting and publication will be accompanied by a communication programme to registrants and others.

Recommendation: to consider the content of this report.

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

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.

References in the OPS to candour

Standards that refer to candour:

C9 Act quickly to help patients and keep them from harm

1. You should take steps to protect patients if you believe that a colleague's or practitioner's health, conduct or professional performance poses a risk to them. You should consider one of the following courses of action, keeping in mind that your objective is to protect the patient:
 - 1.1. Discussing your concerns with the colleague or practitioner
 - 1.2. Reporting your concerns to other colleagues or the principal of the practice, if there is one, or to an employer
 - 1.3. If the practitioner belongs to a regulated profession, reporting your concerns to his or her regulatory body (including the GOsC if the practitioner is an osteopath)
 - 1.4. If the practitioner belongs to a voluntary council, reporting your concerns to that body
 - 1.5. Where you have immediate and serious concerns for a patient, reporting the colleague to social services or the police.
2. If you are the principal of a practice, you should ensure that systems are in place for staff to raise concerns about risks to patients
3. You must comply with the law to protect children and vulnerable adults.

D7 Be open and honest when dealing with patients and colleagues and respond quickly to complaints

3. You should operate a procedure for considering and responding to any complaints about your practice. You should make sure your staff are familiar with this procedure and know to whom to direct any patient complaints
6. You should inform your professional association and professional indemnity insurers immediately if you receive a complaint.
7. You should ensure that anyone making a complaint knows that they can refer it to the GOsC and you should cooperate fully with any external investigation.

D10 Ensure that problems with your own health do not affect your patients

1. If you know or suspect your physical or mental health to be impaired in such a way that it affects the care of your patients, consider whether you should:
 - 1.3 Inform the GOsC so that your registration details can be amended

D17 Uphold the reputation of the profession through your conduct

1. The public's trust and confidence in the profession, and the reputation of the profession generally, can be undermined by an osteopath's professional or personal conduct. You should have regard to your professional standing, even when you are not acting as an osteopath.
2. Upholding the reputation of the profession may include
 - 2.8 Behaving honestly in your personal and professional dealings

D18 You must provide to the GOsC any important information about your conduct and competence

1. You should tell the GOsC straight away, if you:
 - 1.1 Are charged, anywhere in the world, with an offence relating to:
 - 1.1.1 Violence
 - 1.1.2 Sexual offences or indecency
 - 1.1.3 Dishonesty
 - 1.1.4 Alcohol or drug abuse
 - 1.2 Are convicted of a criminal offence, anywhere in the world
 - 1.3 Receive a conditional discharge for an offence
 - 1.4 Accept a police caution
 - 1.5 Are disciplined by any organisation responsible for regulating or licensing a healthcare profession
 - 1.6 Are suspended or placed under a practice restriction by your employer or a similar organisation because of concerns about your conduct or competence