

9 August 2013



The Policy Team
Professional Standards Authority
157-197 Buckingham Palace Road
London
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By email: policy@professionalstandards.org.uk

Dear Sirs

Call for information: How can professional regulation encourage healthcare professionals and social workers to be more candid when care goes wrong?

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally of practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has approximately 4,000 members in the UK and abroad who represent hundreds of thousands of injured people a year.

As our remit only extends to personal injury law including clinical negligence, we can only offer comments that relate to this.

APIL is supportive of an open and transparent health care system, which ensures that health care professionals admit to patients when things have gone wrong. Full information must be given to patients and their carers or representatives about any act or omission affecting their medical treatment and care which has caused harm. APIL believes that the majority of those injured as a result of medical accidents frequently want nothing more than an explanation of what went wrong and why; and what lessons have been learned to ensure that the same mistakes will not happen again. We

therefore welcome proposals that will increase candour, and in particular we welcome the proposed introduction of a statutory duty of candour.

APIL has previously responded to a consultation by the Department of Health (December 2012) on the introduction of a contractual duty of candour in the National Health Service, which was subsequently brought into force in April 2013. In our response we welcomed a duty of candour and openness, but were not satisfied that a contractual duty would be sufficiently effective. We raised issues with the duty being on the employer rather than the individual. We believe that it would be simpler and less bureaucratic if the obligation were placed on the individual rather than the employer. We strongly believe that any level of transparency with regard to all health care providers must be statutory.

In our earlier response, we also raised concerns that the duty would apply only in cases of moderate to severe harm or death. We remain concerned that the statutory duty of candour proposed by the Professional Standards Agency will only apply where poor care causes death or serious harm. We reiterate that the duty should not be limited in any way, and all patients deserve candour, regardless of the injury suffered. It is important to look at this issue from the perspective of the patient, and to imagine what it is that the patient would want; namely the whole truth and complete transparency. This means that the medical professionals must not omit facts, or leave anything to implication or the patient's imagination.

APIL believes that a statutory duty would go some way to improve candour; however it must be implemented in a way that encompasses all health care providers and also is not limited to those who have suffered serious injuries.

We hope that our comments are useful to you. If you have any queries, please do not hesitate to get in contact.

Yours faithfully

A handwritten signature in black ink, appearing to be 'A. M. M.', written in a cursive style.

Alice Warren
Legal Policy Officer

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