

17 November 2015

Matthew Tester
Healthcare Quality Division
Department of Health and Social Services, Welsh Government
Cathays Park
Cardiff
CF10 3NQ



Dear Mr Tester

Welsh Government Green Paper: Our Health, Our Health Services

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 around 3800 members in the UK and abroad - 141 of those in Wales - representing hundreds of thousands of injured people a year.

We recognise that many of the questions and issues in this Green Paper are outside of APIL's remit, but we would like to take this opportunity to comment on the questions relating to a statutory duty of candour for NHS Wales. APIL welcomes that the Welsh government is examining options for further enhancing openness, transparency and candour in the Welsh NHS. We agree that a statutory duty of candour should be introduced in Wales, to reflect the situation in England, where a statutory duty of candour has been in place for NHS providers since November 2014, and independent health and adult social care providers since April 2015¹. A new statutory duty would ensure consistency, and encourage an open and transparent culture across the NHS in Wales. 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. They also want to know that lessons have been learned. A statutory duty of candour, with clear guidance issued to health care professionals on when such a duty would apply, would help to achieve this.

Harm threshold

The threshold of harm to which the duty of candour applies must be proportionate, striking a balance between providing the patient with an apology, without requiring the health care professional to divulge every "near miss". We feel that the threshold in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 – moderate to severe harm or death – strikes this balance. We recommend that this threshold is replicated in any duty of candour regulation applying in Wales. Telling the patient about every slight incident, even if there was no harm, may result in adverse effects on patients, causing them to lose confidence in their

¹ Regulation 20, Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

health care providers. This is not to say that near misses and slight incidents should not be taken seriously, reported and addressed to ensure that they do not occur again, but this is a separate issue to the duty of candour.

The purpose of a statutory duty is to increase openness between the service provider and user. This can be achieved without the need to cause unnecessary worry to the patient; and without overloading health and social care professionals with an unmanageable administrative burden. If the duty is not overbearing, health and social care professionals are likely to embrace a new culture of openness. This would hopefully lead to more openness and transparency as a whole, not just in those situations as required by the regulations.

Duty to report

It is also important that regulations also contain a compulsion on the duty holders to report accidents that result in moderate to severe harm or death, to a relevant nominated body – such as the Healthcare Inspectorate Wales (HIW). It is important that HIW is notified in all cases, as this will ensure that HIW is fully informed when things go wrong, and plans can be put in place to prevent repeat incidents across the whole of NHS Wales.

Broad scope

A statutory duty of candour should also be broadened to apply to health and social care providers operating independently in Wales. All healthcare providers, NHS, non-NHS, and those providing primary care such as GPs, should be under the same duty to ensure consistency and to ensure that all patients, should anything go wrong, are provided with apologies and an explanation of what went wrong and how it is going to be prevented in future.

We would welcome the opportunity to comment on any draft regulations imposing a duty of candour once these have been drafted.

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

Yours faithfully

A handwritten signature in black ink, appearing to read 'Alice Warren', written in a cursive style.

Alice Warren

Legal Policy Officer

Association of Personal Injury Lawyers

