To consider

Developing joint explanatory guidance with the Nursing and Midwifery Council on duty of candour

Issue

1 The development of explanatory guidance for doctors, nurses and midwives about the professional duty of candour, including enhanced advice about near misses and apologies.

Recommendations

2 The Strategy and Policy Board is asked to:

a Note plans to develop explanatory guidance jointly with the Nursing and Midwifery Council, which expands on our existing guidance about the professional duty of candour and includes specific advice about near misses and apologies.

b Consider whether we should accept the Nursing and Midwifery Council’s offer of using its externally appointed consultants to run the guidance consultation, following our detailed instruction and with our joint oversight.

c Agree that we should, in addition, conduct some discursive events with our key stakeholders to ensure their full participation in the consultation and to probe any challenging issues that arise.

d Consider whether to invite some or all of the other regulators to endorse or support the explanatory guidance and/or be involved in its development in some way.

e Note the development of the draft explanatory guidance and approve outline content.
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**Issue**

3 In simple terms, candour means the quality of being open and honest, already core to our guidance. The Williams-Dalton Review (March 2014) into the threshold for a statutory duty in England expresses it in simple terms:

‘Patients should be well-informed about all elements of their care and treatment and all caring staff have a responsibility to be open and honest to those in their care. It follows then that care organisations should have and sustain a culture which supports staff to be candid.’

4 An explicit duty of candour has been campaigned for by patient groups over many years, and was a central recommendation of the Francis Inquiry. However, the term has limited resonance outside of England and there is some confusion and concern amongst professional groups about what it really means for them.

5 The Report of the Francis Inquiry recommended both an individual and an organisational duty of candour in legislation, and also a specific new offence about obstructing others in their duty of candour. In response, Government emphasised the role of existing and strengthened professional duties, stating that:

‘the General Medical Council and the Nursing and Midwifery Council will be working with the other regulators 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.’

6 We have been working on with all the other regulators of the health and social care professions and the joint statement is due to be considered by the Chief Executives Steering Group this summer. This is a brief, high level summary of support and key principles, possibly accompanied by additional statements from each regulator.

7 To ensure doctors, nurses and midwives understand what candour means for their professional practice, we are developing joint explanatory guidance with the Nursing and Midwifery Council (NMC) which will expand on the advice we give in our core guidance documents, including enhanced content on near misses and apologies, and explain the context of the new organisational duty of candour.

8 We envisage an explanatory document with a title such as ‘Openness and honesty: the professional duty of candour’. It would be based on existing
guidance, and while there are new points of detail the fundamental principles remain unchanged.

**What is the process for developing joint guidance?**

9 The aim is to launch the consultation in early November 2014 at a *promoting professionalism* event with the NMC, with publication of final guidance in March 2015.

10 The Department of Health (England) will report on progress against the Francis Report recommendations in mid-November 2014. This is part of the undertaking to report annually on progress, so it will be helpful to have published the consultation document ahead of this.

11 We published a joint statement of professional values with the NMC in July 2012, but this will be the first time we develop joint explanatory guidance. This is ambitious within the timescale and not without risks: for example that the principles become so high level in order to apply to all the targeted professionals that doctors do not find them useful. However, joint working is important symbolically and will encourage greater consistency amongst regulators in terms of expectations about the behaviour of their registrants. In an issue like candour, the professional considerations are very similar for the whole healthcare team and we believe joint guidance will be powerful and well-received publicly.

**What are the options – including risks and benefits – for consulting jointly with the NMC?**

12 The NMC have offered to run a joint consultation with an external agency as they have already allocated resources for this. Outsourcing the running and analysis of a consultation would clearly have benefits for us in terms of resources, but it would also be a significant departure from our usual practice.

13 Over the last decade we have refined and improved our consultation processes, learning from each consultation about better ways to engage in meaningful ways with stakeholders across all of our key interest groups. This leads to a robust final product that has the buy-in and support of all of our stakeholders. The risk of having an external agency responsible for consulting is that they may not fully understand the complexity of the relationships with some of our stakeholders, and the nuances in the language of our guidance.

14 We can mitigate this risk in two ways:

   a Firstly, by maintaining control over the consultation process, for example by giving detailed instructions to the external agency about how to analyse responses and report on findings, and ensuring it was jointly badged and jointly overseen.
Secondly, we could carry out additional engagement and/or research (e.g. with our core key interests and/or with hard to reach groups) outside of the formal consultation process. This would complement the core consultative activity and ensure it targeted all constituents, including those who might not readily engage with an NMC-led consultation.

The scope and outline content of the draft explanatory guidance

15 It is anticipated that the explanatory guidance will apply to all registrants of the GMC and NMC, whatever their grade or specialty and whether they work in the NHS or independent sector. It is also perhaps worth considering whether we would wish to invite at least some of the other regulators to support the explanatory guidance or even be named in it. This could improve the perception of regulators’ expectations and reduce potential confusion for professionals. However, it may not be easy to achieve.

16 The draft outline of the joint explanatory guidance and indicative content are at Annex A.
Supporting information

How this issue relates to the corporate strategy and business plan

17 This issue relates to Strategic Aim 2 of the Corporate Strategy and Business Plan: help raise standards in medical education and practice.

What equality and diversity considerations relate to this issue

18 We will undertake equality analyses throughout all our guidance development projects. Our engagement strategies will ensure we hear from diverse groups of patients, doctors and the public.

19 Our learning materials help doctors to provide care to all their patients, and highlight some of the challenges related to providing care to particular groups of patients, for example older people.

If you have any questions about this paper please contact: Mary Agnew, Assistant Director - Education and Standards, magnew@gmc-uk.org, 020 7189 5325.
Structure and content of explanatory guidance on candour, including advice about near misses and apologies


2. Introductory section setting the context and defining candour, including reference to Francis report and the definition given in that report.

3. Extracts from GMC and NMC guidance which this explanatory guidance is expanding on.

4. The professional duty to be candid with patients when things go wrong:
   a. Being open and honest when things go wrong - how doing the groundwork and already having had a conversation about risks will make this easier; being particularly sensitive for vulnerable patients, perhaps making sure they have support, someone with them. Emphasis that vulnerability is not an excuse to not be honest.
   b. Apologies - must be sincere, finding the right time, place, verbal at the time of the error, and in writing afterwards? May not always be necessary to have a written apology; handling well can avoid subsequent complaints and have an enormous impact on the patient’s perception of the incident; reassurance that an apology is not an admission of liability (some research around this also).

5. The professional duty to be candid with employers - and all colleagues - about errors, near misses.
   a. Using existing reporting mechanisms appropriately (this is likely to vary in primary/secondary care and from organisation to organisation). We may need to liaise with NHS England re the National Reporting and Learning
System. We will also need to be sure that any guidance is applicable in all 4 UK countries.

b Promoting and encouraging a learning culture where concerns can be shared/raised/reported openly without fear of blame (expanding on GMP paragraph 24). This applies both when things go wrong and for near misses. Perhaps we could particularly emphasise the importance of senior, established registrants being open about their errors.

c We’d want to define a near miss, and stress the importance of disclosing/sharing them within the organisation so that others can learn from them.

6 Additional duties for professionals in management roles (following the ‘Doctors with extra responsibilities’ format of the Leadership & management guidance). Importance of bridging the ‘ground up’ professional duty with the ‘top down’ contractual/organisations’ duty.

7 Advice about the statutory duty of candour on organisations and its interaction with the professional duty.

Issues to tease out during engagement and/or consultation

8 Apologies – what do patients want from an apology? When do they expect an apology? What might make things worse?

9 We feel that the duty of candour to report near misses is on the individual professional to inform the organisation so that lessons can be learned, and that there is no obligation to tell a patient if no harm has been done. Is this assumption correct? Would patient trust be damaged by the failure to be open with them about a near miss?