The [Royal College of Occupational Therapists](https://www.rcot.co.uk/) (RCOT) is the professional membership organisation for occupational therapy staff across the UK with a total membership of 32,737. Of these, 28,141 re professionally qualified occupational therapists across the UK (RCOT, 2018). There are 1,363 RCOT members in Northern Ireland of which 1,207 are professional members (RCOT, Feb 2021). Occupational therapists in Northern Ireland work in trusts, across health and social care services across all levels of services. They also work across other departments and sectors such as housing, education, prisons, the voluntary and independent sectors, and vocational and employment rehabilitation services.

Thank you for the opportunity to respond to these proposals. Our comments are as follows:

**We agree that the safety of patients and other service users is of the highest importance.**

**We support a statutory organisational duty of candour. We do not support an individual organisational duty of candour.**

1. We are not convinced that the proposals for an individual duty of candour with criminal sanction will in themselves provide higher levels of safety for service users, nor better treatment for families. The foreword to the consultation document by the Workstream Chair indicates a flawed approach: it calls for an underpinning of legislation and then in the very next sentence for ‘inspirational leadership…to champion…values’ (p2). Values and culture can be built, by clear-minded leaders and empowered and motivated employees. Organisations in highly-regulated industries can have vibrant, highly-productive cultures. Indeed, healthcare is of course highly regulated, and many healthcare organisations have excellent cultures. But these policy proposals are a mix of positive steps and legislative direction, and we believe that this mix is counter-productive.

**We agree that a supportive, open culture has the best effect on user safety**

1. In considering our response to this consultation, we spoke with occupational therapists about the best ways in which to protect service users. Time and again, three clear drivers for safe practice were mentioned, both of which are features of open, nurturing and reinforcing cultures. First, accountability and personal responsibility underpinned by supportive supervision. This supervision will be matched by peer support and case discussions. Second, a culture of learning from mistakes. The best and safest workplaces, in our members’ experience, are those where people are supported to declare mistakes and to show how they will learn from them. This is the responsibility of individuals, but it works best when it is not a heavy weight. People who are scared or under pressure make mistakes. Third, start early. Developing a culture of continual learning begins in pre-registration education. Students should be given that understanding from the start.

1. We recognise that a great deal of care has been taken in developing the ‘Being Open’ framework. We do not doubt that it will be welcomed by many managers. We would support the development of the Being Open framework, perhaps by extension into national events where people can come together, reflect on best practice and how to improve this, led jointly by the Department of Health and professional bodies. We also note that the development of similar frameworks has accompanied the development of a statutory organisational duty of candour in other nations such as England and Scotland.

1. However, we are concerned that under these proposals, the framework would be introduced *at the same time* and *as part of the same change process* as the statutory individual duty of candour and we believe that this would be a mistake. It should be borne in mind that many organisations that have good, open cultures may find that these are diminished or undergo a period of transition when adopting the new framework. Our understanding of organisational development is that change processes in which there is such a mix of framing are confused and confusing and may not succeed.

**But the case is not made for individual liability**

1. We note the ‘Options Research’ report produced by the IHRD workstream. This concedes that previous reviews, such as the Donaldson Report of 2014, have concluded that a statutory duty on individuals ‘could promote a culture of fear rather than openness’. Justice O’Hara has argued that a professional, ethical requirement for individuals to behave honestly was not sufficient in the cases he investigated, but to our mind he seems to skirt over the implications of introducing an individual requirement, stating, ‘*All that is required*(our emphasis) is thatpeople be told honestly what is happened.’ His statement that those ‘whose conduct is appropriate’ will ‘not [be] threaten[ed]’ follows a line of argument that is disputed by many. (We return to this subject below.) We repeat the point made above that people who are scared or under pressure make mistakes. In addition, bad organisations treat their staff badly. We consider that an organisation in which some stakeholders place (to use O’Hara’s framing) ‘reputation before honesty’ would be quite capable of scapegoating an individual. Indeed, an individual statutory duty of candour provides an incentive for bad actors in bad organisations, as it could be seen as taking pressure off the corporate body. Where there is a hierarchical organisation, people may be frightened to step forward. These proposals have the effect of potentially isolating an individual, who might not have the confidence to come forward.

1. We find Justice O’Hara’s argument that breaches of professional ethics show that professional ethics are in some ways not sufficient to be curious. We would not consider a breach of the law to show that a law was not sufficient: instead, we would look to the circumstances around the specific breach of that law and work out the appropriate action. We consider that the proposals lean too enthusiastically towards the wish to introduce ‘a direct and individual criminal sanction for breach’, ‘to send a compelling message’, and while admitting that the proposals might ‘be perceived as harsh and create fear amongst staff, thus impacting on morale and recruitment or retention’ gloss over what that might mean both for standards in patient care but also for the overall culture of the organisation.

1. We were struck by the difference in approach between these proposals and the Sturrock Report into the culture of NHS Highland. Sturrock makes detailed recommendations but they are rooted in the distinct circumstances of NHS Highland. Of culture, Sturrock writes: ‘Nothing is black and white…Matters are complex and not amenable to binary, simplistic analysis. There are many sides to most stories. I was presented with many contradictions and inconsistencies.’

**A statutory individual duty of candour will have negative consequences**

1. In paragraph 2 above, we noted that open cultures provide the safest patient care. This could be put at risk by implementing a statutory individual duty of candour. Openness that arises naturally is not the same as openness that is demanded by statute. Some of the occupational therapists we consulted believed that the statutory duty for individuals would immediately put people into a defensive position. Concerns were raised that there would be immediate under-reporting of near misses. Other occupational therapists said that a negative culture might not necessarily arise as a result of the proposals. It was noticeable, however, that no one we spoke to believed that the proposals would lead to more positive or open cultures.

1. In paragraph 5 above, we noted that some groups in society would be surprised by Justice O’Hara’s assertion that those ‘whose conduct is appropriate’ will ‘not [be] threaten[ed]’ by the law. We are concerned that employees from such groups would develop lower levels of trust in their organisations as a result of a statutory individual duty of care; such employees may be less likely to pursue promotion or contribute to the health service to the limits of their talents.

**Contact**

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