Agenda Item 11

Enclosure 7

Health and Care Professions Council
22 May 2019

Summary of the PSA's report 'Telling patients the truth when something goes wrong'

For discussion

From Jasmine Leng, Policy Officer

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Executive Summary

The Professional Standards Authority (PSA) published a report in January 2019, 'Telling patients the truth when something goes wrong'. This paper summarises the report's content and identifies areas of the report which relate in some way to the work of the HCPC and its registrants.

The duty of candour was first introduced in 2014 and requires professionals and organisations to be open and honest with patients where there have been failings in their care.

This duty is reflected in the Health and Care Professions Council's Standards of conduct, performance and ethics at standard eight: be open when things go wrong.

Previous consideration	This paper has been considered by SMT.
Decision	Council is invited to discuss the paper.
Next steps	Next steps are indicated in the paper. We will publish a blog post providing further information on standard eight of the Standards of conduct, performance and ethics and highlighting the findings of the PSA's report.
Strategic priority	Strategic priority 2: Ensure our communication and engagement activities are proactive, effective and informed by the views of our stakeholders. Strategic priority 4: Make better use of data, intelligence and research evidence to drive improvement and engagement
Risk	Strategic Risk 1 - Failure to deliver effective regulatory Functions. Strategic Risk 3 - Failure to be a trusted regulator and meet stakeholder expectations.

	The Council takes a 'minimal' approach to public protection risks. Public protection is our aim and our strategy and processes are intended to provide this.
Financial and resource implications	There are no financial and resource implications for current or pre-existing work. The financial and resource implications of future work, if any, would need to be established with other Heads of Departments.
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Summary of the PSA's report 'Telling patients the truth when something goes wrong: evaluating the progress of professional regulators in embedding professionals' duty to be candid to patients'

Introduction

1.1 The statutory duty of candour was introduced in 2014[1] in response to the Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (the Francis Report).

1.2 The duty of candour requires professionals and organisations[2] to be open and honest with patients where there have been failings in their care.

1.3 Since 2014, regulators have been encouraged to develop guidance and implement initiatives to help healthcare professionals and organisations to embed the duty of candour in practice. The PSA's recent report, 'Telling patients the truth when something goes wrong' reports on the progress regulators have made since the PSA first reported on the issue in 2014.

1.4 The report was based on desk-based research; questionnaires submitted to the PSA by stakeholders across health and social care; and discussion groups which included regulators and fitness to practise panellists.

1.5 This paper briefly summarises the report's content and identifies areas of the report which relate in some way to the work of the HCPC and its registrants.

Summary

2.1 The report produced several findings which are summarised below.

Candour

2.2 The PSA noted that it is difficult to measure candour quantitatively. Fitness to practise cases often do not record instances of a lack of candour[3], for a variety of reasons, and it can be difficult to prove that a professional has not been candid. It is therefore difficult to measure to what extent the duty has been embedded successfully.

[1] The duty of candour was introduced in 2014 in England, and in Scotland in April 2018. It is not yet in force in Northern Ireland and Wales but is being consulted on.
[2] The organisational duty of candour is placed on all Care Quality Commission registered providers in England.
[3] We introduced a new case classification system in February 2019, which includes the category: 'failure to be open and honest'. As the system has not long been live we only have limited data regarding candour.

2.3 Some stakeholders did not think that the term 'candour' is well-understood by the public or professionals. In particular, the professional's individual duty of candour was often confused with the duty placed on organisations to be candid.

2.4 Stakeholders also noted that there may be natural limits to candour that professionals must bear in mind, such as the limits of what patients might want to know about.

Barriers to candour

2.5 The PSA found that many of the barriers to candour that existed in 2014 still have an impact now. These include:

- working environments where there are 'blame cultures' or cultures of defensiveness;[4]
- a lack of belief that being candid achieves meaningful outcomes (such as the prevention of mistakes recurring);
- heavy workloads which prevent professionals from having enough time to discuss issues candidly with patients;
- fear of repercussions; either at work or in the form of regulatory, criminal or civil prosecution proceedings[5];
- fear that candour will impact on indemnity insurance arrangements;
- delays before the professional realises a mistake has been made; and
- a lack of space or opportunity to discuss the mistake (such as where a professional is referred immediately to a regulator, without a local investigation having taken place).

The role of regulators

2.6 Many stakeholders felt that the role that professional regulators can play is 'significant', 'vital' and 'important'. However, many respondents also felt that

[4] The impact of 'blame cultures' was noted in 'People like us? Understanding complaints about paramedics and social workers'.
[5] Some stakeholders made specific reference to the negative media attention surrounding high profile cases such as the case of Dr Bawa-Garba.

there are limitations to how much regulators can achieve, especially where professionals already view candour as an important part of professional practice.

2.7 Many respondents commented that regulators have communicated well what the duty to be candid means. This was particularly true of regulators that have published guidance to positively support practice (as opposed to where guidance may be used by employers as a 'stick') and where case studies have been used.

2.8 Many respondents felt that the role of regulators includes taking action when professionals have not been candid, and contributing to a 'no blame' culture by being clear about how they will treat professionals who are candid. Some regulators have already included candour in fitness to practise proceedings.[6]

2.9 Some respondents suggested that regulators should help create environments in which professionals can be candid, especially by working with health and social care organisations.

2.10 The PSA noted that all regulators have published standards relating to candour.[7] Similarly, all regulators have taken steps to incorporate the duty of candour into education and training.

2.11 The PSA concluded that regulators have made progress in relation to candour, but that it can be hard to measure progress accurately. It also noted that some steps taken by regulators are yet to 'bed in' and so only time will tell how successful these have been.

Encouraging candour

2.12 The report identified ways in which candour may be encouraged. These were not limited to regulators, and included the following:

- creating working environments amenable to candour, for instance, by providing good leadership and building positive relationships between members of staff;

[6] The GOC and PSNI provide training on candour to case examiners and fitness to practise committee members.
[7] For the HCPC this reference can be found in the Standards of conduct, performance and ethics at standard eight: 'be open when things go wrong'.

- embedding the perception that candour equates to professional responsibility, perhaps by supporting professionals to be more autonomous and accountable in their practice;

- training and educating professionals on how to be candid, the benefits of candour and the implications of not being candid, especially with the use of 'patient stories';

- removing the threat of prosecution;

- clarifying the implications of candour for indemnity arrangements; and

- publicising instances when professionals were sanctioned for lack of candour.

Conclusions

2.13 The report concluded the following:

- many of the barriers to candour noted in 2014 still affect professionals' ability to be candid, most notably their working environment;

- learning more about the benefits of candour from the perspective of patients and the public, in particular through case studies of candour, would be particularly helpful;

- regulators have made progress in embedding candour, but it is difficult to measure how much progress has been made;

- there are further opportunities for regulators to affect candour, particularly in relation to education and fitness to practise; and

- whilst regulators have a role in embedding candour, it is the responsibility of all organisations and individuals across health and social care to produce professionals who are candid. This requires interprofessional working.

Areas for the HCPC

3.1 We have identified areas of the report which relate in some way to our activities.

Clear guidance that contextualises candour for professionals

3.2 Professionals still sometimes struggle to understand *how* to be candid, or why it is important. The report noted that professionals would benefit from examples of positive candour and when candour is 'not delivered well', as well as feedback about the importance of candour from patients and carers.

3.3 The report also suggests that regulators should learn from, and work with, other health and social care organisations (such as educational bodies and trade unions) to produce guidance.

We are currently publishing a series of blog posts about the Standards of conduct, performance and ethics. Following this paper to Council we will be publishing a blog post on standard eight: be open when things go wrong. This blog post will provide more information for registrants about candour, including further explanation of the benefits and importance of candour and the implications of not being candid. We will also signpost registrants to useful resources about candour.

We are currently developing other ways to further registrants' understanding of our Standards and to support them to apply these in practice. This includes the development of case studies and information sheets. As part of this work, we will consider developing resources specifically on candour.

'Regulatory space' for candour in fitness to practise

3.4 The report suggests 'a candid two-way exchange of information at an early stage before formal aspects of the process are invoked', as well as the use of consensual disposal or continuing fitness to practise.

The HCPC will explore with our Fitness to Practise department whether there are any elements of the fitness to practise process in which candour could be further embedded.

The HCPC's Threshold Policy sets out the HCPC's approach to investigating fitness to practise concerns, and outlines our investigation process. The threshold test is whether the concern received, and any associated information, amounts to an allegation that the registrant's fitness to practise may be impaired on one or more of the statutory grounds set out in the Health and Social Work Professions Order 2001.

The threshold test does not make any reference to candour, and it is not possible to consider candour at that stage of the fitness to practise process, or to make any exceptions to the threshold test on the basis that a registrant has behaved candidly.

This means that any consideration of candour would likely need to be after the Threshold decision and not during the early stages of the process.

Our newly revised Sanction Policy will include a section on mitigating factors (discussed below at 3.5) which includes a section on 'remorse, insight and apology'.

We will also consider whether there are any opportunities to engage with registrants about candour at an early stage of the fitness to practise process. Any references to candour would need to be clear about the limitations of the role that consideration of candour can play in the process.

Formal recognition of the importance and value of candour

3.5 The PSA would like regulators to be clear about how they will treat instances of candour, and 'transparent, supportive and consistent' in their consideration of registrants who have acted candidly. This could involve producing statements that behaving candidly will not expose registrants to arbitrary repercussions, and highlighting positive examples of when candour has been delivered well.

Our newly revised Sanction Policy (approved by Council in December) will contain a section on mitigating factors in fitness to practise procedures. The policy indicates that remorse, insight and apology:

> *'may be useful indicators of a reduced ongoing risk posed to service user safety. For this reason, mitigation information may reduce the severity of the sanction required or, in some cases, mean that a sanction is no longer required at all.'*

The policy emphasises the importance of a registrant 'taking responsibility', and the weight placed upon early expressions of insight. The section also makes explicit reference to the duty of candour, and clarifies that 'an apology does not mean the registrant is admitting legal liability. This is clearly set out in the Compensation Act 2006 (England and Wales) and the Apologies (Scotland) Act 2016.'

We have also recently published guidance on self-referrals, supporting registrants to understand when to inform us of a concern about their conduct, competence or health. The guidance clarifies the importance of being open and honest as a professional, and how the HCPC will respond to self-referrals.

The guidance states: 'We investigate all cases objectively and independently. We will treat you fairly and explain what will happen at each stage of the process.' The guidance further clarifies, 'Self-referral does not automatically lead to a sanction against your registration.'

Education and training

3.6 The report suggests regulators could provide training[8] on communicating candidly with patients,[9] or promote and enforce education in professional training, perhaps by including 'courage, transparency and the duty of candour' or similar in the Standards of education and training[10].

We require education providers to demonstrate that their programmes ensure their students 'understand and are able to meet the expectations of professional behaviour, including the standards of conduct, performance and ethics' (SET 4.2 of the Standards of education and training). The accompanying guidance states that these standards, which include standard eight: be open when things go wrong, are 'an essential part of being fit to practise'.

Our standards of education and training also require approved education programmes to ensure that learners meet the Standards of proficiency (SET 4.1). At present, the Standards of proficiency do not reference candour. We are due to review our Standards of proficiency during 2019 – 2010, and we will consider candour as part of that work.

At the HCPC we do not provide professional training. However, we are currently in the early stages of developing online materials to support registrants' to apply our Standards in professional practice. We will also consider developing supportive materials on candour as part of that work.

Interprofessional working

3.7 The report highlights the possibility of working with other regulators to clarify the meaning of candour more effectively. Suggestions included sharing learning; creating one 'joined-up' vision of candour;[11] and working with systems regulators to clarify the difference between an individual professional's duty of

[8] The GMC conducts workshops on candour.
[9] The report suggests that any training and education would be more successful if it was interprofessional.
[10] This standard appear in the NMC's Standards of Proficiency for registered nurses. Similar standards are also currently included by the GCC, GDC and GPhC.
[11] In particular, it was suggested that regulators could revisit the joint statement of 2014.

candour and the organisational duty of candour. The report also suggests working with stakeholders and other 'key players' to foster a cultural shift from a culture of blame to a culture that promotes learning from mistakes.

We will explore the possibility of further joint working with other regulators in relation to candour, perhaps by developing a joint statement.

We have recently commissioned research to understand the characteristics of effective clinical and peer supervision. It is anticipated that the outputs will be used to engage with stakeholders to support registrants in practice, which we hope may help to address some of the issues that create environments which do not promote candour and learning.

Making better use of data

3.8 Suggested uses of data include the identification of organisations with high referral rates with the intention of referring these to systems regulators, or to illustrate candour issues for professionals.

It is hoped that the new case classification system, introduced in February 2019, will produce data relating to the nature of fitness to practise concerns, including the category 'failure to be open and honest'. This may help us to understand candour issues for professionals in more depth.

We are in the process of reviewing our fitness case management system, which will allow us to better collect and report on data regarding fitness to practise.

We are also in the early stages of exploring the creation of a data and intelligence team, subject to the outcome of the fees review. This would allow us to develop our data capabilities further.