

**Annex B**  
**CONSULTATION QUESTIONNAIRE**

Question 1 :

Do you agree that the arrangements that should be in place to support an organisational duty of candour should be outlined in legislation ?

Yes  No

UKHCA considers that there are distinct differences between the health sector and homecare where services are usually undertaken over a considerably longer period. This creates a therapeutic relationship between carer and service-user that predisposes towards a tendency to greater candour, which, in practice, is widely seen as the 'right thing to do'. We do not think, however, that this cultural paradigm should be seen as sufficient of itself. We therefore support the adoption of legislative measures that we consider should apply across all health and social care operational boundaries. We do consider that any legislative measure should be crafted in a way that differentiates the complaints process and adverse comments from a statutory duty of candour. UKHCA members are concerned that any legislative measures could introduce additional reporting requirements separate from existing procedures and we urge the Scottish Government to seek ways to utilise existing processes in preference to developing parallel systems.

Question 2:

Do you agree that the organisational duty of candour encompass the requirement that adequate provision be in place to ensure that staff have the support, knowledge and skill required ?

Yes  No

UKHCA considers that provision should be made within contracts for contractors providing care so that adequate provision for the development of staff can be undertaken within the spirit and intention of the proposed law. Section 2.5 of your consultation advisory document (00460832) states that: "It will also require training and support to be provided for staff involved with disclosure and support to be available to people who have been affected by an instance of harm". Such additional measures will require considerable resources to implement. We look to the legislative drafting process to make provision for meeting the actual costs of compliance as a statutory component of all health and social care contracts in future.

Question 3a: Do you agree with the requirement for organisations to publically report on disclosures that have taken place ?

Yes  No

UKHCA considers that the first duty of candour should be to the person harmed, or their nominated person where there is a lack of capacity. In keeping with our comments in response to Question 2 above, we suggest that existing reporting procedures be adapted to accommodate the proposed changes in law so that the reporting system provides the required information. We are concerned that where two or more organisations, or providers, are involved there may be a lack of clarity around the causes, time and place of an event and we therefore consider that the proposed law should require open reporting of all adverse incidents by all parties involved, including Commissioners. We are aware that the risk-ratings awarded to care-providers within the inspection and regulatory approach could be impacted by the number of adverse events and this could prove to be a powerful disincentive in *some* instances. We therefore urge the Scottish Government to recognise that some adverse incidents arise from the very nature of the work undertaken in rehabilitation and habilitation programmes, such as mobilisation after a stroke. We therefore suggest that the proposed law recognises the subtle and nuanced differences between proactive and risk assessed care programmes, where risks have to be taken, so that there is a legal differentiation of untoward incidents, including serious untoward incidents (SUI's), wilful neglect and acts of deliberate harm.

Question 3b: Do you agree with the proposed requirements to ensure that people harmed are informed ?

Yes  No

UKHCA appreciates that the existing rules for care professionals as determined by various regulatory bodies requires them to discuss adverse events with those who may have been harmed. We do not see any logic in *not* asking others to meet this standard. We further consider that it should be an offense to restrict others from being candid with those who may have been harmed and this should extend to 'whistleblowers' who should be afforded full protection under the new law.

Question 3c: Do you agree with the proposed requirements to ensure that people are appropriately supported ?

Yes  No

UKHCA is unable to identify any reason or purpose for not supporting people in this situation.

Question 4:

What do you think is an appropriate frequency for such reporting ?

Quarterly  Bi-Annually  Annually  Other  (outline below)

nil comments

Question 5:

What staffing and resources that would be required to support effective arrangements for the disclose of instances of harm ?

UKHCA has indicated above that there are subtle differences in the scope and nature of adverse incidents, notably in our response to questions 3a and 3b: whistleblowers and complainants will require a different type of support to that required where an accident or abuse has occurred. We therefore suggest that a range of policies and procedures is given legal substance so that regulators, safeguarding agencies, commissioners and providers can assure the public that their safety is a collaborative venture characterised by transparency and a sense of proportionality which removes perverse incentives. UKHCA suggests that the Adult Support & Protection Policy Team that operates within the Adult Support and Protection (Scotland) Act 2007 should have sufficient assets to execute the requirements within the proposed new law. Furthermore, we consider that the role of the National Adult Protection Coordinator should be enhanced to match the developments brought about by the proposed new law in a way that builds stronger local networks that can improve the co-ordination, development and dissemination of best practice, as well as promoting joint working between Adult Protection Committees. UKHCA would like to take this opportunity to reinforce the importance of data collection and collation in safeguarding issues and consider that the role of the Convenor of the local Adult Protection Committees should be enhanced in this respect. As a consequence of the foregoing, UKHCA considers that there is ample infrastructure in Scotland to provide the resources required to support effective arrangements for managing the consequences of disclosure without additional burdens being placed on the health and social care sector or taxpayers.

Question 6a:

Do you agree with the disclosable events that are proposed ?

Yes  No  Partially

UKHCA considers the majority of issues enumerated in Section 9 of your explanatory notes to this consultation to be acceptable in principle. We do have concerns around item 9.15 concerning children and find the expectation that a harmful event could include circumstances that impede a child reaching their "full potential" to be unhelpful: how could you ever know? The issues contained in Section 9 are very likely to be matters of interpretation and degree and we find that this may give rise, ultimately, to the need for judicial arbitration. For example, in Section 9.11 it is stated that "Events involving harm that involve the permanent lessening of bodily, sensory, motor, physiological or intellectual functions [...] would be disclosable": in the case of someone who has significant neurological deficit arising from dementia or stroke, measuring the difference directly caused by an adverse incident as opposed to a naturally occurring step-change in their condition may not be possible. We therefore have some hesitation over the enforceability of these criteria, but absolutely accept the spirit in which they intended.

Question 6b: Will the disclosable events that are proposed be clearly applicable and identifiable in all care settings ?

Yes  No

UKHCA is unable to identify any reason or purpose for not applying the proposed regulations to all aspects of the health and social care sector

Question 6c:

What definition should be used for 'disclosable events' in the context of children's social care?

nil comment

Question 7

What are the main issues that need to be addressed to support effective mechanisms to determine if an instance of disclosable harm has occurred ?

UKHCA considers that a balanced management infrastructure should be a direct consequence of the proposed new law. In questions 3.b and 5 above we outline our view concerning the reporting, registration and data-collation that we think is a necessary requisite for a transparent and collaborative partnership of agencies involved in the commissioning and delivery of safe and sustainable homecare services. We would welcome some refinements to the criteria for 'disclosable events' as listed in section 9 of your explanatory document (00460832).

Question 8:

How do you think the organisational duty of candour should be monitored ?

Please see our response to question 5 above

Question 9:

What should the consequences be if it is discovered that a disclosable event has not been disclosed to the relevant person ?

UKHCA is unable to identify any reason or purpose for not applying the full force of the proposed law to all infractions.

**End of Questionnaire**