



Proposals to introduce a Statutory Duty of Candour for Health and Social Care Services

UNISON Scotland's Submission to the Scottish Government on its Consultation on Proposals to Introduce a Statutory Duty of Candour for Health and Social Care Services.

January 2015

Introduction

UNISON is Scotland's largest trade union representing around 155,000 members working in the public sector. We represent over 60,000 health staff as well as social workers, social care staff, mental health officers, etc., most of whom would be affected by the Scottish Government's proposals. We also represent members working in health and care in the community and voluntary sector.

UNISON Scotland welcomes the opportunity to respond to the Scottish Government on their consultation.

General Comments

UNISON believes that Scotland has led the way on patient safety with initiatives such as the patient safety framework, the monitoring and reporting work carried out by Health Improvement Scotland and the Care Commission. These programmes and the associated investment have helped to take Scotland towards an overall culture that values quality, patient care and investment in staffing. We believe that the recommendations from significant events such as the Mid Staffordshire and Vale of Leven enquiries add to an already improved baseline and will take us towards better outcomes generally.

We welcome the introduction of a Duty of Candour – but believe that the desired outcome should emphasise the aim to drive up standards and improve organisational cultures rather than just a monitoring tool to see what reports are submitted.

Existing approach regarding candour

There is no doubt that public confidence has been shaken by failings identified at Mid Staffordshire, Vale of Leven or within those reported in the third and private sectors. In that context UNISON understands and accepts that there has been a political and public response across the UK to incidences of systematic and organisational failings within the Health and Social Care Sectors.

UNISON welcomes the commitment within the consultation to place the emphasis on organisations and not individual practitioners. We welcome the recognition that Health and Social Care Professionals already have a regulatory and ethical obligation to be open and candid with their patients and service users.

However UNISON members are concerned that despite placing the emphasis on organisations, the unintended consequences of such an approach, will be to make employers more risk averse and will lead to an

increase in dismissals, regulatory referrals and potential litigation against individual practitioners as well as organisations.

UNISON also believes that a legislative obligation to be open and transparent, will simply create another series of targets and monitoring regimes, which will become the focus for political and media interest as opposed to being a tool to assist with improving standards.

Further we are concerned that there is real potential that the creation of a measurement of the obligation to report will drive important, although less serious issues (e.g. one-off drug errors, minor slips, trips and falls) underground, as local staff and people managers try to avoid the inevitable scrutiny – particularly in organisations which are culturally risk averse.

If this is a result of the new duties, it will have a more negative impact on quality and patient safety. These ‘minor’ incidents are often a precursor or early warning of much deeper problems.

Proposed requirements on organisations

UNISON welcomes the commitment within the consultation document that,

“The statutory duty will require that an organisation must act in an open and transparent way with people when things go wrong.”

UNISON believes that openness and transparency are critical if our public services are to continue to benefit from high levels of public satisfaction. Failure to support any legislation with a duty to publically disclose would damage public confidence.

It is our submission that if the Duty of Candour is to have a positive impact on standards of care, openness and public confidence, it must be supported by an organisational culture which is not risk averse, and one which welcomes and encourages staff to report incidents, concerns and near misses. Further we believe that that culture must be underpinned by an unwavering commitment to learn from mistakes, invest in learning and where appropriate, staff and systems.

UNISON has been critical of the NHSiS Datex system for some considerable time, as in our opinion, the current system has failed staff and patients because organisations do not see it as an indicator of trends. They do not adequately investigate concerns and implement recommendations which would avoid similar problems occurring in the future. Many UNISON members have advised us that they make Datex reports and never receive feedback.

Similarity within the Social Care setting, existing supervision and reporting mechanisms are not necessarily geared towards identifying system failings and finding solutions. If supervision is to be a component in helping to

drive up standards and support the duty of candour, there will need to be significant investment in the social care sector to ensure that adequate systems exist and that staff are highly confident in using them.

UNISON believes that there is a delicate balance to be struck between disclosure and at the same time ensuring that relevant confidential information is rightly withheld. UNISON is concerned that disclosure, if presented poorly, might identify patient or service users' specific details: details which might in themselves be a breach of the person's rights.

Similarly we are concerned that an approach which relies on the 'naming and shaming' of individual staff, could lead to those individuals being unfairly targeted by the media, the public, the relevant regulator. Certainly if that is a consequence, intended or otherwise, of the Duty of Candour, it will lead to an increase in referrals to regulators, by default drive staff reporting underground and will have a damaging effect on public confidence.

UNISON is concerned that faced with potential litigation or regulatory sanction, risk averse employers are likely to simply dismiss or sanction staff who are involved in a reportable incident, because they will assume that by dismissing the staff, they absolve the organisation from potential criticism.

There is already some anecdotal evidence that this occurs in the private and voluntary social care sector, where dismissals for alleged misconduct appear higher than in the traditional public sector.

If the Scottish Government is to proceed with this legislation, UNISON would propose that careful consideration is given to whether whistleblowers need added and specific protection within the Regulations given. We are concerned that where there is not an open and welcoming culture within the organisation, staff who make legitimate concerns known will find themselves being pressurised or even sanctioned because they have highlighted problems.

UNISON believes that in order to change the culture, those organisations which procure services and monitor delivery and standards, should be actively encouraged by the Scottish Government to review, in partnership with service providers, how they approach their duty of candour, what they determine as a disclosable incident and what they did to improve patient/service user care.

UNISON does not think that the Scottish Government should be prescriptive on the resources that organisations should deploy to meet the requirements of the legislation. Organisations approach issues and challenges in different ways and we believe that organisations should simply be obliged to meet the requirements of the legislation.

We do however believe that the Scottish Government can and should require organisations to identify/nominate an individual who is responsible for compliance with the disclosure obligations and a responsible officer who is responsible for the evaluation of disclosures, incidents, improvements in practice and engagement with the affected person/s.

UNISON believes that these requirements should be flexible enough to reflect that in some instances it would be appropriate for a single person to do both tasks (small independent sector), whilst in a larger more complex organisation they might be part of, or lead an appropriately sized team.

We would however argue that the nominated or responsible officer must be at a level within the organisation that they can easily influence culture, affect positive change and make any apology a valued contribution as opposed to a 'lip service event.'

Disclosable events

UNISON welcomes the recognition that the NHS, through its work around adverse events has driven forward a programme of categorisation which defines events as Category I or Category II. We are concerned that the events as they are categorised do not fit easily within a social care setting, but they do represent a good starting point.

UNISON believes that positive organisations will seek to build the legislative requirement into their existing culture and practice and as such these organisations will want to review minor, non reportable incidents within the same spot light of positive learning and reflective improvement.

We do not believe that all organisations will take this approach and therefore there will need to be detailed discussion and agreement which transcends the various sectors to ensure that the legal obligations are an active tool/lever for improving culture.

Reporting on disclosable incidents and monitoring

UNISON supports the proposal that organisations should publish quarterly reports and that compliance should sit within existing monitoring or scrutiny provisions (HIS; Care Commission etc).

However, recent tragic events in Glasgow have seen an increase in verbal abuse on the cities refuse collection teams. UNISON members will be concerned that organisations which 'name' individual staff in relation to specific disclosable incidents may also 'shame' them. In turn they are concerned that this will lead to regulators automatically pursuing their own investigations; patient or relative referrals to regulators; civic litigation and potentially instances of abuse.

If the Scottish Government is to try and create a culture of openness, it will not be best served by frontline staff who are scared of being 'outed' or sacked by risk averse employers.

Conclusion

UNISON recognises the context and events which have driven this consultation, but we find it hard to welcome the stated objective of the consultation even though we believe that openness and transparency are welcome and should be encouraged.

Our members want to live and work in services which are honest with themselves and with the communities they serve.

UNISON is fearful, that the proposed approach will lead to unintended consequences and will compound the existing culture of fear amongst organisations and their staff.

Naming and shaming are not a valid tool for improving standards. Therefore whilst we recognise the context and background to the consultation, we are concerned about the way in which it will be applied on a practical level within our communities.

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