

British Association of Social Workers Northern Ireland response to the Department of Health Being Open Framework consultation

Introduction

The British Association of Social Workers Northern Ireland (BASW NI) is part of BASW, the largest professional body for social workers in the UK. BASW has 21,000 members employed in frontline, management, academic and research positions in all care settings.

BASW NI welcomes the opportunity to respond to the consultation the Draft Regional Being Open Framework (the Framework).

Support for openness

Core to the social work role, no matter what service a practitioner is employed in, is safeguarding people who use services and improving their life opportunities. This is the case whether a social worker supports children and families, older people, people with a learning disability or a physical disability, individuals seeking asylum, or people with a mental health problem.

While high quality social work practice is key to achieving this aim, so too is ensuring the organisational, legal and policy contexts social workers operate in are focused on keeping people safe. It is, however, a reality that well trained, committed staff can make mistakes, and it is vital that social workers are open when things go wrong.

The Association therefore fully supports the purpose of the Framework as outlined in section 1.2 and recognises the “core purpose of being open is to encourage learning from mistakes and develop better systems that help improve patient safety and quality of care.”

Facilitation of routine reflective supervision

Central to achieving a culture of openness within organisational settings is fostering routine openness. The Framework describes this as “where openness is an intrinsic and routine component of day-to-day activity” and explains “Organisations can facilitate routine openness through the provision of opportunities and time for staff to reflect on their work experiences, in teams and individually.”

BASW NI recognises the importance of protected time for social workers to engage in reflective supervision and supports this as a vital aspect of good social work practice. However, employers often struggle to provide reflective supervision for social workers and while the Framework states “Organisations can facilitate routine openness through the provision of opportunities and time for staff to reflect on their work experiences, in

teams and individually” it fails entirely to explain how organisations will be resourced to ensure sufficient time is made available for practitioners to routinely engage in reflective supervision.

Supporting openness through learning

The Framework explains “Openness with a focus on learning is experienced by staff as support from their organisation to speak openly about and learn from their experiences, both good and bad, and the proactive sharing and implementation of the consequent service improvements and changes.” Again, it is essential that social workers are provided with time in their working week to engage in learning focused openness. BASW NI is conscious that members currently report a lack of time to engage in continuous professional development opportunities within work time and further expectation on staff to learn and implement new skills and approaches to practice will require the allocation of additional training time and resources.

Ensuring psychological safety

The Framework explains “Openness with a focus on learning requires the presence of psychological safety, where staff, patients and service users feel able to talk about sub-optimal experiences without fear of disproportionate or unfairly punitive responses.” BASW NI agrees it is essential that when staff take responsibility for mistakes made, they are treated fairly with proportionate responses by their employers. However, the Association is acutely aware that any efforts to ensure psychological safety for staff will be severely undermined by the proposal to introduce a duty of candour with criminal sanctions for breaching the duty, as recommended by the Inquiry into Hyponatraemia Related Deaths.

The Framework, while stating “Employing organisations should incorporate a “Duty of Candour” into their contracts of employment for all staff” is silent on whether criminal sanctions should be attached to a breach of the duty. To avoid worsening the existing culture of fear within Health and Social Care (HSC) reported by BASW NI members, it is vital that the Framework comprehensively rules out criminal sanctions for breach of a duty of candour.

Existence of a *de facto* Duty of Candour

As BASW NI explained in its response to the 2021 consultation on the Duty of Candour Workstream and Being Open Sub Group Duty of Candour and Being Open Policy Proposals (the 2021 consultation), ensuring social workers are open with service users when something goes wrong is a requirement of the *BASW Code of Ethics for Social Work*¹. The Code is binding on all social workers who are BASW members in all roles, sectors and settings in the UK. It requires that social workers “work in a way that is honest, reliable and open, clearly explaining their roles, interventions and decisions and not seeking to deceive or manipulate people who use their services, their colleagues or

¹ <https://www.basw.co.uk/system/files/resources/Code%20of%20Ethics%20Aug18.pdf>

employers.” The code also requires that “Social workers should be prepared to account for and justify their judgements and actions to people who use services, to employers and the general public.”

It is also a requirement of the Northern Ireland Social Care Council (Social Care Council) *Code of Conduct and Practice*², under which social workers in Northern Ireland operate, that they are candid when errors are made. The code requires practitioners to be “*open and honest with people if things go wrong, including providing a full and prompt explanation to your employer of what has happened*”. Failure to live up to this standard can ultimately result in a social worker being removed from the Northern Ireland Social Care Council register—deeming them unable to practice.

It is the view of BASW NI that social workers, as required by the Social Care Council *Code of Conduct and Practice*, already work under a *de facto* individual duty of candour. Breach of this duty carries with it a severe penalty in the form of a potential loss of livelihood.

In comparison, however, the requirement of the Social Care Council in its *Standards of Conduct and Practice for Employers*³ to “ensure that where care has or may have caused physical, emotional, financial or material harm or loss, this is reported openly and honestly to the appropriate authorities in accordance with Duty of Candour requirements”, does not carry any equivalent threat of sanction on organisations for non-compliance. BASW NI therefore maintains its position outlined in its response to the 2021 consultation that the introduction of a statutory organisational Duty of Candour is needed to close a gap which does not exist at the individual level.

Limitations of pursuing a culture of openness via legislation

BASW NI notes the Framework’s explanation that “This approach is intentionally focused on developing and supporting a culture of openness in the HSCNI system. This is a recognition that neither legislation nor policy alone will necessarily inspire the behaviours that are intrinsic to an open organisation.” The Association considers a focus on creating an organisational culture of openness is essential. However, this is not because BASW NI shares the view that legislation in itself won’t necessarily inspire openness, but rather, because due the aforementioned culture of fear in HSC, legislation which provides for the criminalisation of staff, is likely to severely undermine openness. Legislating for an individual duty of candour with criminal sanctions for breach will act counter to the aim expressed in the Framework to ensure staff are “empowered and secure enough to be open”.

Tools, resources and leadership

The Framework states that “primary responsibility” for supporting staff to feel empowered and secure “lies with the main employers, who as part of their duty of care,

² <https://staging.niscc.info/app/uploads/2020/09/standards-of-conduct-and-practice-for-social-workers-2019.pdf>

³ <https://niscc.info/app/uploads/2021/03/standards-of-conduct-and-practice-for-employers-rqia-10.03.21.pdf>

should ensure that their staff and the public are provided with the tools and encouragement necessary to operated[sic] openly as this framework describes.” Again, this marks a failure on behalf of the authors of the Framework to highlight the need for additional resources to ensure staff are provided with the requisite “tools and encouragement”. In addition, to avoid inconsistency in approach across the sixteen HSC Arms-Length Bodies referenced in the Framework, coordinated resources targeted at developing the skills, knowledge and attitudes needed by staff are required.

Not only does the Framework fail to provide for additional funding to train staff to promote openness, it also fails to compel organisations to acknowledge that underfunding of services can lead to mistakes being made. The Framework states “Organisations *should* be open to the recognition and acceptance of resource allocation having an impact on care provision and its potential to contribute to patient safety” (emphasis added). To ensure organisations fully recognise and acknowledge the impacts of resource allocation on outcomes for patients and service users, the word “should” in the section of the Framework quoted in the previous sentence must be replaced with the word “must”.

BASW NI welcomes the focus on training managers to model reflection and openness to support development of a culture of openness. Providing this essential training will however require additional resources and the Framework is silent in regards to the provision of additional funding for this training.

Consideration must also be given to the treatment of staff accused of failing to act candidly following a mistake in scenarios in which their managers or leaders in the organisation have failed to model openness via their own behaviour.

Employment contracts

Among the proposals aimed at supporting *Routine Openness* is “Employing organisations should incorporate a “Duty of Candour” into their contracts of employment for all staff”. While BASW NI will defer to our colleagues in the various trade unions representing social workers and other HSC staff to comment on the technical considerations of renegotiating contracts to incorporate the new duty, the Association expects it would be a complex and challenging task for HSC employers. Given the likely barriers that would be encountered in attempting to renegotiate existing contracts, there is the risk of a creating an outcome in which staff commencing new posts on new contracts would be subject to the duty, while staff in post prior to the change being introduced, would not be personally affected by the duty.

If part of the social work profession is affected by a legal duty which does not affect other members of the profession, the resulting inequality would risk causing discontent and destabilisation within the social work workforce.

It must be recognised that the social work profession is experiencing a workforce crisis. For a number of years, the high rate of vacancies has led to huge pressures on social workers. While the recently reported reduction in the social work vacancy rate to 3.3%

(September 2024)⁴ is welcome, it does not represent the situation in some social work teams, particularly in the area of child protection. The reported vacancy rate is at odds with the figures shared with BASW NI by Directors of Children’s Services who report Gateway, Family Intervention teams and Looked After Children’s teams continue to experience stubbornly high vacancy levels of up to 40%. The figures as published by the Department of Health do not convey the whole picture as they cover only vacant posts actively being recruited to and omit posts unstaffed due to long term sick leave and maternity leave.

In January 2025, BASW NI met with the Minister for Health and provided oral evidence to the NI Assembly Health Committee. On both occasions representatives stressed the importance of improving support to retain social workers in the most hard to fill HSC posts. The introduction of a duty of candour in social work contracts will serve to undermine efforts to recruit and retain practitioners.

It must also be recognised that approximately one third of registered social workers in Northern Ireland work outside the HSC. Social workers are employed in the education sector, probation, criminal justice and youth justice, and the voluntary and community sector, while a growing number of social workers practice in an independent capacity. Introducing a duty of candour in the contracts of HSC social workers not only risks creating an unequal, two-tier profession within HSC, it would also bisect the profession across HSC and non-HSC lines. This may encourage dissatisfied HSC practitioners to take up roles in other sectors—further worsening the HSC social work recruitment and retention crisis.

Risk of unintentionally undermining an organisational duty of candour

In its response to the 2021 consultation BASW NI outlined the view that the existence of a statutory individual Duty of Candour could undermine the effectiveness of a statutory organisational Duty of Candour. The response explained that where organisational failings exist, mistakes are more likely to be made and it is essential that organisations learn from mistakes to ensure they do not happen again. BASW NI recognises significant work has been undertaken to ensure the Framework contains provisions for HSC oversight, monitoring and reporting requirements to promote openness. However, the Association remains of the view that where individuals stand to be punished when mistakes are made, it is less likely that organisations will reflect and improve. The result will be poorer, rather than better outcomes for service users.

Promoting impartiality and objectivity

The presence of the *de facto* duty of candour for social workers, as contained in the Social Care Council’s *Code of Conduct and Practice* provides important protection to

⁴ Northern Ireland health and social care (HSC) active recruitment statistics September 2024 <https://www.health-ni.gov.uk/publications/northern-ireland-health-and-social-care-hsc-active-recruitment-statistics-september-2024>

people who use social work services. In addition, the independence of the Social Care Council ensures fairness to social workers in scenarios in which their practice is called into question and formally reviewed.

In contrast, where a mistake, or mistakes, have been made in the context of services delivered by an HSC Arms-Length Body, the ability of the employing organisation to demonstrate independence and fairness to a practitioner who is accused of making a mistake and failing to act in accordance with a duty of candour, is questionable. Enabling an HSC employer to implement disciplinary sanctions or terminate a contract in the case of a social worker accused of failing to act candidly following an error, risks a scenario in which the employer apportions blame to the employee, rather than reflecting on the organisational or structural factors which led to the mistake or mistakes being made.

The potential for this outcome is particularly worrying given the Framework's lax approach to requiring organisations to reflect on systemic factors which result in mistakes being made. The Framework states "Organisational openness *should* look beyond the individuals involved to see if system weaknesses or the provision of resources contributed to an incident" (emphasis added). If organisational and structural failings are to be identified, the requirement for reflection at the organisational level must be mandatory and the section of the Framework quoted in the previous sentence requires the word "should" to be replaced with the word "must".

Leaving responsibility to the Social Care Council for reviewing the social worker's practice in the context of the *Code of Conduct and Practice* pre-existing requirement to act candidly will ensure a fairer hearing for the social worker and in cases of organisational failing, improved outcomes for people who use services.

Restorative justice

BASW NI welcomes the provision in the Framework that "Organisations should seek to foster a culture in which the processes to understand root causes, or responsibility are not punitive, but restorative." BASW NI recommends the enhancement of this proposal to mark a genuine commitment to embedding a restorative justice approach within HSC. The Association reaffirms the proposal made in its response to the 2021 consultation to include a statutory requirement for a senior representative of the organisation to engage in a process of restorative justice with the individual affected, or in the case of a fatality, with members of the victim's family. Such a process would ensure the organisation is held accountable as well as affording those affected by the incident the opportunity to be heard and to seek answers to their questions and share the human-emotional impact of the harm caused.

Furthermore, a restorative approach may help all involved to overcome the aftermath of the harm caused. Most of those affected will want to feel vindicated, a sense of justice and a reassurance that this will never happen again. Vitality it also provides an opportunity to rebuild trust between the service provider and service user, who in all likelihood, will continue to be a recipient of HSC services in the future.

The accountability and openness at the core of restorative justice makes the approach particularly appropriate given Framework's multiple assertions of avoiding punitive approaches.

If you would like any further information or to arrange a meeting to discuss the issues raised in this response, please contact Andy McClenaghan, BASW NI Public Affairs, Policy and Communications Lead on 07702 517560 or andy.mcclenaghan@basw.co.uk.