

The duty of candour.

In the summer of 2015, the views of both the Dept of Health (DH) and the General Medical Council on the implementation of the 'duty of candour' finally became clear. It emerges that there are now two distinct duties.

The professional duty.

From the perspective of the children's surgeon, all those registered by the General Medical Council (GMC) must *notify the child's parents (or the competent child) whenever 'something goes wrong' with a patient's care which causes either harm or distress (or the risk of harm or distress) to occur.* It is not further defined, and can be seen to be a low threshold. The guidance is not intended to apply where a patient's condition deteriorates within the natural course of their illness.

The threshold, when crossed, triggers the professional obligation set by the GMC. The GMC guidance on how to fulfil this duty should be carefully read, and followed.

The statutory duty.

Unhelpfully, a second and different threshold, identically named as a duty of candour has been created by the DH for all Care Quality Commission (CQC)-registered providers. This is a corporate (as opposed to professional) obligation which the Trust who employs you must adhere to. Thus whilst it applies directly only to organisations, the contractual link between Trust and employee will nevertheless oblige the surgeon to comply with the local arrangements.

The threshold for the statutory duty is different, and is only engaged by the occurrence of a notifiable safety incident causing moderate harm (plainly, also harm that is worse than moderate, up to and including death); or psychological injury lasting for more than 28 days. You will observe this duty in action when such an incident occurs during clinical care, since it will be identified through the incident reporting system. It will be followed by a prescribed set of actions, including letters of candour being sent; and associated administrative actions will be carried out. As a Trust employee, you will be bound to comply with the local 'duty of candour' policy which will be the instrument with which the hospital attempts to ensure that its' statutory duty is met. The CQC will be responsible for the oversight of this activity.

It is important to note that neither the professional nor contractual duty need a *mistake* to occur for their activation. Even if through no-one's fault, when either 'something goes wrong' or 'moderate harm' occurs during clinical management, that is sufficient to engage the respective duties.

An obvious difficulty may arise where the professional duty is triggered, but the 'thing that has gone wrong' falls short of the contractual threshold of moderate harm. Some hospitals may decide to treat all events in the same way; whilst others, with an eye on their administrative costs, may confine their attention to the statutory obligation, and leave it to medical and nursing professional structures within the Trust to ensure that the professional obligation is fulfilled. It should also be noted that the

arrangements required in England by the CQC for the statutory duty are not identical to those in the other countries in the UK.

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