

## Annex D – Duty of Candour consultation responses by question

### **1. Do you have any comments on the Duty of Candour harm threshold chosen for healthcare?**

The majority of those who expressed an opinion were in favour of the Duty of Candour threshold chosen for healthcare. The main advantages were seen to be that the threshold is consistent with existing definitions, and with the *Being Open* guidance and the NHS Standard Contract Duty of Candour threshold.

Those that did not support the threshold expressed a range of views, including support for a higher or lower threshold, a preference for a common threshold between health and adult social care or opposition to a statutory Duty of Candour.

There were a range of comments on the harm threshold and related issues such as the need for more guidance on the definitions of harm. A few respondents were also interested in including omissions or near misses. There was also discussion as to whether honest errors or unexpected incidents should be excluded. Another theme was the need for information on breaches of the Duty of Candour to be disclosed, either to safeguarding boards, CQC, family members or professional regulators.

### **2. Do you have any comments on the Duty of Candour harm threshold chosen for adult social care?**

The majority of those who expressed an opinion were in favour of the Duty of Candour threshold chosen for adult social care. Respondents indicated that the main advantage of the threshold was the use of existing and known threshold criteria, which is a pragmatic approach that should be familiar to care providers and should keep reporting simple. Those who opposed the threshold were primarily concerned about the variation between the two thresholds, with a preference for a single threshold

Again a wide range of comments were received, which focussed primarily on the need to clarify harm definitions, concerns about how the harm thresholds will work together and the need for Duty of Candour policies and staff training.

### **3. Do you agree with the requirements to be placed on service providers under the Duty of Candour?**

A significant majority of those who responded to this question were in favour of the requirements to be placed on service providers if harm above the threshold has arisen. It was seen as fitting with current best practice and congruent with *Being Open* guidance and the requirements of the Duty of Candour outlined in the NHS Standard Contract and mirrors good practice already in place in some healthcare

organisations. Broadly, those against the requirements were concerned that the requirements were too onerous.

There were a number of common themes in the comments, including the importance of advocacy and support and the need for better guidance and for training. Some respondents also thought that the regulations should include provision to ensure that lessons are learnt by providers; that information should be shared with the service user in terms that are relevant and comprehensible and that apologies should not be given if no-one is at fault. There was also a suggestion that the regulations should require provider organisations to take appropriate action against individuals who prevent the organisation complying with the Duty of Candour.

#### **4 Do you have any views on the costs and benefits associated with the Duty of Candour as set out in the draft impact assessment?**

As part of the consultation, we sought views on the costs and benefits of the statutory Duty of Candour.

The benefits of the proposal are likely to include improvements in patient satisfaction and patient safety, a potential reduction in medical negligence claims, a reduction in patient complaints, and reputational benefits for providers. In addition, there are ethical benefits associated with being open and honest, and these have been reflected by the wide support this policy has received during the consultation stage. The majority of respondents were of the view that being open and honest was simply the right thing to do. Providers also provided some discussion of the potential costs of the policy, which we have incorporated into our Impact Analysis.

#### **5. Do you think any of the proposals set out in this consultation document could have equality impacts for affected persons who share a protected characteristic, as described below?**

Most of those who gave a definite opinion thought that our proposals would not have negative equality impacts and a number of respondents thought that there would be definite positive benefits. The main issues raised were around possible communication barriers - the need to consider adults who lack capacity, to be mindful of different levels of ability and understanding when explaining what has occurred, as well as ensuring that information is accessible to minority groups.

The views we received in answer to this question were taken in to account in an equalities screening exercise, which concluded that there would be no equalities issues.

## Duty of Candour regulations summary of responses

Figure 1

		Pro		Against		Comment*		no reply	
		num	%	num	%	num	%	num	%
Q1	Do you have any comments on the Duty of Candour harm threshold chosen for healthcare?	54	47%	12	10%	16	14%	34	29%
Q2	Do you have any comments on the Duty of Candour harm threshold chosen for adult social care?	41	35%	13	11%	19	17%	43	37%

Figure 2

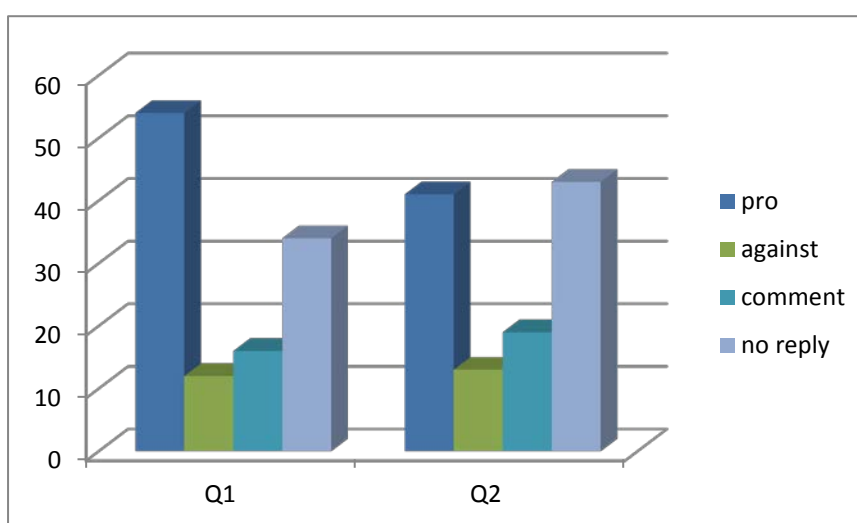
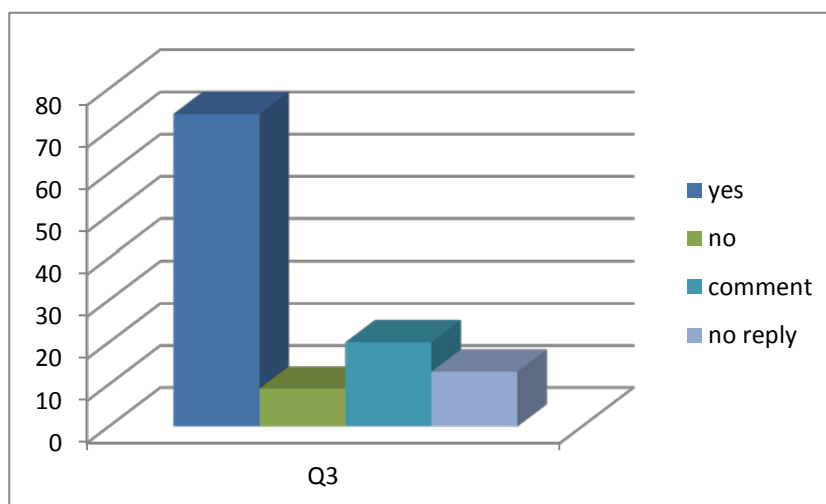


Figure 3

		Yes		No		Comment*		No reply	
		num	%	num	%	num	%	num	%
Q3	Do you agree with the requirements to be placed on service providers under the Duty of Candour?	74	64%	9	8%	20	17%	13	11%

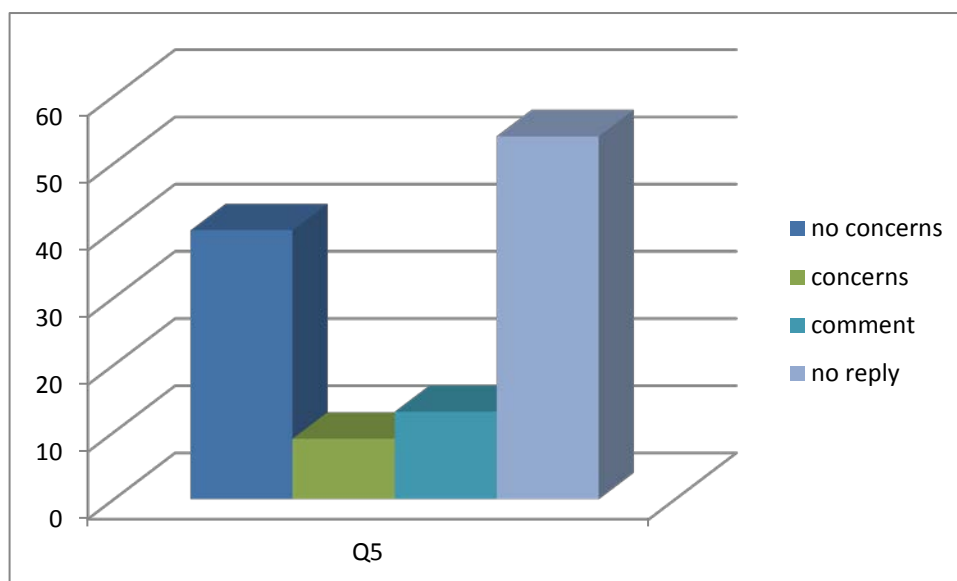
Figure 4



**Figure 5**

		No concerns		Concerns		Comment*		No reply	
		num	%	num	%	num	%	num	%
Q5	<b>Do you think any of the proposals set out in this consultation document could have equality impacts for affected persons who share a protected characteristic?</b>	40	34%	9	8%	13	11%	54	47%

**Figure 6**



\*Comments were made on the question, but the responses didn't directly agree or disagree with the approach taken in the Consultation Document.

The above charts (Figures 1-6) show how the responses to the consultation on the Duty of Candour regulations were split.

The answers were split as follows:

**Question 1 - Do you have any comments on the Duty of Candour harm threshold chosen for healthcare?**

Pro: 54 responses agreed with the threshold

Against: 12 responses disagreed with the threshold

Comment: 16 responses made comments, but did not directly agree or disagree with the approach taken in the Consultation Document.

No reply: 34 made no reply

**Question 2 - Do you have any comments on the Duty of Candour harm threshold chosen for adult social care?**

Pro: 41 responses agreed with the threshold

Against: 13 responses disagreed with the threshold

Comment: 19 responses made comments, but did not directly agree or disagree with the approach taken in the Consultation Document.

No reply: 43 made no reply

**Question 3 - Do you agree with the requirements to be placed on service providers under the Duty of Candour?**

Yes: 74 responses agreed

No: 9 responses disagreed

Comment: 20 responses made comments, but did not directly agree or disagree with the approach taken in the Consultation Document.

No reply: 13 made no reply

**Question 4 - Do you have any views on the costs and benefits associated with the Duty of Candour as set out in the draft impact assessment?**

The responses have been used to inform our updated impact assessment, which will be published at [www.legislation.gov.uk](http://www.legislation.gov.uk), alongside the final regulations.

**Question 5 - Do you think any of the proposals set out in this consultation document could have equality impacts for affected persons who share a protected characteristic, as described below?**

No Concerns: 40 respondents had no concerns

Concerns: 9 respondents had concerns

Comment: 13 responses made comments, but did not directly address the question

No reply: 54 made no reply