

ANNEX I - FREQUENTLY ASKED QUESTIONS

1. Does the duty of candour only apply if the provider was at fault?

No. The presence or absence of fault on the part of the provider has no impact on whether or not a duty of candour is triggered.

2. Can the duty of candour procedure be triggered even if the patient has been appropriately consented for a procedure to be carried out?

Yes. Whether or not the patient has given consent does not affect the application of the duty. If the patient experiences or the circumstances are such that they could experience any unintended or unexpected harm that is more than minimal and the provision of health care was or may be a factor, the duty of candour procedure would be triggered. This includes recognised and consented for complications of a procedure.

3. How is the duty of candour going to work in Primary Care?

The implementation of the duty of candour procedure should operate in primary care settings in the same way that it will be implemented across health boards, Trusts and Special Health Authorities.

4. Are we talking about an intervention that has gone wrong when we are defining a duty of candour incident?

Possibly, though the primary determinant for an organisation to trigger the duty of candour procedure will be through local discussions and decision-making in respect of whether the service user to whom health care is being or has been provided suffered unintended or unexpected harm that is more than minimal (moderate and above) that is related (or may be related) to the provision of health care.

5. If the 'incident' occurred before the Act came into force, but has only been discovered recently, should the duty of candour procedure be carried out?

There is not a legal requirement to carry out the specific requirements laid out in the Act and Candour Regulations for something that happened before the candour legislation was brought into force. However, the expectation is that 'care providers' will behave in the spirit of the duty of candour regulations – i.e. to apologise and to be open and transparent with people about whatever has been discovered.

If the 'incident' is discovered through a retrospective case review and the incident had occurred after the requirements of the Act had been formally brought into force, then this would trigger the duty of candour procedure. The reasons for the retrospective management of the duty of candour procedure would need to be clearly documented and explained to the individuals involved.