



## **RESPONSE TO NORTHERN IRELAND CONSULTATION ON DUTY OF CANDOUR & BEING OPEN**

### **Introduction**

Action against Medical Accidents (AvMA) is the UK patients' charity working for patient safety and justice.

AvMA had the privilege of being represented on the advisory group which worked on these proposals, so we have chosen not to respond to this consultation in detail. Rather we have commented only where we think the proposals should be improved, and where options are provided for comment

**AvMA very much supports the proposals as a whole.**

### **Our response by Question Number (where appropriate)**

**7. We agree with the threshold of harm for the statutory accountability and enforcement purposes, but believe care should be taken to stress that the expectation should be openness and honesty whatever the threshold of harm. The Being Open approach should support that. Also, guidance should stress that where in any doubt the threshold should be treated as met. This would avoid over analysis of the perceived threshold of harm or 'gaming' the system by grading incidents "low harm".**

**11 – 14. We do not agree that a genuine and meaningful apology can be mandated by legislation and to do so may lead to a formulaic, insincere and meaningless approach. We of course believe that a meaningful apology should always follow under the duty of candour and being open where. We believe that to be meaningful an apology needs to be much more than an expression of sorrow or regret. We recommend the Scottish Public Service Ombudsman guidance on apologies. This would be dealt with more appropriately in the guidance for duty of candour and being open.**

**17 – 18. Monitoring of compliance should not just be a matter for provider organisations but should be carried out by RQIA. There should be a clear mechanism for members of the public to raise concerns about breaches of the duty of candour to the RQIA and the RQIA to be able to assess these cases and take action where necessary. A significant inhibitor of public confidence in the duty of candour in England and Wales is the lack of effective assessment of individual breaches by those charged with monitoring or regulating duty of candour.**

**24. We support Justice O'Hara's recommendation for a statutory individual duty of candour. We would stress that criminal prosecution should only ever be considered in clear and egregious cases of 'cover-up'. Or obstruction of others in carrying out their duty.**

**25. Of the two alternative proposals we prefer option (a).**

**27. We support Justice O'Hara's recommendation for a statutory individual duty of candour. We would stress that criminal prosecution should only ever be considered in clear and egregious cases of 'cover-up' or obstruction of others in complying with their duty. Our next preference is option (a).**

**23 & 52. We believe that there should be more emphasis placed on the need to ensure access to appropriate independent support and advice for people who have suffered harm and therefore subject to the duty of candour / being open approach. This would include access to counselling and to sources of specialist independent advice/advocacy. This is not only an issue for provider organisations. Central funding may be needed to make this accessible.**

**August 2021**