

Duty of Co-operation – Consultation on proposed regulations

Consultation Questionnaire

This questionnaire is designed to supplement the consultation document which sets the context to the questions. It should be completed after reading the draft regulations and consultation document.

Responding by e-mail or in writing

If you wish to respond by e-mail, please e-mail your completed questionnaire to: dutyofcooperationconsultationresponses@dh.gsi.gov.uk

If you wish to respond in writing, it would be helpful if you could do so by completing the consultation response form and send it to the address below.

Meena Paterson

Consultation on duty of co-operation regulations
Department of Health
Room 5W41, Quarry House
Quarry Hill
Leeds LS2 7UE

Closing date for responses: 4th June 2010

Name:	<input type="text" value="Jon Levett"/>
Contact address:	<input type="text" value="41 Harley Street, London W1G 8DJ"/>
Organisation representing (if appropriate):	<input type="text" value="General Optical Council"/>
Contact telephone:	<input type="text" value="020 7307 3470"/>
Email:	<input type="text" value="jlevett@optical.org"/>

Freedom of Information

We manage the information you provide in response to this consultation in accordance with the Department of Health's [Information Charter](#).

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. The relevant legislation in this context is the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must

comply and which deals amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties. However, the information you send us may need to be passed on to colleagues within the UK Health Departments and/or published in a summary of responses to this consultation.

The information you send us may need to be passed on to colleagues within the UK Health Departments and/or published in a summary of responses to this consultation	<ul style="list-style-type: none">▪ I do not wish my response to be passed to other UK Health Departments <input type="checkbox"/>▪ I do not wish my response to be published in a summary of responses <input type="checkbox"/>
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Are you responding:	<ul style="list-style-type: none">▪ as a member of the public <input type="checkbox"/>▪ as a health or social care professional <input type="checkbox"/>▪ on behalf of an organisation <input checked="" type="checkbox"/>
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If you are responding as a health or social care professional, please supply the following details:
Profession: <input type="text"/>

Area of work	<input type="checkbox"/> NHS
	<input type="checkbox"/> Social Care
	<input type="checkbox"/> Private Health
	<input type="checkbox"/> Voluntary
	<input type="checkbox"/> Regulatory Body
	<input type="checkbox"/> Professional Body
	<input type="checkbox"/> Education
	<input type="checkbox"/> Union
	<input type="checkbox"/> Local Authority
	<input type="checkbox"/> Trade Body
Other (please give details):	<input type="text"/>

If you are responding on behalf of an organisation that could potentially be a designated body under the regulations, please supply the following details:

Number of WTE health care staff:

Type of organisation

- NHS
- Social Care
- Private Health
- Voluntary
- Regulatory Body
- Professional Body
- Education
- Union
- Local Authority
- Trade Body

Other (please give details):

Duty of Co-operation – Consultation on proposed regulations and draft accompanying guidance

Consultation Questions

Q1 Do you believe that social workers provide services which are connected to health care, as defined in paragraph 2.7?	<ul style="list-style-type: none">▪ Yes <input type="checkbox"/>▪ No <input type="checkbox"/>▪ Unsure <input checked="" type="checkbox"/>
If Yes, what are those services?	This is not a matter which the GOC would wish to comment upon.

Q2 Do you agree that there is no need to designate the police in these regulations? See paragraph 2.16	<ul style="list-style-type: none">▪ Yes <input type="checkbox"/>▪ No <input type="checkbox"/>▪ Unsure <input checked="" type="checkbox"/>
Comments	<input type="text"/>

Q3 Do you have a view on whether we should designate HEIs so that they are subject to the duties of cooperation in respect of health care workers? See paragraph 2.19	<ul style="list-style-type: none">▪ Yes <input checked="" type="checkbox"/>▪ No <input type="checkbox"/>▪ Unsure <input type="checkbox"/>
Comments	The GOC registers student optometrists and student dispensing opticians. Students, like other registrants, are subject to the GOC's fitness to practise procedures. As part of their training, students are providing healthcare to patients in a supervised setting, either at the HEI or in a work-place setting. We do not think it is true to say that 'they (HEIs) will not be employing or contracting with health care workers for purposes connected with the provision of healthcare; rather they will be employing or

contracting with them for teaching purposes' (p.10 of the consultation document). Students are providing healthcare to patients, and whilst the arrangements between HEIs and students are for teaching purposes, this does not negate the fact that health care is being provided.

It is our experience that concerns regarding the conduct of students leads to our taking action against them through our fitness to practise procedures. Indeed, a disproportionate number of FTP hearings, in relation to the number of student registrants that we have compared to optometrists and dispensing opticians, relate to allegations of impairment against students. If HEI's were subject to duties of co-operation, other designated bodies would be made aware of any concerns identified by the HEI, and we believe that HEIs would be further encouraged to share concerns with the GOC and other designated bodies (including other HEIs) about the conduct of their students. It would also encourage HEIs to take appropriate steps to themselves investigate concerns, and develop internal systems to substantiate these.

Q4 Do you agree that Regulation 3 designates all those organisations that are connected to all health care workers involved in providing health care (which are not already designated by the Responsible Officers Regulations)?

- Yes
- No
- Unsure

Comments

HEI's should be designated.

Q5 If you answered No to Q4, which other organisations should be designated?

Comments

See above

Q6 Do you have suggestions on what might usefully be included in the protocols or MoU to facilitate sharing of information about health care workers, between sectors? See paragraph 2.20

- Yes
- No
- Unsure

Comments

Q7 What are the existing mechanisms in your organisation which the “relevant officer” could use for identifying and managing concerns about the conduct or performance of health care workers? See paragraph 2.26

Comments

The GOC does not employ health care workers, but we do receive allegations from patients, members of the public, employers and commissioning organisations about optometrists, dispensing opticians, student dispensing opticians and optometrists, and bodies corporate. We have mechanisms in place for investigating these allegations and taking action against those whose fitness to practise is found to be impaired.

Q8 Do you agree that one individual in an organisation should be given responsibility for complying with the organisation's obligations under these proposed regulations?

- Yes
- No
- Unsure

Comments

In reality compliance will require the involvement of many people in an organisation each with distinct responsibilities. However, it makes sense that a single person should be held accountable for compliance. A distinction is perhaps needed here between responsibility, which will be shared, and accountability which should be attributed to a single person.

Q9 Do you think we should specify in guidance the minimum level of seniority a relevant officer should have?

- Yes
- No
- Unsure

If Yes, what should that minimum level of seniority be?

The person should either be the Chief Executive Officer or a member of the Senior Management Team or someone of comparable status. Accountability should not rest with any person of a lower level within the organisation. Naturally, organisational structures will vary considerably, and there will need to be flexibility in the guidance to allow for organisations to sensibly specify a person of appropriate seniority.

Q10 How do you think the 'relevant officer' in your organisation might ensure that all the information in the organisation's possession is examined once the trigger (see flow chart at page 38) suggests a need for investigation or there is a request for information from

another designated body?

Comments

We have a formal process for the investigation of allegations, and have a hearings process to determine whether or not a registrant's fitness to practise is impaired. As the duty of co-operation relates to those cases where we have taken all reasonable steps to substantiate the allegation prior to the information being provided to another designated body, we would only share information where a finding of impairment had been made.

Q11 Do you think guidance should set out any other responsibilities for the 'relevant officer' role? See paragraph 2.28

- Yes
- No
- Unsure

Comments

Q12 Do you believe the safeguarding measures will ensure that information about health care workers will be dealt with in an open and fair way? See paragraph 2.33 – 2.34

- Yes
- No
- Unsure

Comments

Q13 Are there any other safeguarding measures we should include in the regulations?

- Yes
- No
- Unsure

<p>If Yes, please specify what these are?</p>	<p>We believe that designated bodies should be required to inform individuals that information about them is being shared with other designated bodies and what that information is.</p>
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<p>Q14 Do you agree that draft Regulation 6 provides a robust process for a designated body to substantiate an allegation against a health care worker before information based on it is shared with another designated body?</p>	<ul style="list-style-type: none"> ▪ Yes <input checked="" type="checkbox"/> ▪ No <input type="checkbox"/> ▪ Unsure <input type="checkbox"/>
<p>Comments</p>	<div style="border: 1px solid black; height: 15px; width: 100%;"></div>

<p>Q15 Do you agree that there is already robust guidance on how to handle confidential patient information? See paragraph 2.36 – 2.38</p>	<ul style="list-style-type: none"> ▪ Yes <input checked="" type="checkbox"/> ▪ No <input type="checkbox"/> ▪ Unsure <input type="checkbox"/>
<p>If No, please specify what additional clarification you need.</p>	<div style="border: 1px solid black; height: 15px; width: 100%;"></div>

<p>Q16 When, in a recruitment process, does your organisation seek information/references about the conduct or performance of a health care workers? Does your organisation seek information from current or ex-employers prior to a request for a formal reference being made?</p>	<ul style="list-style-type: none"> ▪ Yes <input type="checkbox"/> ▪ No <input checked="" type="checkbox"/> ▪ Unsure <input type="checkbox"/>
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Comments

We do not recruit health care worker for the purpose of providing health care services.

Q17 Do you think regulation 7 as it stands strike the right balance between the aims set out in paragraphs 2.46? Do you think we should provide in regulation 7 that designated bodies should only provide to a recruiting designated body information about a health care worker's conduct or performance prior to the stage where references are sought, where there is an immediate threat to patient safety (with regulation 7 being compiled with in full when the provision of references stage is reached)?

- Yes
- No
- Unsure

Comments

Q18 If a request for information about a health care worker is made by a designated body during an appointment process, should all the relevant clinical governance information held on file by the designated body receiving the request be transferred to the requesting designated body once the appointment process has been completed?

- Yes
- No
- Unsure

Comments

Q19 Do you foresee any difficulties with agreeing joint action where more than one designated body employs or contracts with a health care worker after one such designated body shares information under regulation 6(1) with the other designated bodies?

- Yes
- No
- Unsure

Comments

Possibly. For example, there may be disagreements between employers and contractors about whether allegations have been adequately substantiated by one body prior to the information being substantiated. Procedures for substantiating allegations may vary considerably, and smaller bodies may lack the resources and experience of larger ones to substantiate allegations. There should be clear guidance available regarding this.

Q20 What is current practice within your organisation about retaining information relating to verified allegations? See paragraph 2.61 – 2.62

- Yes
- No
- Unsure

Comments

In the case of verified allegations, the information is retained indefinitely.

Q21 Do you have a view on retaining information for 5 years (or until completion of the next revalidation cycle if later) on allegations that are not possible to investigate fully or where the allegation is unfounded?

- Yes
- No
- Unsure

Comments

Whilst we currently retain such records indefinitely, we would have no objections to

these being destroyed after 5 years upon review.

Q22 Are you aware of any body, other than those listed above, whose guidance is of relevance to the proposed new regulations?

- Yes
- No
- Unsure

If Yes, please specific.

**Q23 Are there issues on which guidance or clarification would help your organisation meet its obligations under these proposed regulations?
See Paragraph 2.63**

- Yes
- No
- Unsure

If Yes, what are those issues?

**Q24 Do you agree with our estimate of the likely costs and benefits?
See Impact Assessment**

- Yes
- No
- Unsure

If not, please indicate and provide evidence, where possible, of any areas of disagreement.

We think that the impact assessment underestimates the impact on the private sector.
We are aware that , in their response to this

consultation, ABDO, AOP, ACLM, FMO, FODO and BCLA have highlighted the impact that these regulations will have on the 7000 optical practices and 10,000 pharmacy practices which they believe are excluded from the 10,000 independent providers which are quoted in the impact assessment. If these are included, the financial impact will be much greater than stated, particularly given the seemingly wide definition of 'health care worker' which includes any person who is employed by a designated body, which will include a large body of retail staff who pose little or no risk to patients.

Q25 According to the evidence presented in the IA, the likely cost of the preferred policy option on different organisations does not seem to be significantly related to their size. Do you agree with this proposition?

- Yes
- No
- Unsure

If not, can you provide evidence to support your argument?

We believe there will be a disproportionate burden on smaller organisations who will lack the resources and expertise to investigate and substantiate concerns.

Q26 What might be the barriers (negative impact) to the proposed regulations "Duty of co-operation" and good quality outcomes for

- Yes
- No

everyone from the perspective of ethnicity, gender, disability, age, sexual orientation, religion/belief, socio-economic or rural/geographical considerations? What proportionate measures could address those issues?
See Screening EQIA

- Unsure

Comment

Q27 What are the positive impact that might result from implementing this policy from the perspective of ethnicity, gender, disability, age, sexual orientation and religion/belief, socio-economic or rural/geographical considerations? What proportionate measures might we implement that could enhance this positive affect?

- Yes
- No
- Unsure

Comment

7

Q28 Please identify how the implementation of this policy might affect the Human Rights of patients, carers, service providers or the workforce? In your opinion does this mean that this policy should not be implemented or could proportionate measures be taken to address these issues?

- Yes
- No
- Unsure

Comment

Q29 Do you have a view on the suggestion that local health care organisations should maintain a coherent and integrated set of information for all health care workers for whom the organisation which has clinical governance responsibility?

- Yes
- No
- Unsure

Comments

themselves, employers, or the regulator.

Q30 Do you agree that these categories of information are good indicators of performance or conduct?

- Yes
- No
- Unsure

If not, please specify what other information should be included.

Q31 What concerns do you have about sharing “soft” information?

Comments

We agree with the position taken in the tackling Concerns locally report regarding how ‘soft’ information is handled.

Q32 Does your organisation already share “soft” information about health care workers?

- Yes
- No
- Unsure

If Yes, please provide details.

Q33 Do you agree that contractors should notify PCTs of all negligence claims?

- Yes
- No
- Unsure

Comments.

Q34 Do you agree with the definition of “claims”?

- Yes
- No
- Unsure

If No, please explain why not?.

Q35 Do you support the above approach on sharing information with patients, carers, or the public about investigations?

- Yes
- No
- Unsure

Comments

Q36 Do you support the view that the national regulator should be alerted to a pattern of conduct or performance

- Yes
- No
- Unsure

that falls below the threshold for referrals about fitness to practise?

Comments

Q37 Are these examples of concerns about a health care worker's conduct or performance helpful to you when making decisions about how you would comply with the proposed regulations on duties of co-operation?

- Yes
- No
- Unsure

Comments

Q38 Do you have any additional comments on any aspect of this consultation?

- Yes
- No
- Unsure
-

Comments

Please send your completed response form to dutyofcooperationconsultationresponses@dh.gsi.gov.uk