

Walking the fine line: The statutory duty of candour and insurance

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In light of the Department of Health and Social Care (DHSC) publishing their findings from their call for evidence on the statutory (organisational) duty of candour, in this article we consider the potential impact for insurers.

The DHSC states that:

"The statutory (organisational) duty of candour is a crucial, underpinning aspect of an open and transparent culture which supports staff to be candid when things go wrong during the provision of care and treatment. When such errors occur, patients and service users, and their families or caregivers, expect to be informed honestly about:

- *What happened*
- *What can be done to deal with any harm caused*
- *What will be done to prevent a recurrence to someone else."*

However, the duty introduces a potential conflict from the standpoint of medical professional liability and malpractice insurance, as most insurance policy wordings include the obligation not to make admissions. Many wordings have been drafted with the duty of candour in mind and are drafted specifically to state that the requirement not to make admissions does not apply where the insured is complying with their duty of candour. Arguably, any product that does not include this carve out is not suitable for its target market.

Even where wordings do expressly deal with duty of candour, there is a risk of the wording going further than, or not as far as, the actual requirement on practitioners. This can lead to unexpected (and unwanted) outcomes. Equally, some medical practitioners may not fully understand their requirements and may inadvertently make admissions where they are not required to (i.e. going beyond their duty of candour), thereby jeopardising their cover.

What does this mean for insurers?

Insurers face a critical challenge in making sure that their policy wordings are drafted considerately, and in striking the right balance between allowing insureds to comply with their obligations, whilst maintaining adequate protection against admissions. Insurers may also want to work with insureds and brokers to ensure that insureds fully understand what they can and can't admit to.

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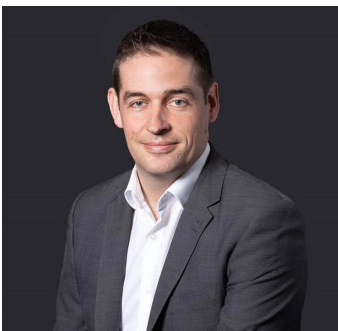


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