

# Written Ministerial Statement

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## Department of Health

### INQUIRY INTO HYPONATRAEMIA RELATED DEATHS (IHRD) IMPLEMENTATION PROGRAMME UPDATE

*Published at 9.00 am on 25 March 2021.*

**Mr Swann (The Minister of Health):** When I took office in January of last year implementing the recommendations of Mr Justice O'Hara's Report, following the Public Inquiry into Hyponatraemia Related Deaths (IHRD), was one of my major priorities. Despite the challenges presented to the Department during the suspension of the Assembly, and the absence of a Health Minister, I was pleased to note the progress that had been made on work arising from the IHRD Report and that some of the established workstreams were close to completing their tasks.

I wish to again put on record, on behalf of the entire health and social care system, profound apologies to the families of those young children who were badly let down not just by the care provided but subsequently.

Let me also place on record my gratitude to Mr Justice O'Hara for so ably shining a light where it needed to be shone.

The IHRD Report is an extremely significant piece of work with implications for all parts of our health and social care system. Work progressed in response by the IHRD Implementation Programme has brought together front-line staff, regulators, various experts, our partners in the community and voluntary sector, the Coroner's Office and most importantly of all service users and carers, to make sure that the changes we make are truly robust and sustained.

There has unfortunately been a degree of misunderstanding in the public domain with regard to the implementation of the IHRD Report. Let me be clear that the report is a landmark document, and my strong view is that it is the foundation for lasting improvements in governance, safety and transparency within and across Northern Ireland's health and social care system.

Unfortunately when the COVID-19 pandemic struck there was no option but to pause the IHRD Implementation Programme. This decision was necessary to allow staff in my Department and HSC Trusts to be re-directed to focus on COVID-critical work. It was also a decision taken with the safety and wellbeing of service users and carers as a priority.

While the temporary suspension of the IHRD Implementation Programme meant that much of the work was paused, I am pleased to advise that some key elements were able to be progressed. These include Duty of Candour, Being Open Guidance, the HSC Board Member Handbook, Independent Medical Examiner (IME) Service, and Statement of Rights for those involved in a Serious Adverse Incident (SAI).

Today I am announcing that on the 12<sup>th</sup> April 2021 a public consultation opens on policy proposals for a Statutory Duty of Candour and Being Open Framework. This public consultation will run for a period of 16 weeks.

A Statutory Duty of Candour would create a legal responsibility for all healthcare organisations and individual staff to be honest when things go wrong. This duty would not just apply to being open and honest with patients, but also include the need to be open and honest within organisations when reporting adverse incidents or near misses that may have led to harm.

I can also advise that work on the HSC Board Member Handbook is almost complete, the Handbook will be available on the Department's website next month. This Handbook is an invaluable resource for Board members, it will support members in their important leadership role, in seeking assurances about the safety and effectiveness of services.

A statement of "What you should expect if you are involved in a Serious Adverse Incident" has been developed collaboratively by service users, carers and HSC staff as members of the SAI Workstream of the IHRD Implementation Programme. The statement has also been presented at a number of HSC staff engagement events and an Involvement Workshop with the wider IHRD Service Users and Carers Liaison Group. This statement is to be passed to all HSC organisations for implementation over the coming months.

Another key element of the IHRD Implementation Programme that has progressed is the work to develop proposals for an Independent Medical Examiner (IME) Service in Northern Ireland. Prototypes to determine the most appropriate way to operate such a service and identify the implications for all those involved in operating the service, are actively progressing. Learning emerging from these will be used to develop firm proposals and options for an IME service, which will issue for wider consultation in due course.

As I have already indicated, the system's response to his report has undoubtedly and regrettably been hampered by the absence of a Health Minister for a significant period and, subsequently, by the COVID-19 pandemic. Nonetheless, I anticipate a significant acceleration of the implementation of the IHRD recommendations when the Covid-related pressures on the Department and HSC system subside.

My Department accepts the recommendations of the O'Hara Report in their entirety. It is unfortunate that a distorted narrative has been propagated by some in this regard in recent times. For the benefit of any doubt, I reiterate that the Department of Health and the wider HSC system have at no time disputed the contents of the IHRD Report.

Some confusion appears to have arisen in relation to the criticism of individuals in the Public Inquiry Report. On this subject, it is important to acknowledge the cautions which Mr Justice O'Hara himself recorded.

He stated: "The Public Inquiry process is investigative and inquisitorial and seeks to determine what has happened in order to better identify what may be learned. Accordingly, I have found myself in a very different position to a judge sitting in a court of law. In identifying what has gone wrong I have inevitably criticised some individuals and organisations, but my findings are not binding and are not determinative of liability."

He further made clear: "I am conscious that the individuals who are criticised were not able to defend themselves as they might in adversarial proceedings and were circumscribed in their right to make representations. I am also aware that individuals who are criticised may attract adverse publicity affecting both reputation and career. Therefore where critical comment is made of an individual, it must be assessed in the context of the limitations of the process."

Given the limitations articulated by Mr Justice O'Hara, it is clearly not for the Department to offer a qualitative view on his criticisms of individuals. There are pathways in place – including Trust standards frameworks and independent regulatory processes – to produce findings that can be binding and determinative of liability. Such processes are independent of the Health Minister and the Department - and quite properly so.

At no stage has the Department sought to challenge the validity of Mr Justice O'Hara's criticisms. Relevant employers have taken them, similarly without challenge, as the starting point for consideration of the need, or otherwise, for further action against any individuals named in the Report.

In conclusion, I would also highlight comments from the IHRD Report in relation to improvements implemented subsequent to the timeframe that this public inquiry addressed. Mr Justice O'Hara stated that it was "clear that very considerable professional attention has been devoted to protecting children undergoing fluid therapy and significant progress has been made. However, there can be no room for complacency because total patient safety cannot be assured." While noting that the "Health Service

environment has most definitely been transformed since the period under review”, Mr Justice O’Hara emphasised that it remained “critical to keep building upon the very real progress made and to further undermine the remnant culture of clinical defensiveness”.

Those are very apt comments. We must continue to strive for improvement, both in the practices and in the culture of our health and care system. The forthcoming public consultation on policy proposals for the Statutory Duty of Candour, which I am announcing today, will be an important part of that process.