

# Duty of Candour and the “Hillsborough Law”

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# The Duty of Candour

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# Judicial review and the duty of candour

**Judicial review is not ordinary civil litigation.** Its role is supervisory: the Court asks whether public power has been exercised lawfully.

That constitutional function explains why the process is different. Part 54 CPR does not assume the routine exchange of documents that might take place in a civil claim.

**Instead, the Court depends on candour.**

The public authority must put forward the explanation and material needed for legality to be tested fairly.

# Judicial review as a partnership

*“...a partnership based on a common aim, namely the maintenance of the highest standards of public administration.”*

**R v Lancashire CC ex p Huddleston**

Sir John Donaldson MR’s 1986 description defines the nature of judicial review. The aim is not simply to win the litigation, but to assist the Court in deciding whether public power has been used lawfully.

**That is why candour requires a different litigation instinct: explain first, defend second.**

# Why candour, not routine disclosure?

**Ordinary disclosure would often be expensive and unnecessary.** Judicial review usually turns on the lawfulness of a decision, not a wide factual trial.

The Court therefore starts from a different premise: the public authority will identify and explain the material needed to determine legality.

**However, explanation is not always enough.** In *Tweed v Parades Commission for Northern Ireland* the Court held that it was “*ordinarily good practice to exhibit [a document] as the primary evidence... ..the document itself is the best evidence of what it says*” may still order disclosure where an explanation of the material is not enough.

The practical question is whether the evidence gives the Court a fair and complete account of the decision.

# Candour is more than producing documents

**Documents alone rarely answer the Court's questions.** Candour requires an intelligible account of the decision-making process.

The evidence should explain what happened, why it happened, and what material was considered – including material that is unhelpful to the authority's case.

**Quark Fishing:** *the Court should not have to "tease the truth out".*

**The account should answer:**

**What happened**

the factual chronology

**Why it happened**

the reasons and context

**What was considered**

the relevant material

**What cuts both ways**

assisting and adverse points

# A Few Key Principles

## Quark Fishing

The authority must give a full and accurate explanation, not merely exhibit selected documents.

## Citizens UK

Candour means no spin, no selective presentation, and a continuing obligation as the case develops.

## R (oao HM) v SSHD

The Court assumes it will be given all necessary information, because the state is under a positive duty to ensure this occurs.

## BG v Hackney

The duty is not one-way. Claimants also owe candour when presenting the case to the Court.

# What the Administrative Court expects

***“Put all the cards face upwards.”***

The Administrative Court Guide 2025 distils the authorities into a practical discipline: the evidence must be clear, balanced and complete enough for the Court to trust the account being given.

That means avoiding ambiguity, selective evidence and misleading omissions. It also means explaining adverse material rather than leaving the Court or the claimant to find it.

**Candour is active.** It is not satisfied by passive disclosure or silence on difficult points.

# When candour goes wrong

**Failures of candour are rarely just procedural.** They affect the Court's confidence in the evidence and in the decision-maker's overall account.

Once that confidence is lost, it is difficult to recover. The litigation may become about credibility as much as legality.

**The consequences can escalate quickly:**

- 1 Adverse findings or inferences**
- 2 Disclosure orders and indemnity costs**
- 3 Judicial criticism and lasting reputational harm**

# From common law candour to the Hillsborough Law

**The common law duty explains the baseline.** Public authorities must give the Court a fair, complete and unspun account of the decision under challenge.

**The next question is statutory:** what would change if that culture of candour were written into law?

## Next section

The “Hillsborough Law” and the proposed statutory duty of candour and assistance.

We turn to: the duties, powers, scope, offences and standards that would sit around it.



# The “Hillsborough Law”

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# Public Office (Accountability) Bill

*'defensive and evasive'*

Lord Taylor, Chairman of the public inquiry into the Hillsborough disaster when describing the evidence of senior police officers.

- Report stage in the House of Commons
- New duty of candour and assistance ('DOCA')
- Applies to inquiries, inquests and other investigations
- New criminal sanctions
- Extension of public funding

# Overview – duties

- Duty to act with “**candour, transparency and frankness**” in their dealings with inquiries and investigations (cl. 2)
- Positive obligation to **notify** where the authority has grounds to believe that the acts may be relevant to the inquiry or investigation OR they otherwise have information likely to be relevant
- Positive obligation to provide **assistance** to an inquiry or investigation
- New duty to promote and take steps to maintain high standards of ethical conduct
- Reflects existing DoC which already applies in JR (common law DoC).
- Clause 8 defines an inquiry or investigation
- Clause 8 defines who is in scope
- Responsibility rests on the public official in charge of the authority
- Must act expeditiously: cl.2(6)(i)
- Must act without favour to their own or another person’s position: cl. 2(6)(ii)

## Overview – powers

- New power for inquiry chair to make a compliance direction to a public authority or public official under cl.3(5). Adds to existing powers under Inquiries Act 2005, s.21 (compulsion of attendance and/or provision of documents)
- Bites on the person in charge of a public authority
- At any time
- Cannot be used to produce material which is privileged or subject to PII or which would be security or intelligence material within the meaning of s.1(9) OSA 1989

# What is in scope? Meaning of inquiry and investigation

## Inquiries:

- Inquiry under the Inquiry Act 2005
- Non-statutory inquiries to which paragraph 2 of Schedule 1 applies
- Local authority inquiries

## Investigations:

- Part 1 of the Coroners and Justice Act 2009
- An investigation specified in regulations under paragraph 8(1) of Schedule 1

# Who is in scope? Meaning of public authority and person “in charge”

## “Public authority”

- Cl. 8, see list at paragraph 2 of Schedule 2
- But only if its functions are of a public nature or includes functions of a public nature

## Person “in charge”

- Chief Executive where authority has a board of directors
- The individual carrying out functions corresponding to the Chief Executive

- Also extends to those who have a “relevant public responsibility” see cl. 4(2):
  - Health and safety responsibility
  - Carried out activities **as a service provider** to a public authority and the activities had a significant impact on members of the public

# New offences

- Failing to comply with DOCA, intentionally or recklessly, cl.5
- Misleading the public, cl.11, applies to acts which are “seriously improper”. Intentionally or recklessly and know or ought to know act is improper
- Commission of seriously improper acts, cl.12
- Breach of duty to prevent death or serious injury, cl.13



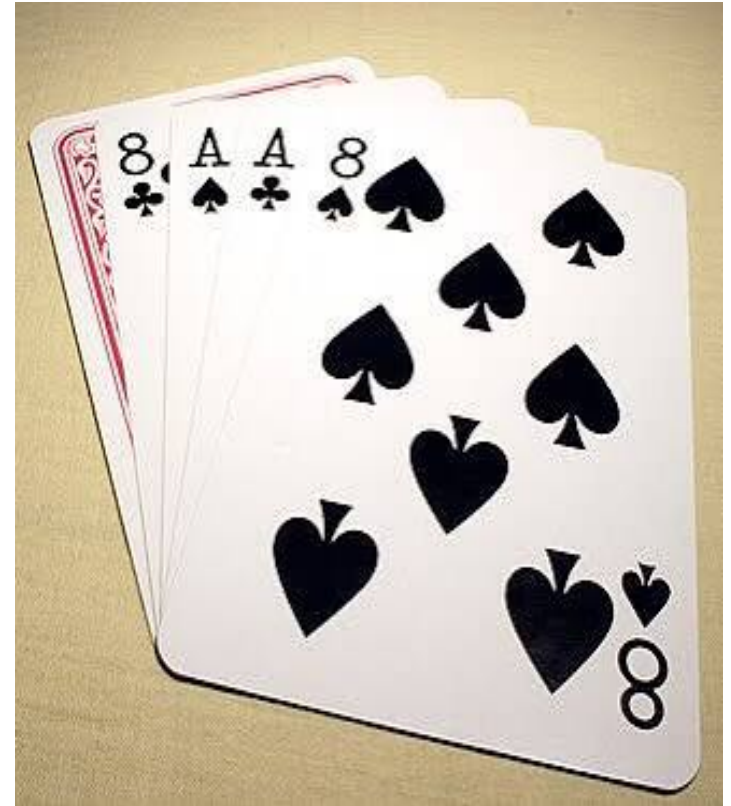
# Standards of ethical conduct – Cl. 9

- Duty to promote and take steps to maintain high standards of ethical conduct “at all times”
- Puts Nolan principles on a statutory footing
- Obligation to:
  - adopt a code of conduct
  - Take steps to ensure awareness
  - Ensure code is published



## Where next?

- Current version 14 May 2026
- Next step: 3<sup>rd</sup> reading in House of Commons
- Further reading:
  - Explanatory notes
  - [Government factsheets](#)







# Thank you & contact details

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