

## **Memorandum of evidence from the British Medical Association to the House of Commons Health Select Committee's inquiry: the MoU (Memorandum of Understanding) on processing information requests from the Home Office to NHS Digital for tracing immigration offenders**

### **About the BMA**

The BMA (British Medical Association) is a voluntary professional association and independent trade union, representing doctors and medical students from all branches of medicine across the UK and supporting them to deliver the highest standards of patient care.

### BMA position on the MoU (Memorandum of Understanding) between NHS Digital, Home Office and Department of Health

- 1.0. The MoU permits NHS Digital to share confidential information with the Home Office "*in the public interest*", for immigration offences. The BMA believes that the type and number of disclosures by NHS Digital represent a lowering of the 'public interest' threshold for disclosures of confidential information from that which is set out in GMC (General Medical Council) and NHS Digital guidance.
- 1.1. GMC guidance states that doctors must only make a disclosure in the public interest without consent, if it would "*protect individuals or society from risks of serious harm*". In our view, disclosures under the MoU permit data to be released in circumstances that would not comply with the professional standards of confidentiality; this concern has also been voiced publicly by the National Data Guardian and GMC in correspondence published by the Health Select Committee.
- 1.2. We believe it is extremely worrying if NHS Digital, as the statutory 'safe haven' for health data in England, is not applying the same high standards of confidentiality as those which exist for doctors, including those practising within the health service. This is a matter of great concern to the BMA's members, which was reflected at our recent annual representative meeting where a motion opposing the MoU was passed on those grounds.
- 1.3 We are concerned that the MoU potentially sets a precedent for lowering the threshold for disclosure in other areas and circumstances which are separate from the issue of immigration.
- 1.4 The BMA believes that clarity is urgently needed before further disclosures are made – in 2016 alone, the reported number of requests from the Home Office was in excess of 8,000. We welcome the Committee's inquiry as an opportunity to discuss the following areas of concern:
  - The criteria used by NHS Digital for disclosures to the Home Office under the MoU – the 'public interest' test
  - The compatibility of disclosing confidential information for general immigration purposes with legal and professional standards of confidentiality
  - The potential for the public to lose trust in the health service and also the impact that any loss of public trust would have on health-seeking behaviour, and the associated risks to individual and public health
  - The adequacy of scrutiny and oversight procedures for disclosures made under the MoU.

### NHS Digital's National Back Office tracing service review

- 2.0. NHS Digital has published the findings from its National Back Office tracing service review. The review makes references to patients' names and addresses as being 'administrative' information. Although the review states that NHS Digital does treat patients' names and addresses as confidential, the BMA is extremely concerned at this attempt to draw a distinction between demographic data and clinical data.

2.1 We would profoundly disagree with any attempt to categorise demographic information as not being subject to the established rules on confidentiality. It is our view that all information which patients provide for the purposes of registering for or receiving healthcare is confidential information, regardless of whether the information is demographic or clinical. This information has been shared by patients within a trust relationship between doctors and patients.

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