

## **‘Recommendations of the Commission established by Public Concern at Work on Whistleblowing’**

### **House of Lords - Short Debate Monday 24 March 2014**

**The British Medical Association (BMA) is an independent trade union and voluntary professional association which represents doctors and medical students from all branches of medicine all over the UK. With a membership of over 153,000, we promote the medical and allied sciences, seek to maintain the honour and interests of the medical profession and promote the achievement of high quality healthcare.**

#### **Background**

There are clear professional duties on doctors, outlined in the GMC’s guidance *Good Medical Practice*<sup>1</sup>, the professional code governing their fitness to practise, to be open and honest with patients if things go wrong and to raise and act on concerns about patient safety. The BMA strongly supports these principles, upholding the highest standards of patient care, and believes all NHS staff must be honest and transparent in everything they do, in order to best serve and protect patients. We can and must to do more to promote and monitor these duties, the fulfilment of which can rightly mean the difference between a doctor being able to practise or not practise.

At the same time, no barriers to doctors in fulfilling these duties should be created. As the Francis Report<sup>2</sup> highlights, NHS organisations must do more to listen to and act on the concerns of staff. Placing a corresponding duty on healthcare providers ‘to listen and learn’ could send a positive and reassuring signal to staff that they will be heard without fear of punitive action. Conversely, we remain concerned that introducing a statutory duty of care on individuals would be counterproductive and restrict a doctor in raising concerns about patient safety.

In order to encourage individuals to raise concerns, we believe that the focus should be on the application of good practice at a local level, driven by the adoption of robust and consistent governance processes, and the development of greater awareness of local policies.

The BMA submitted evidence to the Commission on Whistleblowing established by Public Concern at Work and welcomes the report of the Commission as a valuable contribution to the debate on the support being provided to whistleblowers. This is a debate that the BMA is keen to have with its own members and has issued a discussion paper aimed at *Supporting Doctors Raising Concerns*<sup>3</sup>. The BMA Chair of Council, Dr Mark Porter, has also recently met with the Chief Executive of Public Concern at Work to discuss how the BMA can best respond to their report and support the implementation of its recommendations.

This briefing considers some of the Commission’s recommendations and highlights areas where the BMA would support further consideration.

## **Strengthening and clarifying the legal protection for whistleblowers contained within the Public Interest Disclosure Act**

The BMA recognises the bravery and commitment to their patients that doctors and others show when they raise concerns about standards of care and training and condemns the bullying and harassment that can sometimes occur after concerns about standards of care and training have been raised. Effective mechanisms for handling concerns are not currently widely embedded across the NHS. In a recent Pulse survey<sup>4</sup>, nearly a third of GPs who complained about their local hospital's care of patients within the past year, found their concerns were not acted upon, whilst an RCN survey<sup>5</sup> highlighted similar issues.

Doctors have reported to us that fear of bullying, fear of personal exposure, potential, perceived or actual conflicts of interests between professional and contractual duties, and a lack of confidence about whether others will support their concerns and the consequent impact upon their careers, amongst other reasons, inhibit them from speaking out. The better legal support proposed in the Commission's report (recommendations 8-20) will help free doctors, and others, from these concerns.

## **Strengthening anti-gagging provisions in the law**

The BMA particularly welcomes the proposal to strengthen anti-gagging provisions in the law (recommendations 17 & 18). Whilst continuing to believe that BMA members themselves sometimes need the protection of confidentiality clauses in any settlement agreement with an employer, we are absolutely clear that this must not be at the expense of the member's right to speak out about poor standards of care or service. We are keen to discuss with Public Concern at Work how best to achieve these two objectives. We have also published guidance highlighting to our members how their contracts support their right to speak out<sup>6</sup>.

## **Broadening the definition of worker (Recommendation 10)**

The BMA has specifically called for the extension of the whistleblower protections to GP Principals, who are self-employed contractors, and thus very much welcomes the support for this proposal from the Commission. The BMA believes that protection is required for these doctors and for others who have a statutory role as members of Clinical Commissioning Groups (CCGs) but who may have concerns about the patient safety implications of services commissioned by their CCG.

## **Regulatory structures**

Whilst we welcome the greater clarity on best practice in facilitating whistleblowing and whistleblowers provided by the report, we are not convinced that an already well regulated medical profession and over-regulated health service needs a further regulatory structure to support whistleblowing. We would welcome further clarity from the proponents of the report and from the Government on how the Commission's proposals would work in the NHS and the wider health sector.

The BMA believes that better and more consistent application of good practice in managing and dealing with concerns at a local level, founded on robust and consistent governance processes, would provide doctors and other health care professionals with greater confidence. This should be reinforced by the active promotion of local policies on raising concerns and the protections offered by the Public Interest Disclosure Act (PIDA). The joint NHS Employers and Social Partnership Forum toolkit for making employees aware of how to raise concerns, originally launched in 2011<sup>7</sup> (the *If you see something, say something* campaign) is to be welcomed and should be widely promoted.

## **Named contact to investigate concerns**

The BMA has recommended that, to increase awareness and for clarity, explanation of an employer's policy should form part of induction processes and that there should be at least one named contact within each organisation whose primary role should be to investigate and act on concerns raised in relation to standards of care and patient safety. In larger organisations it might, for example, be appropriate to have one person per site. In smaller organisations such as GP practices a named partner or senior practice manager, or the Care Quality Commission registered manager, could fill this role.

## Register of claims

The BMA believes that a register of claims should be re-introduced, having been removed by statute in 2001, in order to provide greater transparency and highlight the fact that a culture of openness and reporting should be a normal, routine and everyday part of clinical governance.

The BMA does not support the introduction of further legislation in relation to an individual duty of candour backed by criminal sanctions. This would create the wrong sort of culture change, encouraging defensive practice rather than a professional commitment to openness and partnership. The Berwick review of patient safety in the NHS took the same view and agreed that existing professional duties were sufficient.

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## For further information, please contact:

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## Notes

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<sup>1</sup> General Medical Council (2013), *Good Medical Practice*. Manchester: General Medical Council

<sup>2</sup> The Mid-Staffordshire Foundation Trust Public Inquiry, Chaired by Robert Francis QC, [Final Report](#) (2013)

<sup>3</sup> British Medical Association (2013) *NHS Culture: Supporting doctors in raising concerns*.

<sup>4</sup> <http://www.pulsetoday.co.uk/your-practice/francis-inquiry/up-to-third-of-gps-raising-alarm-over-hospital-care-seecomplaints-ignored/20002784.article>

<sup>5</sup> <http://www.bbc.co.uk/news/health-22252425>

<sup>6</sup> <http://bma.org.uk/practical-support-at-work/whistleblowing/what-about-my-contract>

<sup>7</sup> NHS England and Social Partnership Forum Toolkit, [Raising Concerns at Work: communication tools](#) (2011)