Parliamentary brief
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Criminal Justice and Courts Bill
Amendments on wilful neglect (Clauses 19 & 20)

Report Stage Briefing
20 October 2014

About the BMA
The British Medical Association (BMA) is a voluntary professional association and an independent trade union 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.

Introduction
Following events at the Mid Staffordshire Foundation Trust, and the subsequent public enquiry led by Professor Don Berwick¹, existing gaps in legislation relating to the safety of patients were identified. The report recommended that an offence of wilful neglect or ill-treatment is introduced in relation to adults with full capacity. The Government has accepted this recommendation and is using the Criminal Justice and Courts Bill to legislate for it.

The BMA is supportive of the introduction of an offence for ill-treatment or wilful neglect but also remains watchful and cautious in how proposals are to be implemented and how this may affect doctors and other healthcare professions.

Amendment numbers 42 and 43
The Bill, in its current form, does not seek to define the circumstances in which a prosecution of a healthcare or care professional would be considered. Amendment numbers 42 and 43 change clause 19 to extend subsection one to provide that the offence would be triggered when the care workers activity amounts to a breach of the relevant duty of care and where the ill treatment or wilful neglect would not have occurred or would have been less likely to have occurred in the absence of that activity.

Feedback from our members suggests that they are concerned that the offence could be used as a tool of blame. Anything that can be done to clarify the circumstances that might lead to a prosecution would help to assure clinicians who make genuine unintended errors/mistakes that they will not be subject to prosecution. We support the view that the focus of the legislation should be on the conduct and the intent, rather than the outcome for the patient.

The BMA is concerned that the offences, as drafted in the current Bill, could have a negative impact on healthcare workers, inhibit a reporting and learning culture and may not achieve the government’s objectives. We would like safeguards in the legislation to ensure that the offence deals with only the most serious incidents in order not to spread fear about criminal sanctions within healthcare.
If healthcare professionals become more fearful of the way their conduct could later be criticised it might make them less open and willing to admit genuine errors, either to patients or to management, and therefore make healthcare less responsive and accountable to patients.

Amendments 42 and 43 provide clarity on when the offence of wilful neglect would be triggered. We are supportive of this amendment and urge peers to vote in support.

Amendment numbers 45 and 46
The amendment removes the word ‘gross’ from the description of when an offence would be committed by a care provider (clause 20). This in effect lowers the threshold for when a care provider commits the offence and may bring it more in line with the threshold for prosecution for the offence in relation to an individual.

The Bill uses ‘gross breach’ in terms of negligence triggering an offence of ill-treatment or wilful neglect. The BMA considers the offence of ill-treatment and wilful neglect to be one which requires gross or significant negligence on the part of the clinician or trust. We believe the threshold for such an offence should be high for both an individual and a trust.

Amendment 45 and 46 lower the threshold for an offence to be triggered for a care organisation. We understand the intent behind the amendment but are concerned it may lead to the legislation being applied in circumstances that it is not meant to capture. We therefore do not feel that this amendment is necessary.

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For further information, please contact:

Stephanie Creighton | Senior Public Affairs Advisor |
T: 0207 383 6681 | M: 07824 550771 | E: screighton@bma.org.uk |
BMA House | Tavistock Square | London | WC1H 9JP |

References