Serious Crime Bill – Consideration of Commons Amendments

House of Lords
Monday 2 March 2015

The British Medical Association (BMA) is an apolitical 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. We have a membership of over 154,000, which continues to grow each year.

Female Genital Mutilation
Female Genital Mutilation (FGM) is a serious crime and form of abuse that no child or woman should have to suffer. The BMA recognises that doctors have a vital role in breaking the generational cycle of this illegal and harmful practice.

Amendment 5 – mandatory reporting
The BMA welcomes recent measures as part of the Serious Crime Bill that aim to help protect girls and women who are at risk of, or have undergone, FGM. Nevertheless, we have significant concerns about amendment 5 on mandatory reporting for under-18s for the following reasons:

- The BMA believes that mandatory reporting does not always put individual survivors and potential victims of FGM first, and could, in some cases, act against an individual girl’s or young woman’s interests.
- There are already legal and professional obligations to report FGM through established safeguarding mechanisms where FGM is identified in under-18s. These obligations are sensitive to the individual interests of a girl or young woman.
- In exceptional circumstances a decision can be made not to report where it would not be in the interests of the girl or young woman concerned. Advice should be sought from experienced colleagues, and the decision and its justification should be carefully recorded. Any decision not to report must not mean inaction. Steps should be taken to ensure the girl or young woman receives appropriate care and support.
- The BMA believes that mandatory reporting to the police, with no consideration of the individual girl’s or young woman’s interests, will deter adults and the parents of children from seeking healthcare, in relation both to FGM and other health conditions.
- The BMA believes that mandatory reporting to the police risks healthcare professionals being perceived as agents of the criminal justice system, with a consequential loss of trust in healthcare professionals and the NHS.
**Case studies**
The BMA believes that a blanket mandatory duty to report FGM could, in some cases, force a doctor to act against an individual girl’s or young woman’s interests, for example, as illustrated in the cases outlined below:

**Case A:** A competent 17-year-old wishes to access medical services to address the physical and psychological consequences of having undergone FGM. She is reticent about accessing health services and she does not want anyone other than the healthcare team she contacts to know that she has undergone FGM. The FGM was carried out on her when she was five, in another country, by her grandmother who is long dead, against her parents’ wishes. It is clear from the way the 17-year-old presents that she will never let a child of her own undergo FGM and, in this situation, there is no risk to other girls and there will be no prospect of a prosecution in her case. The priority for health care professionals will be to establish a relationship of trust with the young woman and ensure that she is supported and her physical and mental health needs are met.

**Case B:** A child has undergone FGM in her country of origin. Since moving to the UK the family is made aware of the harmful consequences of FGM and wishes to seek health assistance to reduce the risk of complications following the FGM. The family has no intention of continuing with the practice now that they are aware of the harm and risks. The mother of the girl is concerned that if she accesses health services, she will be reported to social services and the police and her daughter will be taken away from her.

**Case C:** A girl who has undergone FGM is discouraged from visiting healthcare professionals for unrelated reasons, because of concerns that she or those close to her will be subjected to a criminal investigation. This has dire consequences for the girl’s health due to the resultant failure to assess an issue unrelated to having undergone FGM.

**Lack of evidence for mandatory reporting**
A review from the Royal College of Paediatrics and Child Health (RCPCH) found that “Ultimately there is no credible or conclusive evidence that it [mandatory reporting] better protects children at risk of harm, and its introduction would undermine the cultural approach of risk and responsibility sharing that has been developed in the current system. Mandatory reporting still raises more questions than it provides answers. It is, unfortunately, a blunt instrument which is a simplistic and ineffective answer to a far more complex set of problems.”

**Consultation**
We welcome the Government’s recognition that proper consultation is needed on issues that are sensitive, important and which involve new obligations on professionals who work in this difficult field. The BMA remains concerned that given the importance of ensuring that FGM is tackled as effectively as possible, just five weeks were given over the Christmas period for stakeholders to respond to a consultation on how mandatory reporting of FGM should be introduced. It is our view that the Government should have first consulted, or as a minimum asked the question within the consultation, about whether mandatory reporting should be introduced, instead of focusing solely on how it should be introduced.

The outcome of the Government’s own consultation does not give clear evidence supporting mandatory reporting of ‘known’ abuse directly to the police – only 41% of respondents to the consultation agreed that reports should be made directly to the police. The BMA, General Medical Council (GMC) and Royal College of Paediatrics and Child Health all responded outlining their opposition to mandatory reporting.
Amendment 6 – Statutory guidance
The BMA believes that it is critical that there is a consultation on any FGM guidance introduced on a statutory basis. The amendment states that consultation will take place with ‘any person whom the Secretary of State considers appropriate’. The BMA would welcome a commitment that any consultation will be carried out with a 12-week period of formal consultation. This commitment to formal consultation and engagement with stakeholders is critical given the importance of ensuring that FGM is tackled as effectively as possible.

March 2015

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References

1 See, for example – GMC. Protecting children and young people: The responsibilities of all doctors. GMC, London, 2012. Any “serious or persistent failure” to follow the GMC guidance puts doctors’ registration at risk.
5 https://www.gov.uk/government/consultations/introducing-mandatory-reporting-for-fgm