

MPS Briefing

New criminal sanction for ill-treatment or wilful neglect

May 2014

In March the government published proposals introducing new criminal sanctions for wilful neglect or ill-treatment. This proposal is in response to the scandal at Mid-Staffordshire NHS Foundation Trust and the recommendations of the Berwick report.

MPS opposes these proposals because:

- A) The lack of a robust justification and evidence for introducing a new criminal offence
- B) The current proposals have significant flaws and would be counter-productive

An unnecessary new law

The current regulatory, disciplinary and criminal framework is already effective at censuring unprofessional behaviour, when properly applied. It is right that where a healthcare professional's behaviour is unacceptable they face tough sanctions for their actions. There is already a range of criminal laws under which they could be prosecuted.

Too much focus on greater penalties and not enough support for learning

The government has focused too much on penalties for healthcare professionals, and not enough on creating an open learning culture. Healthcare professionals must feel able to report accidents and near misses so they can learn from mistakes. The government's focus should be on the development of mentoring, training and leadership programmes to create an open environment of learning.

Normal, everyday clinical decisions will be open to criminal investigation

Many in the healthcare community are concerned about what these proposals mean in practice. As the proposals currently stand, there is a risk that almost any decision – whether it involves the allocation of resources, triaging patients or deciding on a course of treatment – could potentially be investigated for wilful neglect. Clinical judgment should be excluded from any offence. Leaving the decision to the discretion of prosecutors will leave healthcare professionals fearful of their decisions being second guessed.

Inherent conflict with new 'Duty of Candour'

The Care Bill introduces a legal 'Duty of Candour'. This duty means that organisations, and thus its employees, have a legal duty to be open with patients about mistakes. However, if the government creates a new legal offence that results in healthcare professionals becoming afraid of prosecution, then they may be concerned about being open.