

November 2022

## MPS submission to the Welsh government consultation on proposals for primary legislation in mandatory reporting

### Executive summary

MPS welcomes the opportunity to respond to Welsh government consultation on proposals for primary legislation in relation to children's social care, Direct Payments for continuing health care, mandatory reporting and regulation and inspection

MPS is the world's leading member-owned, not-for-profit protection organisation for doctors, dentists and healthcare professionals with over 300,000 members around the world. Our in-house experts assist members with the wide range of legal and ethical problems that can arise from their professional practice

As a medical defence organisation, MPS has a particular view on this topic which applies to healthcare professionals and their duty to safeguarding and patient safety. We are only able to provide views with regards to members of regulated professions which we support – healthcare professionals-. In our submission, we are only focusing on chapter 3, mandatory reporting of children and adults at risk, as we believe this is the area that can have most impact on our members.

MPS is fully committed to the principles of safeguarding of children and vulnerable adults and we understand the need for reporting any concerns to the relevant authorities. However, we are concerned with the prospect of introducing mandatory reporting in legislation as this would remove a level of judgement that it is necessary to exercise on a case by case basis and could place an additional burden on healthcare professionals. As I am sure the Welsh Government are aware, healthcare professionals already have a duty to report any concerns as established in GMC guidance and this applies to both children and adults at risk and we therefore not see the need to introduce further legislation involving regulated healthcare professionals.

### Chapter 3: Mandatory reporting of children and adults at risk

#### Questions for chapter 3

**Question 3.1:** What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

MPS supports the current legislation which requires an organisation to report children and adults at risk to the relevant authorities to protect them from harm.

We also understand why the Welsh government may feel that it is necessary to review the duties contained within the 2014 act and expand this legal requirement to individuals. However, we

believe that introducing this requirement in legislation may not always allow healthcare professionals to act in a child's best interest.

The requirement for an individual to report a child at risk would, in the main, be in line with the *Good medical practice* guidance produced by the GMC which places a duty on all doctors to protect and promote the health and well-being of children and young people. The GMC's guidance "*Protecting children and young people: the responsibilities of all doctors*" makes it clear that doctors *must* tell an appropriate agency if they are concerned that, "*a child or young person is at risk of, or is suffering, abuse or neglect unless it is not in their best interests to do so*". Of note, the last part of this sentence is important "...*unless it is not in their best interests*". The GMC, in their guidance, recognise that there may be exceptional circumstances when it is not in a child at risk's best interests to share information with relevant authorities. Any legal duty to report may remove this element of discretion potentially leading to decisions which are not in a child's best interests.

**Question 3.2:** What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

MPS supports the current legislation and the guidance from the GMC on reporting vulnerable adults. We are concerned with introducing mandatory reporting as this could remove the element of judgement that may be necessary to exercise on individual case by case basis.

The GMC has some guidance on the reporting of adults surrounding four principles: protection, empowerment, proportionality and partnership. The guidance advises doctors to "*take prompt action if you think that patient safety, dignity or comfort is or may be seriously compromised.*" It also states that the adult should participate as fully as possible in the decision as all adult safeguarding processes and laws in the UK say that safeguarding procedures must be person-centred and must take account of the views and wishes of the adult concerned.

The GMC also gives doctors some guidance with regards to situations that can arise when confidentiality rights must be balanced against duties to protect the welfare of patients who may be unable to protect themselves. This guidance establishes some questions such as whether they have the capacity to decide whether to accept help, whether anyone else is at risk of harm and whether the disclosure could be justified in the public interest for example because others may be at risk of serious harm or death if disclosure is not made.

The GMC's guidance therefore allows for a situation where an adult with capacity at risk of harm does not consent to disclosure to relevant authorities and a doctor might abide by that patient's wishes in circumstances where their decision does not expose others to risk of serious harm or death.

The GMC does make it clear that, where a patient lacks capacity and is at risk of or experiencing abuse or neglect, it would "*usually be appropriate to tell a responsible person or authority*".

Therefore there is already a regulatory requirement for doctors to consider notifying relevant authorities when an adult is at risk of, or suffering, abuse or neglect but this is more nuanced than a legislative requirement to report all cases, as decisions to disclose will be dependent on the specific circumstances of the case.

By imposing a duty on an individual to report an adult at risk, this may risk being contrary to the patient-centred approach advised by the GMC.

MPS therefore would understand imposition of a requirement on individual doctors to report adults at risk where that adult lacks capacity to make the decision on disclosure and where that

disclosure is in that adult's best interests or in circumstances where failing to disclose may put others at risk of death or serious harm.

**Question 3.3:** What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach? Please explain your reasoning.

MPS believes that if the government is minded to proceed placing this requirement on individuals not only on organisations it must consider that this will inevitably put some more pressure on already stretched doctors and healthcare professionals.

As such, we believe that clear guidance must be produced and sent to all healthcare practitioners, and this requirement should be mirrored in GMC guidance and *Good Medical Practice* to ensure that all doctors have access to advice on the latest safeguarding laws.

The benefit of placing this requirement on all individual healthcare professionals could hopefully be that more children and vulnerable adults will be protected.

One risk we anticipate is that, if a duty to report to a relevant authority is imposed on individual healthcare professionals, regardless of the patient's views on the matter and regardless of whether it is in the best interests of a patient who lacks capacity, this might risk unintentional harm to the patient or damage the doctor patient relationship.

One further risk that we anticipate for healthcare professionals and one that we would like the government to consider is that healthcare workers who may unintentionally have failed to report an adult or child at risk could be faced with legal consequences. We do not believe healthcare professionals should be held to account if they failed to comply with this legal requirement unintentionally.

**Question 3.4:** What lessons can we learn from the duties to report in other countries?

MPS does not have any comments on this question.

**Question 3.5:** If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

MPS believes that any duties that the government is minded to introduce on individuals should be complimentary, so sit alongside, the duties on organisations under the 2014 Act, as in some cases it may be the organisation which is better placed due to resourcing or other issues to report the adult or child at risk.

**Question 3.6:** If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act

(including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

- (a) What are your views on this in respect of children (under the age of 18)?
- (b) What are your views on this in respect of adults?

MPS does not have any comments on this question.

**Question 3.7:** If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

- (a) What are your views on this in respect of children (under the age of 18)?
- (b) What are your views on this in respect of adults?

MPS can only comment on this duty being imposed on individual healthcare professionals, which as we have stated we do not support due to this requirement already existing as part of their professional regulation. We do not have any comment on this duty being imposed on other regulated professions or individuals.

**Question 3.8:** What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

MPS does not have any comments on this question.

**Question 3.9:** We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

MPS does not have any comments on this question.

**Question 3.10:** Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

MPS has no comment on this question.

**Question 3.11:** We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

MPS has no comment on this question.

## About MPS

MPS is the world's leading protection organisation for doctors, dentists and healthcare professionals with more than 300,000 members around the world.

Our in-house experts assist with the wide range of legal and ethical problems that arise from professional practice. This can include clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.

MPS is not an insurance company. We are a mutual non-for-profit organisation and the benefits of membership of MPS are discretionary as set out in the Memorandum of Articles of Association.

## Contact

Should you require further information about any aspects of our response to this consultation, please do not hesitate to contact us.

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