

## **BMA written evidence to the Public Bill Committee Crime and Policing Bill**

### **About the BMA**

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

**This evidence relates to Part 5, chapter 2 only – Duty to report child sexual abuse.**

### **Summary**

- The BMA supports, in principle, the introduction of a mandatory duty to report child abuse, subject to a number of prerequisites.
- We do, however have significant concerns about the impact on doctor/patient confidentiality of the proposal in the Bill, which would introduce a mandatory duty to report consensual underage sexual activity whether or not there is any suggestion of abuse.
- We are strongly of the view that a doctor should only inform the police or social services of underage sexual activity where they have concerns that the young person is being abused.
- The Bill, as currently worded, would require doctors to report to the police or social services **any** disclosure of sexual activity between, for example, a 15-year-old and an 18-year-old, even if the relationship is consensual and there is no risk of harm present. We believe that this will severely damage trust between young people and doctors and result in young people being deterred from seeking medical support.
- If young people are deterred from seeking sexual health and contraceptive advice, and doctors are obliged to report those individuals who do seek help, this could have a devastating impact on young people's health and wellbeing, potentially leading to an increase in unplanned pregnancy and sexually transmitted infections (STIs) in this group.
- If consensual underage sexual activity is included, the number of cases that would need to be reported also risks flooding the system, to the detriment of those the system is designed to help - those who are suffering, or have suffered, abuse.
- The Bill, as currently worded, presents significant risks to the health and well-being of children and young people and we believe it must be amended to either exclude doctors from the duty to report (Clause 51) or to extend the exceptions (clause 48) to include consensual sexual activity where there are no concerns about abuse or exploitation.

### **1. The BMA's views on mandatory reporting of child abuse**

1.1 At the BMA's Annual Representative Meeting (ARM) in 2015, policy was passed to support 'in principle' the introduction of mandatory reporting of child abuse. The BMA believes, on balance, that the benefits of introducing a mandatory reporting duty outweigh the risks, but there are a number of prerequisites critical to the safe introduction of any new legislation, including:

1. A public health focus – shifting professionals' and the public's perception of child safeguarding reporting and intervention.
2. Awareness - raising awareness of child abuse amongst professionals and the public.

3. Training and support – ensuring adequate resourcing of up-to-date accessible training and round-the-clock support and advice for professionals.
4. Pathways - proper resourcing of appropriate care pathways.
5. Commitment to scientific evaluation - ongoing evaluation of the impact and effectiveness of any new measures.

*The BMA's policy is based on reporting of child 'abuse' not, as the Bill is currently worded, mandatory reporting of consensual underage sexual activity.*

## **2. The BMA's views on reporting of underage sexual activity**

2.1 It is common for young people under the age of 16 to be in consensual sexual relationships with people who are older (and frequently more than 2 years older) than themselves. These individuals need access to contraceptive and sexual health advice and services and must be confident that they can access them in a confidential and non-judgemental way. The BMA is of the view that a doctor should only inform the police or social services of underage sexual activity where they have concerns that the young person is being abused.

2.2 While reporting to social services or the police should always be considered when the individual is very young, health professionals are obliged to act in the best interests of the patient, and this requires flexibility.

2.3 The BMA believes that decisions must be based on the individual interests of the child or young person. Doctors must be able to provide a confidential service to young people who need contraceptive and sexual health advice, whilst having a clear obligation to report when a relationship is abusive or exploitative.

2.4 The BMA's views reflect the General Medical Council's guidance which states:

*'You should consider each case on its merits and take into account young people's behaviour, living circumstances, maturity, serious learning disabilities, and any other factors that might make them particularly vulnerable.'*

*'You should usually share information about sexual activity involving children under 13, who are considered in law to be unable to consent. You should discuss a decision not to disclose with a named or designated doctor for child protection and record your decision and the reasons for it' (GMC – 0-18 years, paragraphs 59 and 60).*

## **3. The BMA's engagement with the previous Government on this topic**

3.1 Following the publication of the final report by the Independent Inquiry into Child Sexual Abuse (IICSA) in October 2022 and its subsequent consultation process, the previous Government confirmed a mandatory reporting duty would be introduced through amendments to the Criminal Justice Bill.

3.2 At the time, the BMA expressed significant concern that the proposed 'duty to report' extended beyond child sexual abuse to include consensual underage sexual activity, where there was no suggestion that the young person was being harmed or abused. In its response to the various consultations, the BMA argued strongly against this provision, which would undermine trust in the doctor-patient relationship and would deter young people from seeking advice on contraception and sexual health which would be damaging to young people's health and wellbeing. We also argued that doctors should be able to use their professional judgement to decide when and how reporting would

be appropriate, based on the needs and interests of the individual patient, using well established guidance on child safeguarding.

3.3 When amendments to the Criminal Justice Bill were tabled to introduce a mandatory duty to report (in May 2023), the previous government had addressed our concerns with the introduction of the following clause, in particular (4)(c): -

*'(4) The duty under subsection (1) does not apply to a person—*

*(a) if the person reasonably believes that another person has previously made, or will imminently make, a notification under this section in connection with the suspected offence;*

*(b) for such time as the person reasonably believes another person who engages in a relevant activity in England has made or will make a notification under this section on their behalf;*

*(c) for such time as the person reasonably believes that it is not in the best interests of each relevant child to make a notification under this section.'*

The Criminal Justice Bill fell when the General Election was called.

#### **4. Concerns about the current Crime and Policing Bill**

4.1 Although Part 5 of the Bill is headed 'duty to report child sexual abuse', section 45, which sets out the nature of the duty, is entitled 'duty to report suspected child sex offences', equating underage sexual activity (under the Sexual Offences Act 2003) with sexual abuse.

4.2 The Bill would therefore introduce a mandatory duty on doctors to report:

- any sexual activity with someone under 13; or
- any sexual activity where one party is under 16 and the other is 18 or over e.g. all consensual sexual activity between a 15 and 18-year-old.

4.3 This would prevent doctors from providing young people with confidential sexual health advice and contraceptive services, and the BMA believes the impact of this is likely to be that:

- young people's trust in doctors will be seriously damaged (having broader, and potentially long-term, implications for their ongoing relationship with healthcare services);
- young people will be deterred from seeking sexual health advice and contraceptive services, resulting in a likely increase in unplanned pregnancies and STIs in this group of patients;
- young people may feel they have nowhere to turn when they need help and support;
- services designed to help young people who are being abused risk being overrun with reports of underage sexual activity where the report is based solely on the age of the individuals concerned, rather than any concerns about abuse or exploitation.

4.4 The BMA believes that the current proposals in the Bill present significant risks to the health and well-being of children and young people and need to be amended.

#### **5. Overlap with The Children's Wellbeing and Schools Bill**

5.1. We note that Clause 4 of the Children's Wellbeing and Schools Bill, which is currently being debated, also introduces a duty to share information (including with the police and local authorities) where a 'relevant individual' (which includes some doctors)

(a) holds information about a child or information about another individual that relates to the child, and

(b) considers that the information is relevant to safeguarding or promoting the welfare of the child.

At sub-clause (3) the Bill states:

‘But the duty imposed by subsection (2) does not apply if the relevant person considers that the disclosure would be more detrimental to the child than not disclosing the information.’

5.2 It is essential that doctors are aware of the obligations placed upon them. Doctors need to understand which piece of legislation they would be acting under if they have concerns about child sexual abuse (which would be a safeguarding issue), and therefore the duties, and exemptions, need to be consistent between the two pieces of legislation.

## 6. Solutions

6.1 The BMA urges the Committee to amend the Crime and Policing Bill to ensure that doctors are able to continue to provide confidential sexual health advice and contraceptive services to all those who need them. This could be done by including an identical exemption to that currently provided in the Children’s Wellbeing and Schools Bill such that the duty to report does not apply ‘if the relevant person considers that the disclosure would be more detrimental to the child than not disclosing the information’.

Alternative options would be to:

- amend Clause 51 so that the Secretary of State **must** make Regulations and that these Regulations must include doctors (i.e. exclude doctors from the duty to report);
- include an exemption, as proposed by the last Government, where the doctor *‘reasonably believes that it is not in the best interests of each relevant child to make a notification’*; or
- include an exemption where the doctor reasonably believes that:
  - the relationship between the parties is consensual and not intimidatory, exploitative or coercive;
  - the child is not subject to any pressure to continue in the relationship; and
  - the child has not been harmed and is not at risk of being harmed.

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