



BDA response to the Health and Social Care (Control of Data Processing Bill)

The British Dental Association (BDA) is the professional association and trade union for dentists in the UK. Our members work in all spheres of practice including general dental practice, salaried primary dental care services, hospitals and universities and the armed forces and include dental students.

The BDA appreciates the opportunity to submit views in respect of the Bill. If you require clarification on any of the issues covered in our submission, we would be most happy to provide this. Please contact Grainne Magee, Senior Policy Adviser grainne.magee@bda.org if any queries arise.

General comments

The BDA responded to the consultation document issued by the DHSSPS in July 2014 and in our response, BDA broadly supported the need to bring forward legislation to enable the Department to regulate the use of service user information for secondary care purposes, in limited and controlled circumstances. BDA accept that a clear statutory framework is required to mitigate against the risk of legal challenge, but robust safeguards must be put in place to ensure that personal confidential information is accessed and transferred securely, and for legitimate purposes of public benefit.

The Bill introduces enabling powers to make regulations in a number of areas. We recognise that some of the detail will be covered by subsequent subordinate legislation. There are a few points that we would wish to make on the Bill and these are set out below.

Response

Clause 3 (1)-(5) - BDA welcome the obligation on the Department to develop and publish a Code of Practice on the processing of information, and that this will be subject to revisions. It is suggested this is subject to consultation. The use of confidential patient data is subject to numerous complex legal requirements that all health professionals including dentists must be aware of, adhere to and understand. It is important that the code of practice is understood and provides clear advice on the requirements of this legislation.

BDA welcome the establishment of a Committee under clause 2 and support that this is made in legislation. Clause 2(1) states that the Department 'may' by regulations establish a Committee. It is suggested that this is strengthened and is mandatory. BDA welcome that the legislation makes provisions for 'requiring' disclosure (Clause 1 (2) (a)) but the Committee has no power to compel those who own the data to disclose this. BDA seek confirmation that this is indeed the case, as this is an important safeguard and inclusion of this in the legislation is welcome. The proposed Committee could potentially in some circumstances override the decision of an individual to opt out from the disclosure of data, if is deemed to be in the 'public interest'.

It is recognised, and has been widely discussed, that what is deemed to be 'in the public interest' is subject to interpretation and is largely based on case law. Public interest is a key responsibility and a critical aspect of the decision making process of the proposed

Committee; there is therefore a need to ensure that the committee organisational structure is effective and the decision making processes are robust and transparent. The public interest threshold must be high and used only when disclosure is necessary to protect individuals/society.

Greater clarity as to how this Committee will work in practice is needed as the Bill does not prescribe the level of detail of representation, role and remit, terms of reference and how statutory functions will be discharged and monitored etc. Much of this detail around the governance arrangements will be covered by subsequent subordinate legislation, and we consider that there must be full consultation on all regulations arising.

It is essential that the Committee is independent and represents a broad range of representatives including healthcare professionals, clinicians and patient representatives. Committee membership should also include those with the necessary expertise e.g. clinical research and legal expertise particularly given that processing must be compliant with the Data Protection Act 1998 (DPA).

We have highlighted a few areas in which we consider further thought is required and recognise that some of the detail will be covered by subsequent subordinate legislation and subject to further consultation. If the Committee would like any clarification on any of the issues covered in our submission, we will be most happy to provide this.

BDA Northern Ireland
7 August 2015