FROM THE MINISTER OF HEALTH

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Dear Keith

Thank you for your letter on the 5th December in relation to oral evidence to the Committee for Health on the 4th December by BMA and RCGPNI. You have requested a response to the issues raised including that both BMA and RCGPNI strongly oppose Clause 2 of the Bill as currently drafted, as the definition of "an adult at risk" includes adults with capacity to make their own decisions. They also stated in their evidence that they have had no engagement with the Department as part of the policy formulation and drafting of the Bill.

Policy Position & Legal Advice

The policy position supported by advice from OLC and DSO is that the definition of an adult at risk at Clause 2 should apply to adults at risk with and without capacity to consent (to make their own decisions). If the change proposed by BMA and RCGPNI was made, it would greatly reduce the intended impact of the Bill by removing its application to adults with capacity who consent as well as those who are pressured into refusing consent. It would also prevent the Bill from applying to adults with capacity who are being financially harmed or taken advantage of in other ways not involving medical assessment.

There are many examples of someone who might be an adult at risk but still have capacity, e.g. someone with a physical disability or chronic illness, someone suffering from domestic abuse and someone who was being taken advantage of, and more. Such people do not

necessarily lack capacity. The policy position is that all adults at risk, whether they have capacity to consent or not, should be covered by the Bill and the protections it offers.

The suggested amendment could also have a particularly adverse effect in relation to removal and banning orders which are included in the Bill, whereby a person with capacity who was being harmed could not willingly be moved to other premises or have an abuser banned from premises.

Since the definition at Clause 2 applies to the whole Bill it would also greatly limit the scope of the functions of the Adult Protection Board and may render the CCTV regulations unworkable in relation to an establishment which did not provide exclusively for those without capacity. In short, the Bill would become something like a second Mental Capacity Act, which is not the intention behind the Bill.

The definition of an adult at risk derives from the existing definition of an adult at risk and in need of protection from the Prevention and Protection in Partnership adult safeguarding policy published in 2015. This was a deliberate choice to ensure consistency with the current definition. Notably the 2015 policy has two definitions (adult at risk, and an adult at risk and in need of protection). In the Bill we are using the second of those (reworded slightly to fit with the drafting of legislation), but we are using the term 'adult at risk' for drafting/grammatical reasons.

Duty of Confidentiality

The policy position is that it is in the public interest that reports are made to Trusts so that they can investigate whether adults at risk need protection. Clause 4 will apply to all doctors including those in the health system, who would be required to notify the trust of a suspected adult at risk who may need protection. Legal advice indicates that the duty of confidentiality itself is not an absolute duty; this was also acknowledged by both BMA and RCGPNI in their evidence to the Committee for Health.

This position is also supported by relevant caselaw regarding patient confidentiality which demonstrates that patient confidentiality is not absolute and may be overridden where there is held to be a stronger public interest in disclosure or to prevent harm.

In relation to UK GDPR, Article 6(1)(f) permits the processing of personal data which is necessary for the purposes of the legitimate interests of a third party, except where such

interests are overridden by the interests of fundamental rights and freedoms of the data subject which require protection of personal data. Article 9(2) relates to the processing of special categories of personal data and 9(2)(g) provides an exception to the prohibition on the processing of personal data concerning health provided for under Article 9(1) - *"(g) processing is necessary for reasons of substantial public interest on the basis of domestic law and which shall be proportionate to the aim pursued and provide for suitable and specific measures to safeguard the fundamental rights and interests of the data subject;"*

"Required by Law" Exception

Disclosure under the Bill would be covered by the "required by law" exception if the bill as drafted was passed as the duty to disclose would be a statutory duty or a duty to comply with a court order. If the matter came to court and the adult concerned and the doctor concerned both objected to disclosure, this may impact on the court's decision.

There are several established exceptions usually referred to in general terms as where disclosure is in the public interest or required by law. There are also other circumstances where there is a statutory requirement upon doctors to report e.g. contagious diseases, carrying out an abortion and reporting of serious crime to the police. There is general recognition that a patient presenting with gunshot wounds or knife wounds should be notified to the police; indeed, most medical involvements in policing and criminal law matters will entail disclosure to the police or the courts. There is a general duty on everyone (including doctors) to report serious crime to the police.

Adult Safeguarding Transformation Board

The Adult Safeguarding Transformation Board which oversees the progress of the Bill discussed the BMA and RCGPNI concerns at its meeting on the 11 December 2025. It supported the existing policy position underpinned by legal advice that the definition of an adult at risk at Clause 2 should not be amended to define adults at risk as adults who lack capacity under the terms of the Mental Capacity Act (Northern Ireland) 2016.

Engagement with BMA & RCGPNI

Both RCGPNI and BMA submitted responses to the consultation held on legislative options to inform the development of an Adult Protection Bill for Northern Ireland between December 2020 and April 2021. RCGPNI agreed with the proposed definition of 'adult at risk and in need of protection' and with mandatory reporting. BMA also submitted a response to the consultation but did not specifically reject the definition of an "adult at risk and in need of

protection". It did seek clarification on whether the consent of the adult at risk would be sought.

The Adult Protection Bill Team has engaged with a range of HSC workforce organisations since 2022 providing regular updates on the development of the Bill. A Workforce Stakeholder Group was established with representatives from the BMA, Royal College of Nursing (RCN), Northern Ireland Social Care Council (NISCC) and British Association of Social Workers (BASW). The Bill team has met with or provided written updates on the progress of the Bill with this group on a quarterly basis since then.

The Bill Team also met separately with the BMA on several occasions in 2023 and 2024 (14 September 2023, 15 April 2024 and 29 May 2024). These meetings covered a range of topics including the GP's role at Clause 4 and 7 of the Adult Protection Bill. As part of this, discussion took place on the duty to report at Clause 4 in the Adult Protection Bill and GP input into investigations undertaken by Trusts e.g. medical examinations.

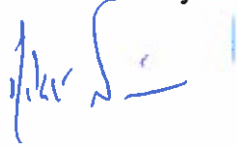
The BMA did raise some concerns in June 2024 that clause 4 may obligate doctors to disclose information without consent in all cases, even where the patient has capacity, which it believed would be contrary to GMC and BMA guidance. However, due to diary commitments on both sides, it was not possible to arrange a further meeting at that time.

While the Department did engage with the BMA as above, it should be noted that the full text of the Adult Protection Bill, including the definition, was not shared with any stakeholder until after the Bill was introduced to the Assembly. This is in accordance with the convention that a Bill should first be seen by Members.

Policy officials will reach out to both BMA and RCGPNI to follow up on this issue and to fully engage with them on the concerns they have raised.

I hope you find this information helpful.

Yours sincerely



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