

Adult Protection Bill

The Royal College of General Practitioners is the main professional membership body for GPs in the UK. Our role is to encourage, foster and maintain the highest possible standards in general medical practice. The Royal College of General Practitioners Northern Ireland (RCGPNI) represents more than 1400 GPs across Northern Ireland and is grateful for the opportunity to respond to the Minister of Health's draft Adult Protection Bill to the Northern Ireland Assembly.

The intention of the Bill

Firstly, the College would like to acknowledge the spirit of this draft bill, and its underlying purpose to protect vulnerable adults in Northern Ireland. The College understands the driving motivation by the Department of Health to introduce legislation that will provide additional protections to strengthen and underpin the adult protection process. The serious failings witnessed in institutions such as Dunmurry House and Muckamore Abbey Hospitals require legislation that ensures that no such incidents can occur again. It is vital that patients, service users and families have trust in the health and social care system, and there is adequate protection for vulnerable adults, balanced with their rights to privacy and confidentiality. We feel that as presented, this bill has the potential to interfere with a capacitous individual's autonomy, their right to confidentiality, and to jeopardise trust in medical and healthcare professionals.

The role of GPs in Adult Protection

As far as the draft bill relates to general practice, GPs must at all times be aware of their own statutory, legal, and professional safeguarding responsibilities, including the obligation to act when there is a safeguarding concern, within a strong ethical framework. GPs play a major role in recognising indicators and signs of all types of abuse and neglect in adults, as well as children. In working with vulnerable adults, GPs are duty bound to apply the principles of consent, confidentiality and capacity in relation to safeguarding. The Royal College of General Practitioners [Summary of Safeguarding Knowledge and Capabilities](#) sets out guidance for GPs when responding to incidents of abuse and neglect. The summary advises GPs to "act when there is a safeguarding concern, seek advice and guidance, and escalate concerns when necessary." The summary also provides guidance on documenting safeguarding concerns, information sharing and multi-agency working.

- Documenting safeguarding concerns accurately and safely in the patient record
- Managing safeguarding documents in line with best practice in information governance and data protection
- Proactively addressing safeguarding challenges of patient online access including coercion to access records
- Participating in multi-agency and multi-disciplinary working
- Sharing information appropriately and proactively in a safeguarding context

- Contributing to safeguarding reviews
- Learning from safeguarding serious case reviews (local and national)

Doctors must balance these duties with a capacitous patient's inherent right to confidentiality and autonomy

'Adults at risk'

The College has significant concerns about the draft Bill in its current form and the College asserts that as presented, the Bill could undermine the principle of doctor-patient confidentiality and undermine an adult with capacity's right to autonomy.

The Bill sets out in Clause 2: 'Adult at risk'; Clause defines an 'adult at risk' (A). A is considered to be an 'adult at risk' if:

(a) A is unable to protect A's own well-being or property;
(b) the conduct of another person is causing (or is likely to cause) A to be harmed; and (c) A's personal circumstances increase A's exposure to harm. (Clause 2 (1)(a-c)).

The College's concerns relate to clauses in the Bill which refer to "adults at risk". The Bill's definition of an adult at risk extends beyond adults who do not have capacity to make their own decisions and will include those who are capacitous. The GMC guidance states that ". As a principle, adults who have capacity are entitled to make decisions in their own interests, even if others consider those decisions to be irrational or unwise".¹

The College believes that the Bill's current definition of 'adult at risk' could require GPs to act contrary to the GMC's guidance, jeopardising the rights of adults with capacity. The College believes that any new legislation that seeks to protect adults should retain the common law principle that: "All adults retain the right to make decisions which seem unwise or irrational to others. Although such actions may raise questions about capacity which require further exploration – where for example they follow a period of illness or an accident – they are not determinative of capacity."

The College believe that Clause 2 should be amended so that it is clear the definition includes only adults who lack capacity under the terms of the Mental Capacity Act (Northern Ireland) 2016. Patients with capacity should still have the right to manage the risks to which they are exposed (provided no one else is at risk) even if GPs consider their decisions to be unwise.

¹ <https://www.gmc-uk.org/professional-standards/the-professional-standards/confidentiality/disclosures-for-the-protection-of-patients-and-others>

Confidentiality

A confidential health service is a crucial foundation of the doctor-patient relationship.

The draft Bill sets out;

Clause 8: examination of records

This clause sets out that where medical records are required by a social worker, the grounds for disclosure are:

- consent by the adult at risk (Section 8(2)); or
- a 'production order' - which applies where consent is refused or the individual lacks capacity. (Section 8(4)(a) and (b)).

The College asserts that disclosing patient information without consent in an adult who has capacity will damage doctor-patient relationships. As GPs, we emphasise the importance of the trusted, confidential relationship between GPs and their patients, advocating for relationship-based care built on empathy, trust, and continuity.

The GMC guidance states that;

"If an adult patient who has capacity to make the decision refuses to consent to information being disclosed that you consider necessary for their protection, you should explore their reasons for this. It may be appropriate to encourage the patient to consent to the disclosure and to warn them of the risks of refusing to consent.

Para 59. You should, however, usually abide by the patient's refusal to consent to disclosure, even if their decision leaves them (but no one else) at risk of death or serious harm."²

. Bar exceptional circumstances, the College asserts that patients should expect their sensitive information remain confidential. Any disclosure to third parties, save when the patient is without capacity, risks destroying the doctor-patient relationship and undermine confidence in the medical profession generally.

Conclusion

The College welcomes the opportunity to respond to this consultation. While acknowledging the sentiment and the purpose of the Bill, we have outlined our concerns with the definition of 'adult at risk'. We have proposed changing the definition of the term to 'adult without capacity', thus preserving the rights of adults who retain capacity to make autonomous decisions, even in instances where healthcare professionals believe these decisions to be unwise.

² Ibid

We recognise that failings in the past have required action to protect vulnerable adults, but this does not mean that confidentiality and disclosure of medical information can be set aside, except for exceptional circumstances.