

September 2021

Briefing to the Bill Committee: Health and Care Bill

Opening remarks

The Medical Defence Union (MDU) is the UK's leading medical defence organisation.

We are led and staffed by doctors and dentists who have real-life experience of the pressures and challenges healthcare professionals face every day. Our support spans multiple areas of their professional practice; from investigation by a regulator, to complaints, to claims of clinical negligence.

We are deeply committed to playing our part in fostering an open, learning culture in the NHS. For all those working within the health and care system, this is a journey that will always be ongoing – rather than a fixed destination.

A learning culture in the NHS is something that has to be constantly nurtured, and the Health and Care Bill has a role to play in that; specifically, the formal inception of the Healthcare Safety Investigation's Branch (HSIB) as a statutory, independent arm's length body – the Health Services Safety Investigations Body (HSSIB).

Part 4 – The Health Services Safety Investigations Body

The MDU warmly welcomes the creation of the HSSIB. We have always worked closely and collaboratively with the HSIB. Placing the organisation on a statutory footing will create a sense of permanence, elevate the status of its investigations, and define its independence from both the health service and government.

The success of the newly minted HSSIB will - like its predecessor – depend on effective collaboration and communication with doctors and their colleagues across the healthcare system, as well as with patients and their families. For the HSSIB's investigations to yield the results we all want to see, with improvements identified in the interests of patient safety, it is vital that the much vaunted 'safe-space' in this legislation – so healthcare professionals can engage with the HSSIB's investigations without fear or blame – is as robust and as safe as possible.

We are proposing an amendment to the Bill. To ensure that the HSSIB's 'safe-space' can work as effectively as possible; support the engagement of healthcare staff; reduce the prospect of fear and reluctance to engage with investigations and maximise the chances of HSSIB reports yielding meaningful improvements in patient safety - **Coroners should be removed from the list of exceptions to the prohibition on disclosure of HSSIB material, contained in Schedule 14.**



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There is currently no national coroner service for England Wales. Coronial services are delivered at a local level, meaning the way the service operates can vary depending on whether you are in Nottingham or Bristol.

Through supporting our members across the UK, we see the difference in how patient deaths are investigated at judicial level. Across England and Wales, we often see cases - similar in nature - where in one local authority area the coroner closes the case in a timely fashion following a robust but focused study, whereas in others, proceedings are of an inordinate length with healthcare staff involved in protracted investigations.

We are concerned that the Bill, as currently drafted, allows for coroners to be exempt from the prohibition of disclosure of HSSIB material. This would mean that individual coroners could routinely request material from the HSSIB's investigations – naming individual doctors and other healthcare staff. The ramifications this could have on healthcare professionals' willingness to be fully engaged and open with HSSIB investigations, are profound – given the multiple jeopardy that could be involved in being named in a coroner's investigation (such as a Fitness to Practise investigation by their professions regulator).

Another consideration with the variation in coronial practice across the country – as it relates to Schedule 14 (6)[1] – is that the HSSIB may rightly feel obliged to challenge the legal standing of a request of a senior coroner for the disclosure of protected material, in the High Court. With that variation in coronial practice, it is easily foreseeable that the cost of these cases to the HSSIB could grow exponentially – money which could be better spent on constantly improving its investigatory processes and delivering the learnings that patients, their families and healthcare professionals want to see.

We feel that making coroners an exemption to the prohibition on disclosure of HSSIB material is unnecessary – as Schedule 14 (5) provides for any person to apply to the High Court for an order for protected HSSIB material to be disclosed for specified purposes. This is a more than adequate safeguard.

The creation of the HSSIB is such a positive step forward for the NHS. It is a landmark moment in the journey towards fostering an open, learning, no-blame culture. That is why the 'safe-space' that this Bill creates at the very centre of the HSSIB is so important. **That safe space needs to inspire the confidence and trust of those who will be engaging with it; this is precisely why Schedule 14 (6) should be removed from the Bill. We urge the Committee to support its removal.**

If you have any questions, or require any further information from the MDU, please do contact me.

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