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Mr Barry Quirk
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London Child Protection Committee
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Ethics

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Dear Mr Quirk

The British Medical Association (BMA) has serious concerns about the London Child Protection Committee's draft protocol for those working with sexually active young people. We urge you to withdraw the protocol which contradicts existing guidance and will cause confusion both for doctors and patients. Clear advice, accurately reflecting the law and best practice needs to be agreed between all the relevant bodies. In particular, the BMA is deeply unhappy about a policy that bypasses doctors' discretion and says that all cases of sexually active young people under the age of 13 must be reported to the police. Such a rule makes it impossible for young people to develop a relationship of trust with doctors even though an ethos of trust is likely to be conducive to them confiding about any pressures upon them. We are also concerned that such a rule would generally deter young people from seeking advice which would protect their health and welfare.

The BMA advises that doctors have a primary duty to act in the best interests of patients. Doctors are well aware of the health risks for young people of premature sexual activity. Acting in their interests, therefore, may well involve encouraging patients to delay sexual activity. It is also good practice in all cases for doctors to encourage young people to discuss their intentions with their parents. Nevertheless, when young people are already sexually active in a mutually agreed relationship with someone of similar age, acting in their best interests can include providing sexual health advice or contraception. The draft protocol is likely to create confusion as to whether doctors can discuss these issues or give contraceptives to some young patients even where they consider this to be in the patient's best interests. Furthermore, young people are less likely to trust and to talk to doctors if they think that there is an obligation to report such conversations to the police, regardless of the context of the case.

All health professionals have clear professional duties of confidentiality and can be subject to disciplinary proceedings for an unjustified breach. Clearly, however, this does not mean that they are unaware of the vital importance of protecting children and other vulnerable people from abuse or exploitation. Where there is any evidence or reasons to suspect that young people are coerced, exploited or abused, professional guidance is clear that a breach of confidentiality is likely to be justified. Ideally, however, this should be discussed first between the patient and health professional so that, wherever possible, disclosure to the police is voluntary, is supportive of the patient and maintains trust in healthcare providers. Persuading a young person that it is in his/her best interests to involve social services, the police or other agency often takes time and the building of trust between patient and health professional. Automatic referral would leave no room for manoeuvre and the young person's cooperation may be lost as a consequence.

The statutory body for medicine, the General Medical Council, stresses the importance of such discussion. (GMC, Confidentiality: Protecting and Providing Information, 2004). It says in relation to children and others who may lack competence to consent that, only where it is essential and in the patient's medical interests should disclosure occur when patients refuse to share information. Patients' lifelong view of health care may be influenced by how they are treated in their youth by health professionals and so breaches of confidence should only occur when essential, not as a matter of routine.

It is good practice for doctors to make clear to patients at an early stage any limits on their confidentiality. Under the protocol, all services would need to make clear that any sexual activity under the age of 13 would be automatically reported. In our view, this would deter this group of patients from contacting health services at all and so could potentially result in the emergence of less rather than more information about abusive cases. Furthermore, although no patient of any age has a right to absolute confidentiality, disclosure without consent requires making a balance between the resulting harms and benefits. In its recommendations, the Bichard report recognised that, even when a criminal offence is known or suspected, there may be exceptional reasons for not notifying the police. It highlights the balance to be sought between maintaining confidentiality and disclosing criminal activity. In relation to the concept of mandatory reporting, Sir Michael Bichard made it plain that, although that was an option, he was unwilling to recommend something that took away local discretion and could lead to the referral of cases of mutually agreed sexual activity between young people.

This also reflects BMA policy regarding the importance of doctors making individual assessments before deciding whether a breach of confidentiality is justified. We acknowledge that abuse or exploitation can occur even in mutually agreed relationships and it is vital, therefore, that doctors are vigilant about signs of abuse, coercion or exploitation in all cases involving young people. The list of considerations to be weighed in each case – included in the protocol and drawn from the Bichard report's recommendations – is very helpful in this respect. This could usefully form the basis of a multi-agency approach. It is essential that there be scope for case by case discretion. Inflexible blanket rules based on age alone are unhelpful.

In its published guidelines the BMA emphasises that "understanding, personal experience and maturity are key issues in decision making but they are attributes that individuals acquire at differing rates. Because individuals within this population are constantly changing, it is important to emphasise that rigid blueprints and fixed assumptions about maturity and immaturity should be avoided." ("Consent, Rights and Choices in Health Care for Children and Young People", 2001) Also when responding to the Home Office consultation that preceded the Sexual Offences Act, the BMA stressed the importance of individual assessments in this context of young people, pointing out that competence to make a particular decision rather than numerical age is the appropriate criterion in medicine. It was in response to representations from professional bodies that Parliament amended the Sexual Offences Act to make clear that health workers would not commit an offence by providing confidential sexual health advice or treatment for people under 16.

The BMA also recognises that the younger the patient, the greater will be the concerns of health professionals and society to ensure that the sexual activity is not abusive or coercive. Special attention must be given to any teenagers who appear particularly vulnerable to ensure the absence of coercion or abuse. The presumption must be that the very young would always fall into this category of those needing extra attention but that is not the same as saying that each individual should routinely be reported to the police. In cases of concern (for any reason, not solely age) it is common for health professionals working with sexually active young people to initiate an extended discussion with the young person, refer him or her to other counsellors or to support workers in the health team or engage in team discussion. In many cases, these discussions elicit information that clarifies whether or not it is entirely appropriate to involve the police promptly. We oppose the concept of making such disclosure routine and mandatory, leaving no scope for consideration of individual circumstances.

We are also concerned that the guidance suggests that whenever professionals are aware that someone under 16 is sexually active, a check should be made with the police as to whether the patient's sexual partner is known to them. Whilst seeking information from the police is likely to be

acceptable in cases where health professionals are already concerned about the possibility of exploitation, this would be an unacceptable breach of confidentiality in other cases.

In summary, therefore, the BMA agrees that premature sexual activity should be discouraged but this should be generally done through providing information, advice and support to individual young people who are thinking of entering a mutually agreed relationship. Where the relationship is not voluntary, prompt action is required involving appropriate agencies and team discussion may help clarify suspicions in this regard. The younger or more vulnerable the patient, the greater care and awareness required of health professionals. The BMA reiterates the need for individual assessments, given that capacity can vary considerably amongst people of the same age and the context of each case is relevant to the action taken. We believe that mandatory reporting will not prevent sexual activity among young people but is likely to deter them from seeking medical advice and will inevitably hinder the formation of trusting relationships between patients and health professionals.

Yours sincerely

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