

Would criminalizing guilty healthcare professionals improve patient care?

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The UK government is considering whether to adopt a recommendation to introduce a new criminal sanction in cases where healthcare workers are "unequivocally guilty of wilful or reckless neglect or mistreatment of patients". A discussion in *BMJ* today asks whether this will improve patient care.

Jo Bibby, Director of Strategy at the Health Foundation says it will deter poor care that results in severe harm, but not death. She says that the proposal, made in response to the Francis inquiry, will close a gap in the law and is one of many important steps to improving patient care.

Dr Bibby says there are many instances where new legislation to curb behaviours have worked including the drink driving laws, compulsory wearing of seatbelts and the recent smoking legislation.

She argues that without the Children and Young Persons Act 1933 and Mental Capacity Act 2005, it is unlikely that offenders would have been prosecuted under general assault laws. Plus, there is "no evidence to suggest that the introduction of the Mental Capacity Act has generated a culture of fear or inhibited candour or cooperation between [healthcare workers](#)". Bibby asks why everyone receiving healthcare can't be afforded the same protection as patients covered by the Mental Capacity Act.

She understands concern from [healthcare professionals](#) worried about being prosecuted where harm has occurred through circumstances

outside their control, but stresses that the proposed legislation would apply "only to 'wilful' neglect".

Dr Bibby concludes that this legislation "wouldn't be without potential pitfalls" and stresses the importance of clarity and on "building [...] the understanding required to enable people to work in safe systems of patient care".

However, Dr Christine Tomkins has the opposing view that sufficient sanctions exist already and "such a move would be likely to be detrimental in a number of ways".

As CEO of the Medical Defence Union in London, Dr Tomkins says that sanctions are "already in place for healthcare professionals accused of 'wilful neglect'". She asks how new offences will be defined when it is not clear "whether [it] would involve only 'neglect' or extend also to 'mistreatment' or 'ill treatment'".

Dr Tomkins says that it is unrealistic to say that a sanction will be applied rarely as "when something goes wrong there are often attempts to bring professionals to account in as many ways as possible". She adds that the police and Crown Prosecution Service would have to get involved, often taking years.

She believes that investigations which can "last months and sometimes years" would cause "enormous distress and disruption to those accused and to the NHS generally, affecting [patient care](#)".

Dr Tomkins says that doctors already follow the GMC's guidance of Good Medical Practice which sets out clearly "what is expected of doctors for the protection of patients".

Dr Tomkins concludes that it is "misguided" to suggest that a new

sanction would be "a positive step towards improving patient safety" adding that this is "not the best way to encourage [...] open culture".

Provided by British Medical Journal

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