

# Consultation Response

October 2011

## MPS's response to

### **Cabinet Office consultation on “Making Open Data Real”**

The Medical Protection Society is the leading provider of comprehensive professional indemnity and expert advice to doctors, dentists and health professionals around the world.

We are a mutual, not-for-profit organisation offering more than 270,000 members help with legal and ethical problems that arise from their professional practice. This includes clinical negligence claims, complaints, medical council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal-accident inquiries.

Fairness is at the heart of how we conduct our business. We actively protect and promote the interests of members and the wider profession. Equally, we believe that patients who have suffered harm from negligent treatment should receive fair compensation. We promote safer practice by running risk management and education programmes to reduce avoidable harm.

MPS is not an insurance company. The benefits of membership are discretionary - this allows us the flexibility to provide help and support even in unusual circumstances.

## **QUESTIONS**

MPS welcomes the opportunity to respond to the Cabinet Office's consultation on “Making Open Data Real”. We have comments on the section “An Enhanced Right to Data”, as detailed below.

### **An Enhanced Right to Data**

#### **3. Are existing safeguards to protect personal data and privacy measures adequate to regulate the Open Data agenda?**

In the majority of cases yes, however we do not consider the existing safeguards to protect personal data and privacy measures are adequate to regulate the Open Data agenda in all circumstances. Combining apparently anonymised data sets could result in individuals being identifiable where this involves very rare conditions. As such, there should be oversight of released data to ensure that it does not inadvertently disclose personal data in the light of the collective available information. This is a role that might be undertaken by the Information Commissioner.

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An additional concern relates to the way the Health and Social Care Bill is currently drafted which gives wide ranging powers to statutory bodies to require the disclosure of and to permit the publication and dissemination of information. There appear to be few checks and balances on who may request the collection and analysis of data and, in so far as they exist, they seem to be at the discretion of the Secretary of State, the NHS Commissioning Board and the Health and Social Care Information Centre.

We believe it is unnecessary for the Health and Social Care Information Centre (HSCIC), a body which will be established following enactment of the Bill, to collect information which identifies individuals. The passing of this legislation will confer on it exactly this power. We believe that where there is no sanctioned use of personal data there should be no power to collect and collate it. The Bill as currently drafted brings in effect an end to the notion of patient confidentiality - the foundation stone of the doctor patient relationship.

**4. What might the resource implications of an enhanced right to data be for those bodies within its scope? How do we ensure that any additional burden is proportionate to this aim?**

We suggest there is a potential that individual, small bodies (such as GP Surgeries) will be expected to become data publishers or that they will have to provide such large volumes of data that this would become burdensome. Overarching bodies, such as Clinical Commissioning Groups or the Department of Health itself, should limit the impact of data requirements on individual practices.

There is also a potential burden on clinical care that will impact on GPs were clinical outcome and prescribing data to be published. It is likely that, where patients are aware of this data, they will use this to impact on clinical decision-making processes.

Should you require further information about any aspects of our response to this consultation, please do not hesitate to contact me.

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