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EDITORIALS

Disclosure of patients' data to the UK Home Office must stop

Immigration enforcement should never undermine the right to health

Koldo Casla *policy, research, and training manager*¹, Peter Roderick *principal research associate*², Allyson M Pollock *director*²

¹Just Fair, London, UK; ²Institute of Health and Society, Newcastle University, Newcastle upon Tyne, UK

The BMA's annual representative meeting in June called for the NHS to stop handing over non-clinical details of patients, including their addresses, to the UK Home Office for immigration enforcement purposes without consent of patients and knowledge of their GP.¹ The motion brings into sharp focus the undermining of doctor-patient confidentiality and the insufficient attention to evidence in policy making.¹

The personal details of patients are being disclosed under a "memorandum of understanding" agreed last year between the Home Office, the Department of Health, and NHS Digital (formerly, Health and Social Care Information Centre).² The intended purpose of the memorandum is to facilitate and formalise the exchange of personal data between hospitals and immigration enforcement officials.

The memorandum apparently followed the Goddard review into NHS Digital's so called back office function, which was initiated in November 2014 but remains unpublished. The head of NHS Digital at the time, Kingsley Manning, was seemingly concerned about the legal basis for disclosure and has since resigned. He was reported to have been under "immense pressure" from the Home Office.³

Correspondence released at the end of April by the House of Commons Health Select Committee reveals that Fiona Caldicott, the national data guardian, considers that the memorandum should have been subject to "more public debate" before it was introduced to allow "more scrutiny of the reasoning and factors which led to the policy position."⁴

The information released by the committee also shows that Public Health England experts believe that sharing of patients' personal information with law and immigration enforcement authorities "risks undermining public confidence in the public health system and could have unintended and serious consequences affecting the health of individuals and the risk to the public health of the wider community." They supported their conclusions with peer reviewed and grey literature, which "indicates that a fear of being reported to immigration authorities can act as a barrier to access internationally, in Europe and in

the UK," drawing attention to the disproportionate burden of tuberculosis borne by migrants and the importance of early access to healthcare.⁴

Nevertheless, Public Health England's chief executive, Duncan Selbie, wrote to the health committee stating that "there is no robust statistical evidence about the impact of knowledge of data sharing on deterring immigrants from accessing healthcare treatment"; while the then junior health minister, Nicola Blackwood, assured the committee that "[we] have found no evidence that this policy would deter migrants from seeking treatment."⁴

Yet, fear of deportation has been documented as a serious barrier in 65% of research studies on access to healthcare by undocumented migrants.⁵

The risk of deterring people from seeking treatment has now been recognised by the prime minister in the wake of the Grenfell Tower tragedy; she told the House of Commons that "I would also like to reassure people that we will not use this tragic incident as a reason to carry out immigration checks [and] will make sure that all victims, irrespective of their immigration status, will be able to access the services they need, including healthcare and accommodation."⁶

Reassurances of this kind, however, are no substitute for a legal guarantee of the human right to health, which the UK has signed up to in international law. Migration law and policy must be in line with human rights, and this mandates access to preventive, curative, and palliative services without discrimination and with "strict walls" between health and law enforcement authorities.⁷

To protect doctor-patient confidentiality and the right to health for all, the memorandum of understanding should be terminated immediately, the Goddard review published without further delay, and an inquiry conducted by the national data guardian into the effect on human rights and equalities of disclosure of patient data, including disclosure under the memorandum. In the absence of an adequate legal framework, NHS patients' data should not be handed over to the Home Office.

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- 1 BMA. ARM 2017, motion No 71 (28 Jun). <https://www.bma.org.uk/collective-voice/committees/arm-2017-overview>
- 2 Home Office, Department of Health, NHS Digital. *Memorandum of understanding*, 1 Nov 2016. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585928/MOU_v3.pdf
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- 4 NHS Digital. Correspondence between the Health Select Committee and the Department of Health, NHS Digital, and PHE. <http://www.parliament.uk/documents/commons->

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- 5 Hacker K, Anies M, Folb BL, Zallman L. Barriers to health care for undocumented immigrants: a literature review. *Risk Manag Healthc Policy* 2015;358:175-83. doi:10.2147/RMHP.S70173. PMID:26586971.
- 6 Grenfell Tower. *House of Commons Hansard* 2017;626:col167.. <http://hansard.parliament.uk/Commons/2017-06-22/debates/E4B84F46-4699-4725-BBE4-AA724C3A0191/GrenfellTower>
- 7 Just Fair, Doctors of the World. *Right to health for all: why the Home Office should not have access to NHS patients' data, and why NHS professionals should not be expected to guard our borders (if we are to take human rights seriously)*. 2017. <http://www.just-fair.co.uk/publications>

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