



MEDICAL PROTECTION SOCIETY

MPS's response to:

Commission consultation
regarding Community action
on healthcare services

January 2007

About the Medical Protection Society (MPS)

The Medical Protection Society is the world's leading indemnifier of health professionals. As a not-for-profit mutual organisation, MPS offers support to members with legal and ethical problems that arise from their professional practice.

MPS membership offers peace of mind to more than 240,000 health professionals and their patients worldwide. Within the European Union MPS provides expert advice and support to over 178,000 doctors, dentists and other healthcare professionals working in both the public and private sector in the UK, the Republic of Ireland and Malta.

Members commonly seek help with clinical negligence claims, complaints, medical council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries. They have access to expert advice from a 24-hour emergency helpline and, where appropriate, legal assistance and compensation for patients who have been harmed through negligent treatment. We also run risk-management and education programmes to reduce adverse incidents and promote safer practice.

MPS is not an insurance company. All the benefits of membership of MPS are discretionary as set out in the Memorandum and Articles of Association.

The current consultation

1. MPS welcomes the Commission's initiative to develop a Community framework for safe, high quality and efficient healthcare services and for providing greater clarity about the application of community law to health services and healthcare. Our response focuses on patient safety in the case of cross-border healthcare, and the availability of redress when patients suffer harm (question 4). Patient mobility raises a number of complex issues relating to redress for patients and access to justice. The current consultation presents a welcome opportunity for the Commission to address some of these challenging issues.

Access to Redress

2. Doctors and other healthcare professionals go into practice with a commitment to being good clinicians and the safety of their patients as their foremost concern. The overwhelming majority of healthcare professionals deliver excellent care to their patients every day. However medicine is not an exact science and sometimes patients suffer avoidable harm as a result of human error and systems failures in treatment.
3. It is important that patients receiving healthcare treatment in any member state have access to information about professional standards and complaints mechanisms. They must also be confident that that they will have access to redress and compensation where appropriate if they are injured as a result of negligent medical treatment.
4. Where harm has been suffered, remedial treatment, rehabilitation and ongoing care are important and it is to everyone's advantage for this to be provided when most benefit can be derived rather than waiting for legal processes to be exhausted. Providing appropriate remedial treatment promptly can help mitigate some of the dissatisfaction and reduce the incentive to litigate. But where the provision of compensation is contemplated, a fair balance must be struck between the entitlement of patients to receive compensation and the importance of not criticising healthcare professionals unfairly.
5. MPS supports the principle that the body which commissions the healthcare treatment is responsible for ensuring that adequate and appropriate indemnity is in place. The indemnity may be provided by the treatment provider, or, if the healthcare treatment is provided on a wholly private basis, then the responsibility for ensuring that adequate and appropriate indemnity is in place should fall with the individual provider of treatment.
6. We acknowledge the challenges posed by differing legal jurisdictions within the European Union. We accept that a patient who has suffered harm as a result of medical treatment must be entitled to seek compensation through the courts both in the country where the healthcare treatment was provided and their country of domicile. However it must be recognised that the differing systems can often pose obstacles for patients seeking compensation and healthcare professionals responding to allegations.

From the perspective of healthcare professionals, MPS has experienced practical difficulties when representing members who have provided treatment in another country within the EU. For instance there can often be difficulty with the availability of witnesses and with adducing evidence if a patient brings a claim in their country of domicile but received treatment in another country within the EU. The jurisdictional issues are complex and it would be helpful for these issues to be considered in the Commission's review of healthcare services.

Patient Safety and Learning from Errors

7. We welcome the Commission's reference to "effective reporting and learning" in the consultation document. MPS has, for many years, endorsed a culture of openness within the healthcare professions where lessons are learned and information is shared. To achieve this objective we firmly believe that there must be a commitment across borders to lower the current blame culture and an acceptance that learning from mistakes is paramount. It is essential that disincentives to reporting adverse incidents are removed wherever possible.
8. Doctors and other healthcare professionals who make a mistake are far more likely to be affected by the adverse incident itself than the payment of compensation. In our experience healthcare professionals are keen to learn from what has happened and ensure there is no recurrence. We believe that training and support is essential to building an open and fair culture that encourages reporting and safety conscious working.

We would be pleased to expand on any of the issues raised in the consultation paper and would be happy to be consulted on the proposals relating to health services that the Commission plans to bring forward later this year.

MPS

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