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Please quote Our Ref on all correspondence

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17 April 2019

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M1:03 Scottish Parliament
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Dear Ms Baker

MDDUS RESPONSE TO THE PROPOSED CULPABLE HOMICIDE (SCOTLAND) BILL

I am responding on behalf of the Medical and Dental Defence Union of Scotland (MDDUS) to your consultation paper on the proposed Culpable Homicide Bill.

MDDUS is one of the three major medical defence organisations providing indemnity to healthcare professionals particularly in the field of primary medical and dental care. Our membership is open to GPs, hospital doctors, dentists and private health care practitioners across the UK. Our experience of providing indemnity in medical negligence cases outside the NHS indemnity scheme, managed through the Central Legal Office on behalf of NHS Trusts, is extensive and without equal.

We have read your submission with interest and note that the central aim of the Bill is to ensure the prosecution of medium to large corporates in culpable homicide cases thus ensuring the "Transco loophole is closed". Your consultation paper and the background notes do not appear to make any specific reference to healthcare but we observe from the proposed definition of "cause of death" that this would also include a medical fatality.

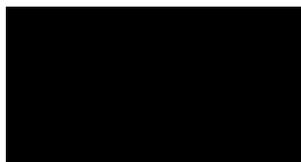
You will no doubt be aware of the recent prosecution in England, and the GMC proceedings relating to the actions of Dr Bawa Garba which have been a catalyst for an examination of how prosecutions proceed in a Healthcare setting. You will be aware of the resulting concern expressed by the medical community and the impact on morale across the profession.

The Marx/Hamilton Review was initiated by the GMC in early 2018 in response to this concern and is due to report later this year. They are gathering a very wide range of evidence from professional and patient groups and it is essential in our view that the proposed Culpable Homicide Bill dovetails with this Review to ensure a consistency of approach across the UK and in Healthcare in particular.

MDDUS submitted written evidence to the GMC Marx/Hamilton Review working group and was also invited to attend a session with the working group to discuss these issues. In these circumstances, from a position of knowledge in respect of these Reviews, we would submit that the GMC should be contacted directly to be advised about the terms of the proposed Bill given that it materially impacts on the major review being undertaken by them.

If the Bill is to proceed as currently proposed, we would ask that it excludes cases involving healthcare professionals given the unintended consequences on the healthcare professions.

Yours sincerely

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