**Purpose: (c162) Clarify interactions between Academic External Review and the new Re-identification Offence**

Probing amendment: **Remove 162(4)(b)(iii) and insert in place:**

(iii) has received retroactive approval for all actions taken.

In principle, the re-identification clause had the prospect of damaging legitimate research, and the solution to that is novel, and on the face of it at least, may be effective.

The effects of retroactive immunity for researchers (via clause 162(4)(b)(iii)) should be fully worked through with the relevant data authorising bodies. In what may likely be the full glare of public interest, a post-event authorisation, where a researcher by definition will not have followed all the rules (if they had, it would have been a pre-event request), is likely to put unusual stresses on the authorisation processes for research. **Has Government received assurances about this approach?**

As drafted, this law will require a external (potentially peer) reviewer to make a decision which either gives a fellow researcher immunity from prosecution, or undermines their legal defence, based on actions that have already been taken and are known to be flawed. That is not a question such review was designed to answer, nor one such reviewers necessarily expected to sign up for.

Given the flaws in the design and structure of the offence, to resolve this structural problem would probably require a radically different approach to defining the Offence.

**Purpose: Confirm the scope of prevention of coercion**

Probing amendment, **clause 172(1) insert at end:**

**(c) consists of information associated with that record,**

The NHS has committed to informing patients how their medical records are used. The legal protections in the Bill against “enforced Subject Access Request” on a medical record should should also apply to such information *about* that record. This probes the Government to confirm that this clause provides that protection.

**(c162) Purpose: Does the Re-identification offence apply to disseminated NHS data?**

Probing amendment, **insert at end 162 (8):**

(c) All data disseminated in compliance with the Code of Practice on Anonymisation shall be subject to the offence in sub-section (1)

Only a Government would consider that information published on the front page of a national newspaper remained considered SECRET.

The HES dataset is the consolidated medical history of England covering nearly 30 years - it contains over 1.5 billion hospital events, which are all dated, and linked to individual. However, every individual within that dataset has had their name/NHS number replaced with a pseudonym to link their medical history.

medConfidential supports an offence that penalises an individual who abuses this dataset. The dataset will protect events such as date of birth, but it leaves entirely unprotected other dates, such as the dates of maternity events of a mother. If a woman has 2 children, and someone knows their birth dates, they are 99% likely to be uniquely identifiable from those the events that occurred on those two dates. The medical history can be read for someone who the individual already knows.

In the event of a leak of the HES dataset, that is the risk that the public are extremely concerned about, and 162(1) and c162(2) do not appear to be engaged.

The offence does cover blatant reidentification at large scale. But that is not a realistic or likely outcome for medical data as disseminated by the NHS. What is more realistic, is that the pseudonymised data is leaked, and because of pre-existing knowledge - either the dates of birth of children, or the date that someone had an unusual or publicised event - that single information can act as a key to read the rest of their medical history. No “more”(162(2)(a)) information is needed to be added to the dataset.

We do not doubt that the Government will concoct a scenario where this offence engages - but in the event of a leak of “de-identified”(162(2)(a)) data, the majority of harm will come from gossip, and the fear of gossip, rather than about random unknown individuals.

When someone is involved in a traffic accident, those are often written up in local newspapers, with the victim usually named, alongside the area they come from, and the date of the event. Traffic accidents are fortunately relatively rare, but that does provide a key into the data which does not depend on re-identification as defined by the offence. Only a Government would consider that information published on the front page of a national newspaper remained considered SECRET.

We welcome the intent of the Offence; it is just far from clear whether as written, a breach of the data disseminated by the NHS would likely be prosecutable. It is unclear whether this was intentional - this probing amendment seeks to clarify that question.

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