Written submission to the Joint Committee on the draft Health Service Safety Investigations Bill

On behalf of the Doctors’ Association UK

Executive summary

1. The Doctors’ Association UK (DAUK) welcomes the creation of an independent body to investigate serious incidents in healthcare bringing medicine in line with similar processes for safety investigations in the rail and airline industries. The development of a culture that focuses on systemic learning from errors, rather than attributing individual blame, is urgently required to develop a safer health service.

2. However, we have serious concerns regarding some aspects of this proposed legislation. Our key concern relates to the proposal for HSSIB accreditation of NHS trusts to carry out “safe space” investigations. We also have other concerns around the following issues.

   - The limits to the independence of the HSSIB
   - Exemptions on prohibitions to disclosure from “safe space” investigations
   - Fines of up to £20,000 for trusts
   - Limitation of the scope of the bill to NHS-commissioned services in England.

Detailed submission

1. The Doctors’ Association UK (DAUK) is a newly-formed, independent campaigning and lobbying organisation that aims to speak out about issues that matter to UK doctors. We were formed in the wake of the Hadiza Bawa-Garba case, and grew out of an online forum of 30,000 doctors. We have been active in policy work, submitting evidence to the Williams’ Review on the application of Gross Negligence Manslaughter, and speaking out and campaigning on other issues, most recently the application of visa caps to international doctors who wish to work in the NHS.

2. The DAUK’s central campaign is entitled “Learn Not Blame”, and seeks to engender a national conversation about the need for a just culture in the NHS. We are campaigning for a step change in the NHS so that honest error is used to drive learning and change for a safer, better NHS, rather than being a focus for individual blame.

3. The DAUK welcomes the development of an independent body, separate from the NHS, to take forward the work of the HSIB. However, to truly achieve confidence from patients and healthcare professionals the HSSIB should also be independent from the government. The powers that the Bill grants to the Secretary of State for Health, to appoint the Chair of HSSIB, remove non-executive
board members and veto the Chief Investigator, will limit the independence of the HSSIB and wider public confidence in investigation results.

4. Our major concern about this proposed legislation is about the process by which HSSIB will be able to accredit NHS trusts to carry out their own “safe space” investigations. There is an obvious, enormous conflict of interest in allowing trusts to carry out their own investigations and this fundamentally undermines the purpose of this bill in creating a new independent body to lead serious investigations. The process for accreditation is not defined in this bill and there is no assurance that medical professionals or patient safety bodies will have input into the accreditation process. Allowing trusts to carry out their own investigations will limit the ability of staff to speak and reflect freely, limiting wider learning and improvement of services for patients. Our understanding is that the current Chief Investigator at the HSIB, Keith Conradi, himself is very uncomfortable with this proposal.

5. To be effective in initiating a cultural change in safety investigations in the NHS there must be confidence in the “safe space” to allow staff to speak freely and to engender wider learning in a blame-free culture. There has been tremendous loss of confidence by doctors into safety investigations following the GMC’s handling of the Hadiza Bawa-Garba case and the treatment of Dr Chris Day, an NHS whistle-blower, by Health Education England. The DAUK is alarmed to see the precedence set by the AAIB investigation in 2015 into the tiger moth biplane pilot Scott Hoyle, in which evidence submitted to the AAIB was admissible in court. The prohibitions on disclosure will limit professional confidence in the safe space investigations, reducing wider learning. The emphasis must be on addressing systemic errors rather than attributing individual blame.

6. The Bill allows trusts to be fined up to £20,000 for not submitting evidence to HSSIB in time and there is no stipulation to what this money will be used for. The DAUK questions the fairness of further punitive measures to NHS trusts facing an increasingly challenging financial environment. If fines are to be taken, the DAUK proposes they should be used to a fund for Human Factors training for healthcare professionals as part of the Government’s wider commitment to leading a cultural change in healthcare.

7. The Bill only applies to NHS-commissioned services in England. The DAUK can see no reason with this should not be applied to the whole healthcare sector including private providers.

8. It is vital that the confidence of patients, doctors and the wider public into safety investigations in healthcare is rebuilt to foster an open, collaborative and safer culture in healthcare.

The Doctors’ Association UK

7th June 2018