

## Royal College of Nursing response to Law Commission consultation on Thirteenth Programme of Law Reform - 59/16

### Introduction

With a membership of around 435,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

### Background

The Law Commission consults when it draws up a programme of law reform. To help compile the 13th Programme, they have asked for suggestions about which areas of the law would benefit from reform.

### General Comments

The RCN, in response, has identified the criminalisation of medical practice as an area of concern. Increasingly, healthcare workers are investigated for the common law offence of Gross Negligence Manslaughter. This charge appears to be utilised variably over time and is currently in vogue. It is an immensely distressing charge to face, and those subject to such investigations are commonly the subject of lengthy investigations but only rarely are they charged. The fear of such charges can cause defensive medical practice. If homicide offences were reviewed, then some of the problems caused might be considered and better and clearer guidance could be utilised.

### Responses to specific questions

The RCN were asked how the issue affects our members. We have told the Law Commission that our members who are involved in a death (frequently in a prison) might be interviewed under caution for this offence if there is any suggestion that something has gone wrong. Often, many nurses who were involved in the same incident are interviewed under caution in what seems an almost automatic way. Lengthy investigations are then undertaken, and during that time the nurses are usually suspended at work because of the seriousness of the charge and lose out on unsocial hours pay and so forth, and society is deprived of their services. They may have to return for frequent bail appointments. At the conclusion of the investigation, often months or even years later, they may or may not be informed that no charges are going to be brought against them. The actual errors or

omissions which are investigated frequently seem to us to be the type of mistake that would not attract much censure by the public, and would be better dealt with by a Regulator. However, making a decision to that effect does not seem to be given a high priority. The availability of a criminal charge and the lack of process mean that these nurses can suffer a disproportionately severe impact.

The RCN was asked to suggest what could be done to improve the situation. In response, the RCN commented that the offence appears to be reached for without much thought as to whether the circumstances warrant such a serious line of investigation. If it is felt necessary to retain offences that criminalise medical practice, then they need to be accompanied by strict guidelines about their use that avoid healthcare workers being routinely subjected to lengthy investigations that cause such distress.