

**Written evidence submitted by Hodge Jones and Allen LLP (NLR0055)**

Dear Sirs

We are responding to the call for evidence on NHS litigation reform in the hope that we can assist the Committee.

We are a member firm of the Society of Clinical Injury Lawyers (SCIL) and endorse their response, but would like to add some comments about the Healthcare Safety Investigation Branch (HSIB), and their role in investigating patient safety incidents.

We are concerned as to the effect of Section 106 of the draft Health and Care bill, which states that 'the HSSIB, or an individual connected with the HSSIB, must not disclose protected material to any person'. Protected material is defined as 'any information, document, equipment or any other item which:

- a) is held by the HSSIB or an individual connected with the HSSIB
- b) relates to a qualifying incident...'

and any disclosure of such material to any other party is a criminal offence.

Previously investigations into adverse maternal/neonatal outcomes were conducted by NHS Trusts into their own conduct and any witness statements and independent expert reports that were obtained by the Trust as part of their investigation would all be disclosable as of right. Such information would be almost certainly handed over voluntarily pursuant to a [Data Protection Act 2018](#) request or alternatively a pre action disclosure application could be made to court pursuant to [CPR 31.16](#).

The draft legislation, if enacted, will create an opaque system in which statements and reports obtained by the HSIB will be prevented from being disclosed to vulnerable families.

It is difficult to reconcile this approach to disclosure with affording families a full and honest explanation of what happened, and if things did go wrong then offering an apology and confirmation of the steps that are being taken to prevent the same thing from happening to another patient.

Yours faithfully

Hodge Jones and Allen LLP

**Oct 2021**