Published on *Adam Smith Institute* (http://www.adamsmith.org)

There?ll be no transparency in the NHS while the lawyers circle above [1]

Written by **Tim Ambler** [2] | Wednesday 6 February 2013

Complain about anything in an NHS hospital and you will face a wall of unknowing. Not sympathy, not a recognition of the mistake and certainly not an apology. This has nothing to do with a lack of care or humanity by NHS staff and everything to do with the scale of legal costs and fines faced by the NHS. The sums are now huge (£15bn in 2010 according to the Daily Telegraph, 3rd August) and rising fast, thus draining the funds that should be spent on front line care.

The reality is that transparency by the hospital (or whatever) will simply provide evidence for the ensuing law suit. If patients and their relatives are given more information about their treatment, then that too can be used in evidence.

Harold Wilson is to blame. When the NHS was set up, patients could not sue and everything was more open. Those are the days of caring we look back on with a warm glow. The reason they could not sue is because there is no contract between NHS and patient: the patient does not directly pay for NHS services, the state does. So the patient had none of the usual customer?s rights. Harold Wilson was lobbied by patients? representatives saying this was unfair and they were entitled to recompense when things went wrong. The law changed and the patient became the customer with a right to sue for damages.

The unintended consequences are now plain: lawyers instruct NHS staff not to admit liability, or indeed anything. The costs to the NHS are not just the lawsuits but lawyer interference in management at all levels. Sweep the cock-ups under the surgical gowns and no one will learn from mistakes or even know about them.

I had personal experience of this when a famous London hospital nearly killed my uncle by not following standard hygiene procedure during his operation. The infection was serious and kept him in hospital for quite a while. My uncle did not want to make a fuss, still less sue, but I insisted on having a discussion with the surgeon. I hit a brick wall. Most people would have given up but eventually, after giving assurances that we would not sue, we met. He was accompanied by a young man whom I took to be a lawyer. He tried to write everything down until, by now quite cross, I reminded them that we were not suing. The meeting was entirely to ensure the surgeon understood what had happened, since we had no reason to believe he did, and to press him on how these things could be avoided in future. I got some satisfaction on the former and none on the latter which was, in fairness, not strictly my business. There was no apology.

The idea that mistreated patients deserve some recompense is now so ingrained that we are unlikely to revert to the pre-Wilson era. But the present system is lose-lose: it contributes to the problems such as those now exposed at Mid Staffs whilst simultaneously destroying the NHS budget and the costs are escalating. Following Mid Staffs all sides are issuing platitudes about transparency but, with the lawyers circling the sky like vultures, it will not happen.

One solution is to have a menu of damages that an ombudsman can award once the facts have been

transparently exposed. In the event the hospital, or the patient?s representative, is less than open, the damages are doubled or eliminated following the more arduous investigation. Any hospital playing the odds, i.e. getting doubled too often, would be required to discipline, and possibly sack, the manager most responsible for the lack of transparency. In this solution, no lawyers would be allowed to participate on either side.

blog comments powered by Disqus [4]

Source URL: http://www.adamsmith.org/blog/healthcare/there%E2%80%99ll-be-no-transparency-in-the-nhs-while-the-lawyers-circle-above

Links:
[1] http://www.adamsmith.org/blog/healthcare/there%E2%80%99ll-be-no-transparency-in-the-nhs-while-the-lawyers-circle-above
[2] http://www.adamsmith.org/taxonomy/term/5859
[3] http://disqus.com/?ref_noscript
[4] http://disqus.com