Editorial

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At a time when so much is 'up in the air' about how radical reforms and cutbacks will affect our key mission of patient safety and justice, this editorial provides a good opportunity to reflect on what is still 'up for grabs'. We are still awaiting the Government's reaction to the responses made to the Ministry of Justice consultations on cutting clinical negligence out of scope for Legal Aid and other reforms to civil litigation funding and costs. The effects of the original proposals would be devastating for victims of medical negligence seeking access to justice. It is to be hoped that the many strongly argued responses, and the ongoing campaign for access to justice, will bring about significant revisions. Meanwhile, we also remain deeply concerned about the impact of NHS reforms on patient safety. The National Patient Safety Agency (NPSA) has, in effect, ceased to function in any meaningful way already, and we have made our concerns known about the absence of any clear business plan for patient safety in the interim period before the NHS Commissioning Board is up and running. It is proposed that even when it is, the Board will absorb the NPSA's functions with a fraction of the resources that they once attracted. How much priority patient safety will have, and how distinct the focus on patient safety will be in the new set up, remains a serious concern. Coupled with this, is the loss of Primary Care Trusts and Strategic Health Authorities, who up to now have also had a vital role to play in overseeing patient safety at the regional and local level. To what extent we can rely on GP Commissioning Consortia to take up the mantle of patient safety when faced with all the other challenges they will have, must also be a doubt. We will be using all the influence we have and continue to work with the powers that be, to seek clarity on these issues, and a clear and robust framework for building on the work that has already been done on patient safety.

With so much going on, it would be easy to lose sight of a potential development, which has the potential to be an historic *positive* development both for patient safety and justice. The Coalition Government has made a commitment to 'require' openness with patients when things go wrong. Coming as it did from the Liberal Democrats' support for a statutory 'Duty of Candour' ("Robbie's Law") for which AvMA and others have long campaigned, this was naturally perceived as being a commitment to just that. However, nothing is as clear as it seems in this new era. Those who would prefer to retain the current status quo, where cover-ups are in effect tolerated, or who are worried about a deluge of new claims as a result of patients actually being allowed to know that something went wrong, have been quick to promote a different definition of "require". The Government, at the time of writing, are still prevaricating on whether to introduce the statutory, enforceable duty envisaged, or bow to the forces of conservatism and simply make a gesture of more guidance or introduce a standard clause in contracts.

Anything less than a clear, statutory, enforceable duty of candour (which could be achieved by a clause in the CQC regulations) would be a complete climb down and a hammer blow to the concept of patient safety and justice. Even the notion that increased awareness of mistakes will lead to more claims is ill founded. International research, our experience at AvMA and that of many practitioners, confirms that many people will not take legal action if they are dealt with openly and honestly from the start, and that early admissions of liability where appropriate, greatly reduce legal costs. This is one decision where money can not be the determining factor. Even if it were the case that more openness and honesty would lead to more claims, do we really want to work in a health service or live in a society which tolerates the intolerable in order to try to save a few pounds? The costs of allowing the current 'culture of denial' to persist, would include a continuing failure to learn and improve, in order to prevent these errors in the first place. This results in far greater financial cost to the NHS in terms of remedial treatment and extra bed days than any possible increase in litigation. More important still, are the incalculable human cost of lives unnecessarily being taken away or ruined, and the loss of ethics in healthcare that a retaining of the status quo would signal. We must do all in our power to help the Government make the right decision.

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