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Consultation paper on implementing a ‘duty of candour’; a new contractual requirement on providers: proposals for consultation

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally of practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has approximately 4,800 members in the UK and abroad who represent hundreds of thousands of injured people a year.

APIL is supportive of an open and transparent National Health Service (NHS) that admits to patients when things have gone wrong. Full information must be given to patients and their carers or representatives about any act or omission affecting their medical treatment and care which has caused harm. APIL believes that the majority of those injured as a result of medical accidents frequently want nothing more than an explanation of what went wrong and why. They also want to know that lessons have been learned. We welcome a duty of candour and openness but we do not agree with implementation as proposed by the Department of Health (DoH) in the consultation paper.

We believe that the duty should be placed on the individual and not the employer. It would be much simpler and less bureaucratic if it were to be introduced as an individual obligation on the professional rather than an obligation on the employer. A contractual obligation, as proposed, which is to be written into hospital contracts, is limited to incidents where medical treatment has resulted in moderate to severe harm or death. The obligation should not be limited in any way.

Patients want the individual responsible for the incident to be held accountable and for both the individual and the organisation to recognise and learn from their errors. It is essential that an open and transparent approach applies across the board to all incidents, not just those incidents that result in moderate or severe harm or death. We are also concerned that GPs, those involved in primary care and private healthcare providers will not be covered by any duty of candour. We want to ensure that all health care providers are placed under the same obligation to ensure consistency. We strongly believe that any level of transparency in the NHS must be statutory and apply to all health care providers.

The contractual mechanism as proposed in the consultation paper does not provide an effective mechanism for requiring openness in the NHS. Openness to patients when something goes wrong is essential.

In the legal profession, if a solicitor breaks their professional rules they are held individually accountable to the Solicitors' Regulation Authority (SRA). Implementing a system similar to this for health care providers will ensure a greater level of accountability.

The DoH has to look at this from the perspective of the patient, and to imagine what it is that the patient would want. The patient would want the whole truth and complete transparency. This means that the medical professionals must not omit facts, or leave anything to implication or the patient's imagination.

We hope that our comments prove helpful to the Patient Safety Team and look forward to engaging with you further in the future.

Yours sincerely

A handwritten signature in blue ink that reads "Katherine Elliott". The signature is written in a cursive, flowing style.

Katherine Elliott
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