

**To err is human to forgive divine: Spotlight on complaints in the NHS, the crusade for perceived justice.**

**ABSTRACT**

The Healthcare Commission's recently published report 'Spotlight on Complaints' highlights a general state of malaise with the NHS' approach to complaint management. The conclusion of this the second report by the Commission is clear, NHS Trusts still have much to do to improve the principle antecedents, which collectively construct complainants' attainment of perceived justice.

**INTRODUCTION**

Amidst the present culture of a heightened intolerance to imperfect service provision, many organizations aspire to offer a 'zero defects' service. It is axiomatic that the possibility of service failures can never be wholly eliminated particularly in the context of healthcare delivery, not simply because to err is human, but significantly because of the innumerable variety of factors that impact upon the delivery process within the NHS.

Against a backdrop of consumerist attitudes amongst patients, the manner in which complaints are managed together with complainants' responses to the process, are increasingly seen as factors, which may positively impact upon the number of actionable complaints, which result in litigation.

Whilst in reality the overwhelming majority of NHS patients are satisfied with the care and treatment they receive, some 140,000 complaints are made to Trusts each year<sup>1</sup>. Naturally NHS complaints cover a wide range of issues, the vast majority of which are not actionable through the courts. A lack of legal redress does not however, negate the importance of the issue to the person making the complaint. A key recommendation of the report is that Trusts apologise for mistakes in patient care. The report suggests that more often than not, all that patients desire is an apology, or an acknowledgement that the Trust's standard of care did not meet acceptable standards.

**NHS COMPLAINTS - A CONCEPTUAL FRAMEWORK**

There is growing recognition that perceived justice plays a significant role in consumers' evaluations of service complaint experiences. The construct of perceived justice suggests: that the fairness of the complaint resolution procedure (procedural justice); the interpersonal communications and conduct of representatives (interactional justice); and the final outcome (distributive justice) are the principle antecedents of consumer evaluations. Collectively, these antecedents are referred to as perceived justice<sup>2</sup>.

The Commission's report indicates deficiencies in regard to all of the collective antecedents to

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<sup>1</sup> The NHS performs in excess of 380 million treatments a year. Spotlight on complaints report

<sup>2</sup> Schofer, K & Enew, C Emotional Responses to Service Complaint Experiences: The Role of Perceived Justice

perceived justice, with 52% of complainants simply wanting an apology, recognition of the event in question, or an explanation. Significantly 16% of the complaints reviewed by the Commission concerned the complaints handling procedure itself; a damning indictment that the process for complaint management within the NHS is failing those it is intended to serve

### **SPOTLIGHT ON COMPLAINTS**

The report demonstrates that of the cases reviewed during the period 2006-7, the actual number of complaints the commission returned to trusts for further action fell from 33% to 26%. However, the commission upheld or partially upheld almost 20% in favour of the complainant, more than double that of the previous year. The most common complaints reviewed by the Commission related to the safety and effectiveness of practices; communication and information given to patients; and the handling of complaints.

In recommending an apology in 23% of cases referred to it, the Commission's report highlights the reluctance of trusts to acknowledge errors and to apologise when on balance, it appears appropriate to do so. In considering this endemic failure

Dr Hugh Stewart, MDU medico-legal advisor, remarked: <sup>3</sup>

"It is extremely important that doctors realise that saying 'I'm sorry this has happened to you' is not the same as admitting liability. In many cases, a prompt and genuine apology is all a patient wishes to hear, and may prevent a complaint from escalating."

It is disappointing that Trusts continue to withhold an apology for fear of admitting liability. This overriding anxiety is perhaps a key cause of the breakdown in interpersonal communications and behaviour; the outcome of which tends to be an overall negative evaluation of the complaint management process. In the absence of clear statistical indicators, one can only speculate as to whether poor complaint management impacts on the resolve of potentially actionable claimants to pursue a legal resolution.

### **A MULTIFACETED APPROACH TO HEALTHCARE COMPLAINTS.**

Issues relating to communication were common throughout the report. Open, clear communication from trusts and better involvement of patients and relatives in key decisions about clinical care can often prevent complaints<sup>4</sup>. On the occasions when things do go wrong the satisfaction of complaint handling is multifaceted. The significance of the interaction between cognitive (judgments, evaluations) and affective elements (feelings, emotions)<sup>5</sup>, each of which exert varying levels of influence at different stages in the complaint handling process, must be recognized and appropriately managed by Trusts.

The Report calls for responsive local management of complaints, which is to be commended, however there has been limited acknowledgement of the potential costs of such devolution, primarily the fragmentation of information and statistics<sup>6</sup>, which may render the evaluation of the efficacy of future reforms problematic.

NHS service recovery and complaint handling should be seen as a critical moment of truth for the NHS. Complaints present a vital opportunity for NHS managers and clinicians to

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<sup>3</sup> [www.mdu.com](http://www.mdu.com)

<sup>5</sup> <sup>5</sup> Schofer, K & Enew, C Emotional Responses to Service Complaint Experiences: The Role of Perceived Justice

<sup>6</sup> Harpwood, V. *Medicine, Malpractice and Misapprehensions* Routledge-Cavendish (2007) pp169

understand what should be done to improve service delivery, but crucially complaints represent a unique opportunity to implement improvements through clinical governance, which may in turn prevent future complaints and claims.