NHS trusts must have legal duty to be open about harms to patients, Francis tells MPs

Clare Dyer

The cost to the NHS from litigation will get “bigger and bigger” unless the health service tells patients what went wrong and settles their claims as early as possible, Robert Francis QC has told the parliamentary health select committee.

The chairman of the public inquiry into Mid Staffordshire NHS Foundation Trust called on the government to implement his 290 recommendations, including a statutory duty of candour to patients. He was quizzed by MPs on 12 February as part of their inquiry into his report.

The annual NHS bill for compensation and legal costs breached £1bn for the first time in 2011-12, when it surged to £1.28bn (£1.5bn; $2bn).

Francis said that he recognised concerns about what effect a duty of candour would have on potential compensation claims. However, “if wrong has been done to a patient, if a public service has done wrong to them and injured them, they deserve compensation,” he said. “They deserve first of all to be told that has happened, and they deserve that that wrong has been put right.

“If we aren’t honest about it I’m afraid the litigation bill will just get bigger and bigger, because people will go on these days until they receive justice and receive satisfaction—and many would say quite rightly.”

Francis, a veteran clinical negligence barrister, added, “If you want to put me and my colleagues out of business, then settle all these things at the earliest possible time until they receive justice and receive satisfaction—and many would say quite rightly.”

His report last week found responsibility at all levels in the NHS for “appalling” care of patients at Stafford Hospital, with failings by nurses, doctors, managers, regulators, and the Department of Health.

Francis said that there was already a duty of candour on doctors, imposed by their regulator the General Medical Council, to tell the truth to the patient if something went wrong. What was lacking was an obligation on the part of organisations, such as trusts, to be honest with patients.

“I believe there should be a statutory duty on an organisation, where a patient has been harmed or may have been harmed, to tell the patient. It follows that there would be a remedy involved if that was breached,” he told MPs.

Important information was withheld from Stafford patients because it was believed to be in the trust’s interests for it to be withheld, he said.

He believed that whatever legislation was in place to protect whistleblowers it would not be enough. It had to be made more difficult not to blow the whistle than to do it. He thought that doctors were now disclosing concerns about colleagues to regulators more than they used to but still not often enough.

At Stafford the medical profession “must have looked the other way,” he said. There was evidence in which some admitted that “we kept our heads down for a quiet life.”

His report recommends that it should be a criminal offence for directors of trusts to give deliberately misleading information to the public or regulators.

Francis told the MPs that the GMC should be more proactive, rather than in the main reacting to complaints coming to it, and should “plug into” information already available. In Stafford, for instance, a team from the Royal College of Surgeons found a “dysfunctional” surgical division, which indicated “dysfunctional surgeons,” he said.


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