

REGULATION AND COMPASSION

Can we? Should we?

Reflections on the NHS post Mid-Staffs

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Disclaimer

Although I am drawing on my experience of various NHS leadership positions, these opinions are personal and not those of and of the organisations with which I have been associated....

MID-STAFFS

A Catastrophic Failure of Compassionate Care

What Happened in Mid-Staffs: The first Francis inquiry: for patients...

- Left in excrement in soiled bed clothes for lengthy periods;
- Assistance not provided for patients who could not eat without help;
- Water was left out of reach;
- In spite of persistent requests for help, patients not assisted in their toileting;
- Wards and toilet facilities left in a filthy condition;
- Privacy and dignity denied, even in death;

What Happened in Mid-Staffs: The first Francis inquiry: professional staff...

- Triage in A&E by untrained staff;
- Staff treated patients and those close to them with what appeared to be callous indifference.
- Lack of basic care across a number of wards and departments;
- Consultant body largely dissociated itself from management;

What Happened in Mid-Staffs: The first Francis inquiry: Culture...

- Culture at the Trust not conducive to providing good care for patients or providing supportive working environment for staff;
- Atmosphere of fear of repercussions;
- High priority placed on targets;
- Low morale amongst staff;
- Lack of openness, acceptance of poor standards;

What Happened in Mid-Staffs: The first Francis inquiry: Governance...

- Management failure to remedy the long-term deficiencies in staff and governance
 - absence of effective clinical governance;
- Lack of urgency in the Board's approach to governance problems;
- Statistics and reports preferred to patient experience data: Focus on systems, not outcomes;
- Lack of internal and external transparency regarding problems at the Trust.

THE RESPONSE TO MID-STAFFS

An undue faith in regulatory interventions?

Francis II: key areas

- Regulation for compassionate professionals
 - Recruitment and training
 - Staffing
- Regulation for compassionate management
 - Good character requirements
- Regulation for open cultures
 - Duties of candour
 - Whistleblowing

Francis II: 290 Recommendations

Values & principles: NHS Constitution (3)

Standards and accountability for compliance
(including managers) (9,10 13-18)

- Director accountabilities, ‘fit & proper person’ test (79-86)
- Leadership accreditation/regulation (214-221)
- Responsible Officer’ for nursing (192)

Francis II: Nursing: Culture of caring (185)

- Education for compassionate care
 - Aptitude test (188) for student selection (185)
 - Hands-on experience during training (186-7)
 - Common qualification/assessment (189)
 - National competencies (190)
- Values-based recruitment to ‘qualified’ & ‘unqualified’ staff nursing jobs (191)
- Clear identification & roles for health care support workers (207-8); registration (209), code of conduct (210), training standards – NMC role (212-3)

Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regs 5 & 19

Staff

(a)... of good character, (b)... qualifications, competence, skills & experience ... necessary for the relevant office or position or ... work.

Directors (or equivalents) also not have (reg 5)

(d)... been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity.

Schedule 4, Part II: Good Character Factors to which regard must be had

7. Whether the person has been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence.
8. Whether the person has been erased, removed or struck-off a register of professionals maintained by a regulator of health care or social work professionals.

Good Character

‘Character determines the response to any given situation and good character will ensure that the response is the correct one, regardless of the circumstances and within agreed processes and systems. It is not possible to outline every character trait that an individual should have. However, among them we would expect to see that the diligence processes take account of honesty, trust and respect.’

A caring and compassionate nature

‘Caring is one of CQC’s key questions against which we rate and we expect this attribute to be at the core of those delivering health care. During inspections we explore whether staff are caring towards people receiving services and whether they are treated with compassion. One way of doing this is by asking people receiving services how they feel when they are being treated or spoken with by staff in that service, and asking staff how senior leaders set the tone and culture of the organisation in this respect.’

Some reasons to be cautious about good character

- Stock v Central Board of Midwives [1915] 3 KB 756
 - Living with a man not her husband
- Ward v Bradford Corp (1972) 70 LGR 27, 35
 - Woman expelled from teacher training college for allowing man to stay in her room overnight
 - ‘This is a fine example to set for others! And she a girl training to be a teacher! I expect the governors and staff all thought she was an unsuitable person... she would never make a teacher. No person would knowingly entrust a child to her care.’ (Denning J)

Some reasons to be cautious about the responsible persons test:

The scope of 'Privy to'

- CQC 'complicit'
- DAC Beachcroft 'evidence to suggest the individual was aware of serious misconduct or mismanagement but did not take appropriate action to ensure it was addressed.'

Leadership team has the latest intelligence on the changes ahead



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Rob Whiteman
Public health cuts send the symbolic message that there is a lack of belief in prevention



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Regulator receives first 'fit and proper person' complaints

21 January, 2015 | By Shaun Lintern

A mass referral of more than 20 senior NHS managers has been made to the Care Quality Commission in what will be the first test of the new 'fit and proper person' regulations, HSJ can reveal.

A group of whistleblowers and campaigners has made seven formal submissions to the regulator, alleging that several managers are unfit for board level positions because of their past actions or behaviour.

Among those named are current and former NHS chief executives, medical directors and senior board level executives.

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Francis II: Duties of Candour (173-184)

- Disclosure to Monitor in FT process (70)
- Staff reporting of concerns, with feedback (12)
- Gagging clauses to be banned (179)
- Disclosure & support where death or serious harm may have been caused by act or omission or organisation or staff (174)
 - Statutory duty (181) with remedy for breach
 - Criminal offences for misleading(183)


Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 20

- ‘any unintended or unexpected incident’ ‘in the reasonable opinion of a health care professional, could result in, or appears to have resulted in... the death’ ‘or... severe harm, moderate harm or prolonged psychological harm to the service user.’
- ‘provide an account... include an apology’
- “apology” means an expression of sorrow or regret’

Freedom to speak up

An independent review into creating an open and honest reporting culture in the NHS

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symbolic message that there is a lack of belief in prevention



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Exclusive: Leaked NHS England study links nursing numbers and care quality

24 June, 2015 | By Shaun Lintern

A leaked NHS England study has revealed a significant relationship between the number of nurses on duty in hospitals and 40 indicators of patient care and outcomes.

- Leaked NHS England study shows link between nurse numbers and patient outcomes
- Project looked at impact of staffing levels on outcomes, including falls
- Report emerges after NICE work into safe staffing levels was suspended
- [The Patient Safety Congress is on 6-7 July](#)

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SOME CONCERNS ABOUT THE ROLE OF REGULATION

Paradoxes of regulation for compassion

Compassion: Character, Context, Action

- Is compassion to be assessed in the experience of the person receiving care or the attitude of the care giver?
 - Interest in patient experience has led to the ‘family and friends’ test
- What is the regulatory target? Being compassionate or doing the right thing?
- Professional agency and corporate regulation
 - Professional discretion v external compliance

The Liverpool Care Pathway

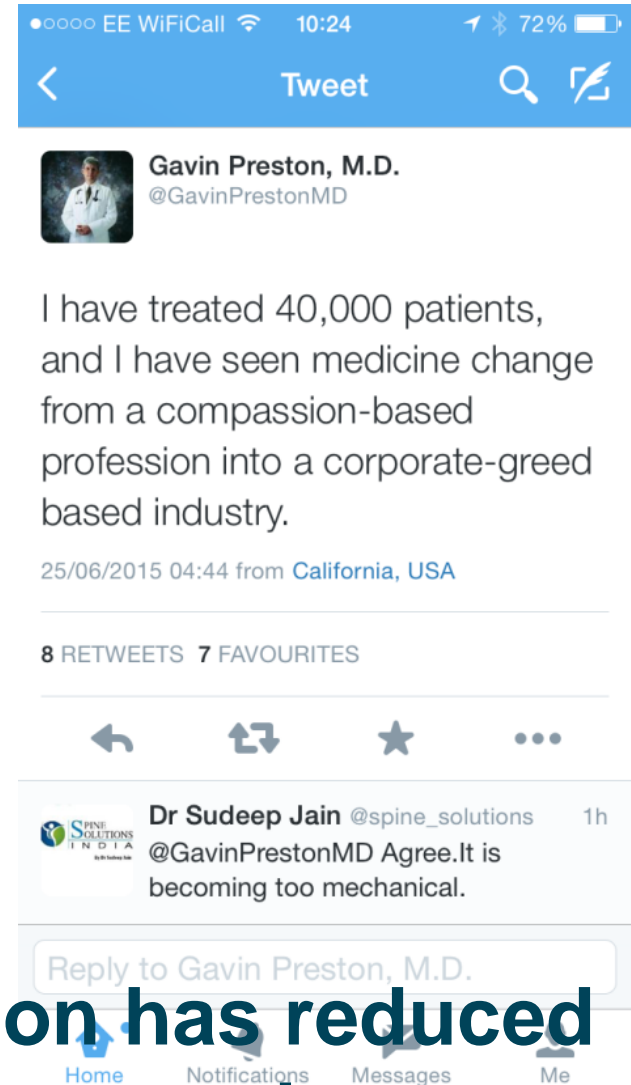
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- Model of good practice: ‘the LCP entirely reflects the ethical principles that should provide the basis of good quality care in the last days and hours of a person’s life.’ (p 8) but ‘implementation of the LCP is not infrequently associated with poor care’.
- Implemented in way the focussed on compliance with process not individual
‘the LCP appears to be being used by some clinicians as a protocol to be followed, rather than as a set of alerts and guidelines for good practice, as it is intended.’ (p 26)

Cultures of accountability: logics of the Mid-Staffs regulatory responses

- Forced transparency, required apologies, stronger penalties:
 - A positivists' view of the law: commands backed by sanctions, hard to connect with the virtue of compassion
 - Fit and proper persons test provides a vehicle for witch hunts
 - Challenges of triple jeopardy
- Blame, no blame and fair blame cultures

- Costs of regulation:
 - The army of inspectors
 - Managerial focus on system compliance
 - Failures of professional leadership
 - Professional focus on record keeping
 - Loss of focus on individual care



Little reason to think regulation has reduced the risk that the failures of compassion at Mid-Staffs could be repeated?