

Editorial

The Bolam test: on borrowed time?

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Editor

Every healthcare professional and doctor should carefully read a report in *The Times* of 9 October 2002.¹ This is a powerful and moving account of a mishap in the NHS that led to the death of a five-year-old girl. The report is of a coroner's inquest into the death of the child from an abscess in her throat that caused airways obstruction after surgery for the removal of a foreign body. Problems were encountered in getting the child to be seen at hospital following discharge and in misdiagnosis. The coroner concluded that substandard care was to blame for the tragedy.

We must express our sympathies to the family. The parents stated at the inquest that they would always regret their 'misplaced trust' in the NHS with its 'institutionalised acceptance of average' which they blamed for the tragedy. I believe these comments have a significance from which we can learn. They are an illustration and a marker for much broader issues in the NHS. I would like to focus on two things. Firstly, is an average standard of care acceptable and sufficient? Secondly, do patients have any real influence in the decisions about their care on a day-to-day basis?

'Institutionalised acceptance of average': what a powerful, vivid and haunting phrase. Of course we could argue and rationalise this: that this is an isolated case, an exceptional case, that much of the care that the NHS offers is excellent – which it is. We can do this as much as we like, but the truth is that many of us would instinctively concur with these comments. We all know what it means, and in one way or another we have all experienced 'institutionalised acceptance of average' – be it as workers in the NHS, or when we are ill or when our relatives are cared for.

I am sure it is not the intention anyone in the health service to deliver average standards of care. For clinicians, their aspiration is to provide top-notch care, the highest possible standard that is the hallmark of professional behaviour. Patients want to believe that the NHS will do its very best for them and, beyond. People want excellence and consistency. The stakes are too high for anything less. Modern healthcare demands the very best of clinicians and systems.

This is significant because I believe it has implications for when things go wrong and claims for negligence are launched. In such cases the courts apply the Bolam test. This famous 1957 case established that a doctor is not in breach of the duty of care 'if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art'. Evidence is heard from experts in the field, as there are several different ways of doing things. However, in an NHS where there is now a national system of standard setting, how long will it be before the Bolam test is challenged?

The National Institute for Clinical Excellence (NICE) issues health technology appraisal and clinical guidelines. For the first time in the history of the NHS the standards of treatment to be expected will be explicit. Which will carry more weight – expert views or national evidence-based standards? As already indicated above, patients want the NHS to do its very best and beyond for them. In my view, the courts are less likely to rely on 'practice accepted as proper by a responsible body of medical men skilled in that particular art'.

This should be seen in the context of patient expectations. Dealing with the might of an institution like the NHS, particularly in the acute sector, is too much for many patients, their carers and sometimes for primary healthcare professionals. There is a constant struggle to have concerns taken seriously, with decisions sometimes taken for the convenience of the service as opposed to what is best for patients.

Things are clearly changing and public involvement is a key plank of health policy in the NHS. I am sure patients want the NHS to accept responsibility more clearly. Patients will be less forgiving. There will not be the leeway that now exists particularly for primary healthcare practitioners. Primary healthcare teams will need to justify their approach to clinical practice, their adherence to national standards and give explanations for any variation.

The national standards will become better known. As they are implemented a picture will emerge of the levels of care being delivered and achieved. From this it will be possible to benchmark standards of care. These will become widely known and it will be

possible for patients to question inappropriate variation. Judging the quality of care will become more explicit. The days of the Bolam test are therefore surely numbered.

REFERENCE

- 1 www.timesonline.co.uk, 9 October 2002, p. 5.