Have professionalism and trust in the NHS been destroyed by regulation

Sir Cyril Chantler FRCP FRCPCH FMedSci.

In 1925 Bobby Jones was the most famous and the best golfer in the world. In June that year during the first round of the United States open championship his ball went into the rough on the 11th hole.

He addressed the ball with his club and it moved slightly. After he had hit it he penalised himself by one shot according to the rules. Nobody had seen what had happened and afterwards a journalist congratulated him for adding a shot to his score. Jones was astonished at the praise. He said “you might as well praise me for not robbing a bank.” The next day he lost the championship on the play-off; in effect by the one shot.

There seems to be two lessons to be learnt here; the first is that he did what was right and the second is that he knew the rules of golf. The actual rules of golf occupy 220 pages, on the first page it states that a golfer is expected to do what is fair but also to know the rules of golf.

If you read the reports into the various awful events that have taken place in our hospitals over the last few years one is struck by the lack of professional leadership

Why did he do what was fair? It seems that human beings are naturally disposed to do this. Adam Smith the Scottish philosopher widely regarded as the father of capitalism wrote another book in addition to the Wealth of Nations. This is entitled a Theory of Moral Sentiments where he pointed out that conscience or a sense of duty to others is as important as the possibility of financial gain in motivating human behaviour. Charles Darwin argued that moral behaviour grew out of the animal tendency for empathy through the evolution of morality.

Moral sense is based on sociability and altruism. I'm not qualified to discuss the moral philosophical basis for altruism but Prof Onora O'Neill is and we are very grateful that she agreed to join us this evening.

But the golden rule of do unto others as you would have done to yourself has a religious foundation which is very much part of Kings College.

What has this got to do with anything other than golf? We have to be able to trust each other for our society to work efficiently.

Ed Smith is a non-executive director of NHS England. He is chairman of their audit committee and one of the

most experienced auditors in the country. In 2006 he wrote a pamphlet on Rules, Regulation and Real Trust. He concluded that trust was a vital ingredient in corporate success, that real trust was based on self-regulation and peer regulation, and that legislation threatened to undermine real trust by substituting technical rules for moral principles.

Let us turn now to the National Health Service. The Lancet recently commented

"*the regulatory regime created in the NHS in the aftermath of Bristol, Shipman, and Mid Staffs, has created a culture of blame, fear and intimidation. Instead of regulation being a means to bring out the best in our health professionals it is used as a tool to threaten, punish and harm. In the NHS few people are cherished. Instead they are seen as problems to be managed.*"

In 2008 Lord Darzi invited two respected internationally based health policy organisations to review the English NHS. Both reports were critical of the top-down culture of the NHS. To quote from the Joint Commission International Consulting report "a shame and blame culture of fear appears to pervade the NHS and certain elements of the Department of Health. This culture generally stifles improvement."

So why has this happened? In 1995 the BBC broke the story of the appalling results of surgery for congenital heart disease in children at Bristol Royal infirmary. This led to an inquiry by the General Medical Council and later a comprehensive review by Prof Sir Ian Kennedy published in 2006.

In September 1998 Harold Shipman was arrested and found guilty of murdering his patients, perhaps over 200 of them. These two separate events have had a profound effect on the practice of medicine in this country.

In 1999 the Institute of Medicine in the USA published a landmark report, entitled *To Err is Human*, which pointed out that each year there were over 100,000 deaths in American hospitals that could have been avoided.

In the UK a report published in 2000 by the Department of Health suggested that the position in our hospitals was similar.

The introduction of more regulation commenced with the incoming Labour government in 1997 who set up the Commission for Health Improvement and developed new standards and guidelines for clinical practice.

At the same time the concept of clinical governance was introduced under the aegis of the then Chief Medical Officer Sir Liam Donaldson who in 2006 made proposals to strengthen the system for regulation of doctors.

The latest report on a failure of clinical governance in a hospital relates to Morecambe Bay and the list of regulators who were involved is long. It includes the Care Quality Commission (the successor but one to the Commission for Health Improvement), the Parliamentary and Health Service ombudsman, Monitor, the General Medical Council, the Nursing and Midwifery Council, the Health and Safety Executive, the North West Strategic Health Authority, local Primary Care Trusts, the

Department of Health, the Secretary of State and in addition the system for statutory supervision of midwives which involves a Local Supervising Authority with a local supervising authority appointed midwife.

We can perhaps conclude that there is now no shortage of regulation in the National Health Service. I acknowledge that the strengthening of regulation from 1997 onwards was both understandable and necessary. The question is whether on its own it is sufficient and indeed whether it has worked. Regulations require rules and rules are sometimes embedded in law. In 1997 a law was passed to ensure a quality service but this was clearly not effective over the next decade. Recently Parliament placed a duty on NHS Institutions not to harm patients. Is not clear to me why this was thought to be necessary or whether or how it can be enforced.

I strongly support good regulation defined by the Better Regulation Task Force as regulation that is transparent and accountable, targeted, consistent and proportional. But is it sufficient in itself? I would suggest that recent experience suggests that it is not. We now have a multitude of regulators but problems continue to happen.

According to Jeremy Hunt there are still around 12,000 avoidable deaths each year in hospitals. I commend Mr Hunt for his insistence on setting a target of zero harm for patients. He uses as one of his examples of good practice the Virginia Mason Hospital in Seattle. In 2001 they adopted the Toyota Lean Production System and pioneered a Patient Safety Alert System.

But they did something else; they renegotiated the terms of employment of all their physicians by introducing the concept of a compact rather than a contract. This sets out what are the organisations responsibilities and what are the physicians' responsibilities.

Modern medical care is complex and hospitals are complicated organisations. They require both good management and strong leadership. Field Marshal Slim once pointed out that managers are necessary but leaders are essential.

As another General, Charles Vivyan has pointed out management is issue based, leadership is value based. Management deals with complexity, leadership deals with change. Management is process based, leadership is goal based and is about people.

I don't think we can make the improvements that we need to make to ensure better care from patients unless we understand the importance of professionalism and professional leadership. A report on doctors in society from the Royal College of Physician's in 2005 suggested that professionalism lies at the heart of being good doctor.

They defined professionalism as a set of values, behaviors, and relationships that underpin the trust the public has in physicians. It is my contention that we need to renew professionalism.

The contracts of employment of doctors both in general practice and in the hospital and of nurses and allied health professionals need to be re-discussed along the lines of the compact introduced at Virginia Mason.

Those introduced over a decade ago are strong on contractual obligations

but weak on professional commitment. If you read the reports into the various awful events that have taken place in our hospitals over the last few years one is struck by the lack of professional leadership. Indeed when I read the Mid-Staffs Enquiry my first question was "*where were the doctors*."

I always contend that doctors need both a contract and a conscience. It is the conscience that is most important. We know from the work of Michael West and others that good teamwork produces good outcomes for patients.

We know from the recent Morecambe Bay inquiry that dysfunctional clinical teams lead to patient harm. Dysfunctional behaviour between or within professions is never acceptable. The greatest protection we have as patients is the competence, commitment, kindness, and behaviour of those who care for us.

There is a considerable amount of research that shows that doctors, nurses and other health professionals work more for love than for money.

They do however want job satisfaction and the danger, as the Lancet pointed out, is that the overwhelming emphasis on regulation is becoming harmful because it is lowering morale and damaging trust. Happy staff lead to happy patients.

My plea is not to abandon regulation though it could and should be simplified with greater clarity between the roles of the different regulators. My contention is that you have to promote trust.

Professional organisations including the General Medical Council, the Nursing and Midwifery Council, the Royal College of Nurses, the Royal College of Midwives ,the Medical Royal Colleges., the British Medical Association and others need to support professionalism.

The next government needs to promote it, NHS England and the Department of Health need to contract or compact for it. Thankfully doctors and nurses are still esteemed by the public so with more support from the media and politicians

I believe we can and must create more balanced regulation of health care in this country.

Thank you