

IT CAN'T BE LIKE IT WAS

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There is a quite long joke about newspapers and the demographics of their readers. If you are interested in the full version then stop me sometime and I will tell you. For the meanwhile we need to know only that the joke begins 'The Times is read by the people who run the country, The Financial Times is read by the people who own the country...' and so on. You may be able to guess or make up some of the rest of the narrative. The two that have always struck me as rather poignant, and I won't divulge the titles, are the periodical that is read by people who 'wish the country was run like it was in the 1950s'; and the one that is read by people who 'believe the country is still run like it was in the 1950s'.

My concern is that as a profession we are in danger of wishing and believing those same things and in no more important an area of our work than in litigation. We have been warned for a long time that we would eventually become like the United States of America in this regard and it may well be that we did not entirely believe it. A recent holiday in the USA brought this into sharp relief for me. Travelling on the ski-shuttle between my accommodation and the slopes I noticed a variety of adverts which ran something like this: 'Drivers are insured against accidents. Did you know that most skiers are too?' and 'Helmets help during accidents. We help afterwards.' The gist of the message is clear, as in all ambulance-chasing legal company scenarios it embeds in the reader the notion that any accident, all accidents, are somebody's fault and

'We have to accept that we live in this age of blame and compensation...'



that recompense should be sought through the law. While it saddened me that even recreation is now considered fair game for this particular weaselesque type of human activity, it did bring into relief the fact that it is symptomatic of the world in which we live; our thinking, our acceptance and our unquestioning belief that this is the way things are and will continue. Much in the same way that it is now difficult to imagine living in a world in which we no longer had to lock doors and windows.

The interface between the legal and health professions is one of a booming business. Recently it was revealed that lawyers suing NHS hospitals over errors gained a record £246 million in a single year. The latest figures also show that the number of cases where legal costs outstripped compensation paid to victims has doubled in five years.

The data emerged after a Freedom of Information request to the NHS Litigation Authority (NHS LA). There were 3,141 negligence cases settled from 2014 to 2015 where the amount the NHS LA paid to lawyers was more than the compensation won for clients. Five years ago the number of similar cases was 1,607. For claims where patients were awarded £10,000 or less in damages for medical accidents, lawyers typically pocketed three times as much. This might also be reflected in Secretary of State for Health Jeremy Hunt's keen endorsement of the 'Duty of Candour'.

The numbers in dental litigation are not as large but are

significant and are increasing. They are reflected in the statistics constantly boasted of by the General Dental Council and are unquestionably fuelled by the legal companies who solicit work from dental patients who feel that the treatment they have received falls short of their expectations and for which some financial recompense may be possible. A further sadness is that such legal firms employ dentists, our erstwhile colleagues, to help in this process. Doubtless they will claim that they are only making a living like the rest of us. In fact, they are making a living out of the rest of us.

So, what is the answer to this? To wish, like the newspaper readers in the joke that we were still in the 1950s, that is, in the past, will do no good whatsoever. We have to accept that we live in this age of blame and compensation – whether for failed implants or collisions on the ski-slopes. In response we have to make sure our game is squeaky clean and that our notes, in particular, are as comprehensive (and sadly, as defensive) as possible. I suggest too that when the inevitable comment arises about the cost of dentistry we point out that an increasing chunk of the bill reflects indemnity and the need to spend so much time documenting conversations which might otherwise be spent on healthcare instead of lawyers.

There is though a rather charming counterpoint to this line of thought. On the same trip to the US I also noted an advisory sign outside a public building. In UK English we would have phrased it as 'do not encourage beggars', in US English it read 'do not give money to solicitors'. I rest my case m'lud.

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