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ABS response to the Report of the Independent Inquiry into the Issues raised by Paterson

In October 2018, on behalf of the ABS, Past President, Mark Sibbering gave evidence to the Inquiry. When the report was published in February 2020, the ABS issued the following statement:

"The Association of Breast Surgery welcomes the Report of the Independent Inquiry into issues raised by Paterson. The Association of Breast Surgery continues to express its sympathy to the patients who have suffered as a result of Mr Paterson's actions. Although Mr Paterson has never been a member of the Association of Breast Surgery, the organisation has taken the incident very seriously. We have reviewed the events that have occurred and identified lessons that can be learnt, both general and those specific to breast surgery. We have endeavoured to disseminate these to our members and those involved in breast care.

We would like to reassure patients that this incident reflects the actions of a single individual surgeon working outside acceptable standards of care and does not represent the current standard of breast care in the UK. The first priority of our members is always the health, wellbeing and safety of patients. The Association of Breast Surgery constantly endeavours to raise the already high standards of breast surgery by providing members with ongoing education and training and support for research and national audits. These collectively aim to ensure the delivery of a high standard of breast surgery care throughout the UK."

[The full report](#) was formally reviewed by the ABS Executive on the 29th April 2022.

Many of the issues raised in the report have already been covered in the ABS action plan following Ian Paterson's conviction. In particular, the ABS have increased awareness regarding mechanisms for raising concerns and issues relating to bullying behaviour.

Below are the list of recommendations from the report and areas where ABS will be taking further action:

Recommendations

Information to patients

Recommendation 1

We recommend that there should be a single repository of the whole practice of consultants across England, setting out their practising privileges and other critical consultant performance data, for example, how many times a consultant has performed a particular procedure and how recently. This should be accessible and understandable to the public. It should be mandated for use by managers and healthcare professionals in both the NHS and independent sector.

Government response – accept in principle

Significant progress has been made on the collection of consultant performance data in the independent sector and the NHS. In 2018, the Acute Data Alignment Programme (ADAPt) was launched to move towards a common set of standards for data collection, performance measure methodologies and reporting systems across the NHS and the independent sector, with potential to be fully implemented by 2022 to 2023.

This data will be made available for managers and healthcare professionals across the system to help support learning and identify outliers.

Over the next 12 months, we will commit to reaching a decision with key stakeholders on what information can be published and whether further government action will be needed to achieve this.

ABS Response:

The ABS has active collaborations with 3 national audits; National Audit of Breast Cancer in Older People (NABCOP) – England & Wales, ABS & NHSBSP audit of screen-detected breast cancers – UK and Getting it Right First Time (GiRFT) – England.

It has also promoted and collaborated with the Private Healthcare Information Network (PHIN), leading to the collection and publication of breast surgery activity data in the independent sector.

Two audits are currently out to tender, an all breast cancer audit and an audit of metastatic breast cancer. ABS is fully supportive of these audits and look forward to working with the audit provider in the set up and delivery of these audits.

Action: To work closely with the new audit provider in set up and completion of the new audits.

Recommendation 2

We recommend that it should be standard practice that consultants in both the NHS and the independent sector should write to patients, outlining their condition and treatment, in simple language, and copy this letter to the patient's GP, rather than writing to the GP and sending a copy to the patient.

Government response – accept

Guidance across the healthcare system now states that consultants should write directly to patients and in a way that they understand. Key stakeholders have committed to writing to their members to encourage uptake.

Over the next 12 months, we will explore with providers how their systems can change to make the process of writing to patients easier for healthcare professionals and how this can be monitored.

ABS response:

The current president Chris Holcombe has written to ABS members to sanction and promote this recommendation. An ABS Summary Statement is available on the guidance platform of the website with breast practise guidance on writing to patients.

Recommendation 3

We recommend that the differences between how the care of patients in the independent sector is organised and the care of patients in the NHS is organised, is explained clearly to patients who choose to be treated privately, or whose treatment is provided in the independent sector but funded by the NHS. This should include clarification of how consultants are engaged at the private hospital, including the use of practising privileges and indemnity, and the arrangements for emergency provision and intensive care.

Government response – accept

The government will commission the production of independent information to make people aware of the ways in which their private care is organised differently from the arrangements in the NHS. Created in partnership with patients, families and carers, this will be published in 2022 and will include expert views on a range of relevant areas that are backed by data and evidence.

ABS Response:

Once this information is available and published, it will be posted on the ABS website.

Consent

Recommendation 4

We recommend that there should be a short period introduced into the process of patients giving consent for surgical procedures, to allow them time to reflect on their diagnosis and treatment options. We recommend that the GMC monitors this as part of ‘Good Medical Practice’.

Government response – accept in principle

Many key organisations, including the General Medical Council (GMC), have taken steps to update their guidance and to confirm that doctors should give patients sufficient time to consider their options before making a decision about their treatment and care.

During annual appraisals, doctors must provide supporting information to demonstrate that they are continuing to meet the principles and values set out in ‘Good medical practice’. The Care Quality Commission (CQC) takes all GMC guidance into account during its assessments.

ABS Response:

This is already covered in generic good practice guidance. Any changes or monitoring would be generic and involve regulatory bodies rather than ABS.

Multidisciplinary team (MDT)

Recommendation 5

We recommend that CQC, as a matter of urgency, should assure itself that all hospital providers are complying effectively with up-to-date national guidance on MDT meetings, including in breast cancer care, and that patients are not at risk of harm due to non-compliance in this area.

Government response – accept

The CQC has now added more detailed and specific prompts on multidisciplinary teamworking to the inspection framework for diagnostic imaging services in NHS and independent acute hospitals, including reference to NHS England and Improvement (NHSEI)'s guidance on streamlining multidisciplinary team meetings for cancer alliances.

When assessing providers in the NHS and the independent sector, CQC will continue to seek assurance that patients are not at risk of harm due to non-compliance with this guidance.

ABS Response:

ABS fully supports MDT working, and there are guidelines on the ABS website regarding MDMS. The ABS does not have a role in monitoring compliance.

Complaints

Recommendation 6a

We recommend that information about the means to escalate a complaint to an independent body is communicated more effectively in both the NHS and independent sector.

Government response – accept

The Parliamentary and Health Service Ombudsman (PHSO) is currently piloting the NHS Complaint Standards, which set out in one place the ways in which the NHS should handle complaints, including the need for organisations to ensure that people know how to escalate to the Ombudsman. These have been developed with the Independent Sector Complaints Adjudication Service (ISCAS), who have included it in their code of practice.

We will continue to work closely with key organisations involved to ensure that standards are reinforced.

Recommendation 6b

We recommend that all private patients should have the right to mandatory independent resolution of their complaint.

Government response – accept in principle

CQC will strengthen its guidance to make clearer that it expects to see arrangements in place for patients to access independent resolution of their complaints regarding independent sector providers.

We will review uptake across the independent sector in the next year, and if uptake is not widespread, we will explore whether current legislation needs to be amended to ensure that all providers make provision for independent adjudication.

ABS Response:

The ABS will promote and publicise any processes introduced.

Patient recall and ongoing care

Recommendation 7

We recommend that the University Hospitals Birmingham NHS Foundation Trust board should check that all patients of Paterson have been recalled, and to communicate with any who have not been seen.

Government response – accept

By August 2020, University Hospitals Birmingham NHS Foundation Trust had contacted all known living patients of Ian Paterson.

By the end of June 2021, the trust had ensured that all known former patients had had their care reviewed, and that any outstanding concerns were addressed in a way that was determined by the patient.

Recommendation 8

We recommend that Spire should check that all patients of Paterson have been recalled, and to communicate with any who have not been seen, and that they should check that they have been given an ongoing treatment plan in the same way that has been provided for patients in the NHS.

Government response – accept

By December 2020, Spire had proactively contacted all known living patients of Ian Paterson to check that their care had been fully reviewed, and that they were getting any ongoing support and treatment that they needed.

Spire have now reviewed the care of over two-thirds of the patients concerned. Spire have prioritised the review of patients according to clinical need, with the most likely in need of new intervention being reviewed first.

We have asked Spire to provide the Department of Health and Social Care (DHSC) with an update on progress in 12 months' time.

ABS Response:

These actions are specific to the healthcare providers concerned.

Improving recall procedures

Recommendation 9

We recommend that a national framework or protocol, with guidance, is developed about how recall of patients should be managed and communicated. This framework or protocol should specify that the process is centred around the patient's needs, provide advice on how recall decisions are made, and advise what resource is required and how this might be provided. This should apply to both the independent sector and the NHS.

Government response – accept

A national framework has been developed that outlines actions to be taken by organisations in both the NHS and the independent sector in the event of a patient recall. The National Quality Board (NQB) will own the framework, which will be published in 2022 and periodically updated.

ABS Response:

This is a generic issue and not a matter for the ABS.

Clinical indemnity

Recommendation 10

We recommend that the Government should, as a matter of urgency, reform the current regulation of indemnity products for healthcare professionals, in light of the serious shortcomings identified by the Inquiry, and introduce a nationwide safety net to ensure patients are not disadvantaged.

Government response – pending

In 2018, the government launched a consultation on appropriate clinical negligence cover for regulated healthcare professionals. This sought views on whether to change legislation to ensure that all regulated healthcare professionals in the UK not covered by state indemnity hold regulated insurance, rather than discretionary indemnity.

The government has now extended this programme to consider the issues raised by the inquiry and is committed to bringing forward proposals for reform in 2022.

ABS Response:

This is a generic issue and not a matter for the ABS.

Recommendation 11

We recommend that the Government should ensure that the current system of regulation and the collaboration of the regulators serves patient safety as the top priority, given the ineffectiveness of the system identified in this Inquiry.

Government response – accept

System and professional regulators have an overarching statutory objective to protect, promote and maintain the health, safety and wellbeing of the public.

The healthcare regulators referenced in the inquiry (GMC, Nursing and Midwifery Council (NMC), and CQC) exist to protect patient safety and this is reflected in their new corporate strategies. They have also taken a number of actions to encourage information-sharing between organisations and to enable patients and professionals to raise concerns.

DHSC's 2021 consultation regulating healthcare professionals, protecting the public sets out proposals that address the issues raised in the inquiry, including a proposal to place a duty to co-operate on all regulators. DHSC plans to draft legislation in relation to the GMC in 2022.

ABS Response:

This is a generic issue and not a matter for the ABS.

Recommendation 12a

We recommend that if, when a hospital investigates a healthcare professional's behaviour, including the use of an HR process, any perceived risk to patient safety should result in the suspension of that healthcare professional.

Government response – do not accept

We agree that exclusions and restriction of practice can be necessary, and in some cases immediate exclusion is an appropriate response while an investigation is ongoing. However, we do not believe it would be fair or proportionate to impose a blanket rule to exclude practitioners in such cases. Such a step may inadvertently cause a chilling effect, dissuading healthcare professionals from raising concerns and negatively impacting patient safety.

It is vital that investigations are robust and conducted in a timely manner. Guidance has been put in place to ensure that concerns are taken seriously, appropriate action taken and that robust investigation processes are implemented, and that clarity on when to exclude a healthcare professional is provided.

Recommendation 12b

If the healthcare professional also works at another provider, any concerns about them should be communicated to that provider.

Government response – accept in principle

The government agrees that, where patient safety is at risk, information should be shared with other providers. However, there must be an element of judgement by providers as they will be taking on responsibility to ensure that this information is appropriate and accurate. Regulators have taken key steps to make it easier for people and organisations to share information regarding patient safety risks. The Medical Profession (Responsible Officers) Regulations 2010 (revised in 2013), which apply to all medical practitioners, have also set out prescribed connections for sharing information regarding performance concerns between health organisations.

ABS Response:

This is a generic issue and not a matter for the ABS.

Corporate accountability

We heard that many patients treated at HEFT, and many treated at Spire, did not feel that the hospitals took responsibility for what had happened. In the NHS, consultants are employees and the NHS hospital is responsible for their management, and accepts liability when things go wrong. The situation is very different in the independent sector where most consultants are self-employed. Their engagement through practising privileges is an arrangement recognised by CQC. However, this recognition does not appear to have resolved questions of hospitals' or providers' legal liability for the actions of consultants.

Recommendation 13

We recommend that the Government addresses, as a matter of urgency, this gap in responsibility and liability.

Government response – accept in principle

The government is clear that independent sector providers must take responsibility for the quality of care provided in their facilities, regardless of how the consultants are engaged.

The Medical Practitioners Assurance Framework (MPAF), published in 2019 by the Independent Healthcare Provider Network (IHPN), was created to improve consistency around effective clinical governance, and to set out provider and medical practitioner responsibilities in the independent sector.

CQC will continue to assess the strength of clinical governance in providers as part of its inspection activity, taking account of relevant guidance such as the MPAF.

As covered in our response to recommendation 10, we have set out a programme of work that will consider the case for reforms to the provision of indemnity cover. We will use this as our initial approach to dealing with the challenges faced by patients of Ian Paterson in accessing compensation.

ABS Response:

This is a generic issue and not a matter for the ABS.

Recommendation 14

We recommend that when things go wrong, boards should apologise at the earliest stage of investigation and not hold back from doing so for fear of the consequences in relation to their liability.

Government response – accept

Healthcare organisations have a statutory duty of candour, which sets out specific requirements providers must follow when things go wrong with care and treatment, including providing truthful information and an apology. This duty is regulated by CQC.

NHS Resolution has consistently advised its members to apologise when things go wrong and to provide a full and frank explanation at the earliest possible stage, irrespective of the possibility of a legal claim. More work is underway to ensure that this NHS Resolution guidance is promoted.

ABS Response:

This is a generic issue and not a matter for the ABS.

Adoption of the Inquiry's recommendations in the independent sector

Recommendation 15

We recommend that, if the Government accepts any of the recommendations concerned, it should make arrangements to ensure that these are to be applicable across the whole of the independent sector's workload (i.e. private, insured and NHS-funded) if independent sector providers are to be able to qualify for NHS-contracted work.

Government response – do not accept – keep under review

This recommendation, if implemented, would change the way in which independent sector providers qualify for NHS contracts. As demonstrated in our response to the other recommendations, independent sector providers are fully committed to implementing changes alongside NHS providers. They must already meet the same regulatory standards, as required by CQC.

We will continue to monitor the independent sector uptake of the other recommendations and we will review our position on this recommendation in 12 months' time, setting out further steps if necessary.

ABS Response:

This is a generic issue and not a matter for the ABS.