

Is sorry the hardest word?



Knowing whether or when to apologise can be a real concern for doctors in all specialties. GMCtoday hears from Paul Williams (left), barrister from Park Court Chambers, Leeds, on the legal implications of apologising to patients.

Politeness never made a bad situation worse, nor for that matter does an apology. But at a time when we are told that society is becoming increasingly litigious, are patients, who see themselves as having been wronged somehow by medical treatment, appreciative of an apology or is it all about hard cash? A 2003 MORI poll of 400 people who had been harmed by their healthcare treatment found that an apology coupled with an investigation and support was the most desired response to the incident, rated more highly than financial compensation or disciplinary action.

Whatever the answer to that question, doctors can have confidence that an apology will not make the situation worse and is not an admission of liability at law. In fact, the GMC places a professional duty on doctors to offer an apology should the situation call for one.

The NHS Litigation Authority's guidance on this issue was

revised in May this year. The guidance states that it is natural, desirable, and good clinical practice to both apologise and provide factual information when there has been an adverse result for a patient and allows for a clinician to express sorrow or regret for an outcome. It is underlined that a meaningful apology and the provision of detailed information to the patient or family do not constitute an admission of liability.

The NHSLA guidance is usefully supplemented in *Being Open*, National Patient Safety Agency, www.npsa.nhs.uk/nrls/alerts-and-directives/notices/disclosure.

The *Being Open* guidance describes in some detail a process and structural mindset for dealing with any potential adverse incident and is based around 10 highlighted principles; the third of which is the principle of apology. It recommends that where harm has resulted from a patient safety incident an 'appropriately worded and agreed manner of apology' should be given as soon as possible after the incident, both in writing and face to

face. Any delay is likely to increase any sense of anger, frustration or upset felt on the part of the patient or carers. An early verbal apology should not be delayed whilst more formal processes take their course.

There can be a follow-on written apology later in the process that also provides

the detailed information and indicates the lessons learnt where appropriate. The written apology should clearly state that 'the healthcare organisation is sorry for the suffering and distress involved in the incident.'

Any face-to-face apology obviously requires a decision as to who is the most appropriate member of staff to speak to the patient or family and make the apology. Consideration will need to be given to the appropriate level of seniority of that person, their relationship to the patient, and their experience or expertise in the type of harmful incident that has occurred. The 10 principles also include 'professional support', and it is particularly important that staff (employed and independent contracting) feel and are actually supported throughout the necessary investigation process as they too may feel traumatised by the incident. They should not be 'unfairly exposed to punitive disciplinary action, increased medico-legal risk or any threat to their registration.'

The guidance in *Good Medical Practice: Being open and honest with patients if things go wrong*, reads: 'If a patient under your care has suffered harm or distress, you must act immediately to put matters right, if that is possible. You should offer an apology and explain fully and promptly to the patient what has happened, and the likely short-term and long-term effects.'

And it really is as simple as that. Any wrong arising from the incident depends upon a proper and fair investigation of the facts, and an apology will not change those facts for better or worse, but it may help heal the emotional hurt caused to the patient and their family. The apology has no adverse legal implications.

