PRACTICE OBSERVED

Rethinking Established Dogma

Is good general practice possible?

ERIC WILKES

After an overseas tour there is a routine and heart warming tendency, on one's return, to feel a gush of patriotic affection.

It may be ghastly over here, but it is even worse elsewhere else. Our local pacesetters of general practice may not have quite the energy or the resources of their counterparts in Australia or across the Atlantic, but they are pretty good; and they are younger than they used to be. Indeed, even in the outbreak of Trent Health Region nearly half the general practitioners are under 50 years of age. We are far away from the isolated and aging sector of yesterday, and the trainees are good and begin to make their mark.

But youth brings its problems as well as old age. The pace of change is very fast and one can be out of date at 40 as at 65. One has to accept the failure, so far, of the vocational training schemes to instil any pattern of genuine continuing education. The national figures of attendance by general practitioners at approved educational sessions are pathetic. It has been said that the only achievement of vocational training is to have made some good practices rather better. The harassed and isolated majority remain untouched. Not for them the age-sex register, and certainly not disease registers, case finding, or high quality surveillance of chronic disease. No teachers' workshops for them, but just the busy surgery sessions for which they feel already grossly overtrained: for despite the

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unhappiness or anxiety of many of their patients, whole hours can go by without meeting one who is recognisably ill.

And if they are ill the pressures to refer to hospital even straightforward cases are considerable. Time is short, and if things do go wrong the general practitioner is to be blamed—a convenient blend of father figure and scapegoat. I remember seeing one of the best family doctors I have met called up before a service committee twice in one month, put there by a formidable combination of fatigue and inevitable therapeutic failure. I remember, too, lunching with two colleagues from the Sheffield medical school who had qualified three or four years before. One was working in Canada, looking after his own cases in the intensive care unit. The other was a principal in a Sheffield practice and so unable to prescribe routine physiotherapy. They were adjusting to their environments. Indeed, the Sheffield general practitioner was adjusting too well, I thought.

Money not standards

If you feel discontented or trapped then you are more likely to talk about money and taxes rather than standards or audit: so one achieves an immediate quality of care, even though it can be done well if determination and leadership are there.¹ With the six minute consultation still with us despite the sagging of consultation rate, we are not going to atone the world by our early diagnosis of the occasional life threatening pathology. Nor are we trained in the group therapy, family therapy, or educational techniques that could accelerate the tendency to reject the doctor and go for self help groups or preventive care, which may be long overdue in an overprofessionalised service, but sometimes are dangerously simplistic.

If we feel depressed and unfulfilled we feel more urgently the need to maintain our family life, to shore up our marriage and to keep contact with our children who may face in their world even more florid disaster. Therefore, we use the deputising service for some of the out of hours work. This can be used for political vote catching but also is a service of variable

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quality and, like nuclear physics, liable to abuse. If we lose the challenge of out of hours crises, even if they are mostly phoney, we have little left but tightly packed sessions for certificates, catarrh, or contraception. One remembers the description of the French military brobelet as sacrificing quality to speed of throughput. This, more than Balint, is our sort of world.

Home visiting still lingers as part of the tradition of British general practice but is increasingly under threat. Visits have diminished by 40% over the past 25 years, at the same time as urban doctors have moved away from their practice areas. Only the idealistic or deprived minority live over the shop, now that the cry for help has become a shout for service. So the general practitioners know their patients less well and are less involved with them. Visits to the chronic sick have been reduced, according to a recent local survey, to negligible proportions by 40%, of practitioners and another 50% would reduce their home visits to the chronic sick more if they could. It is indeed curious that doctors find more satisfaction—or is it just less effort—in giving antibiotics for colds rather than in palliating the hopelessness of the house bound by their occasional visit.

The hospitals receive an increasing percentage of self referrals, probably showing both a lessening of respect for the filter of general practice and also decreased availability. Furthermore, it will help to fight against restricted budgets if hospitals use the lever of developing services with a community outreach: so that the psychiatric or oncology nurse, the diabetic or stoma nurse may theoretically be colleagues who bring extra resources to the primary health care team, but often they behave like rival firms and pose a demoralising threat, even though they provide skills needed by our patients that cannot otherwise be made easily available. Yet sometimes skills are too easily available, and general practice is seen as one of the discredited options and quite unable to modify, for example, the manage-

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GPs and Their Staff

How to change a contract of employment

NORMAN ELLIS

Employment contracts are continually changing and developing. Every pay rise requires a variation of the original contract, as does any change in the duties or hours of work of the staff. Although your staff may be tolerant of change as such (especially if they benefit from it), some variations in their contracts may meet with strong objections and even resistance.

Some general practitioners have come to believe that they cannot change a contract of employment once it has been agreed with an employee. Others think that because it is a written contract then change is even more difficult to achieve, and in some cases even take this view as justification for not

providing written contracts of employment. In fact any employer can change an employee's contract, but he may find himself in serious difficulties if he approaches it in the wrong way.

Nature of the employment contract

It may be helpful to begin by reminding ourselves what constitutes a contract of employment. Firstly, it is important to remember that a contract exists between you and your employees irrespective of whether most of it has been encapsulated in a written document. Moreover, even if there is a comprehensive written document the contract of employment when viewed in its entirety also includes unwritten understandings and working practices (which are commonly referred to as "custom and practice").

The law requires you to issue to any employees working more than 16 hours a week a statement of the main particulars

of employment. (This must also be issued to any employee working for more than eight hours a week who has been employed by you for five years.) The written statement should be issued within 13 weeks of the employee starting work and should include the following information:

- (1) Name of the parties
- (2) Date employment began and statement about continuity
- (3) Job title
- (4) Pay
- (5) Hours
- (6) Holiday and holiday pay provisions
- (7) Sick pay
- (8) Pension
- (9) Notice
- (10) Grievance, disciplinary, and appeals procedures.

The law requires that changes in the terms of the main particulars of employment need to be notified to the employee within one month of the change.

In addition, the law requires an employer of five or more staff to issue a written statement of his general policy on health and safety matters as these affect his staff and the arrangements that he has made for carrying out his policy.

The statutory requirement to provide written statements on these matters does not have to be supplemented in any way. There is no legal obligation to provide a written contract of employment (together with your policy statement on health and safety matters) can be regarded as the basis of a written contract of employment. The contract as a whole also includes the job description (whether written or not) and the many informal understandings and working practices which always form an important part of any employment contract. An example of these informal and unwritten practices are the arrangements normally followed when staff take coffee and tea breaks, including allocating the duty of actually making coffee or tea for the general practitioner and his partners.

Need for consent

In practice there are various approaches to changing a contract of employment. Whenever an approach is adopted the basic principle that must be borne in mind is that an employee should consent to changes before they can become contractually binding, irrespective of whether the consent is implied or by express agreement. Given in advance of or at the time of the change. This principle underlies the different ways in which employment terms may be changed.

It is always preferable, if possible, to seek to reach agreement on the proposed changes. Of course, many employees are not favourably disposed towards changes of any kind, particularly if these affect their duties or hours of work. But sometimes you may be surprised at their responsiveness. Secondly, it is very important to give clear and defensible reasons for the change. Try to explain why it is necessary in the interests of the good running of the practice. Try to ensure that your reasons are fully understood (even if they are not initially accepted) and never rely on other members of your staff to put your case on your behalf. Often there is nothing more damaging than a second hand explanation of your intentions, particularly if it is given by someone who is not favourably disposed towards them. Most general practitioners work with a small enough group of staff for this personal approach to be practicable.

When you have explained the change, and your reasons for having to introduce it, listen carefully to any reasons your staff may have for not accepting it. It is worth considering carefully how far their objections can be answered. If their reasons for not wanting the change seem reasonable it is well worth taking the time and trouble to examine them to see whether a compromise can be agreed which will satisfy both

of your staff, their hours of work, and their place of work are three aspects of their contract that should be written in a manner which allows for change. It is too easy for people to assume that the ambit of their contract obligations is the same as the duties they actually perform. This may happen if staff become accustomed to a more limited range of duties than those originally defined in their contracts and may be avoided if their job descriptions are broadly drafted.

If you have taken care to draft broadly this does not mean that you have an unfettered right to vary your employees' contracts as you wish. If your change leads to the sacking of an employee you may find that the industrial tribunal, in considering an unfair dismissal claim, will wish to examine whether the change you introduced was reasonable in all the circumstances.

If consent is not forthcoming

It may not be possible to obtain the consent of your staff even if you have made considerable efforts to agree the change with them. At the end of the day you go ahead and implement the change you should give reasonable notice of your intentions. Ultimately, if you are called to defend your actions in an industrial tribunal, they will be concerned about the extent to which you have consulted your staff and sought to reach agreement with them, and the reasonableness of your changes in the contracts of employment. Fortunately, these tribunals recognise that any business has to be run efficiently, that no business arrangements can remain static and immutable, and that we live in a world where change is regarded as an essential prerequisite for survival.

In normal circumstances any change imposed unilaterally by an employer without the consent of the employee will be a breach of contract. If this is a fundamental breach of contract, hitting at the heart of the contract, the employee may be entitled to claim compensation for constructive dismissal. Furthermore, even if it does not constitute a fundamental breach an employee can claim damages for the breach in a civil court. It is possible (but not always so) to avoid these problems if you give sufficient notice of your intention to introduce the change. It has been thought that the length of notice of the change required is the same as that which would be needed to terminate the contract lawfully. But even if this length of notice is given the employer could be liable to pay compensation for unfair dismissal or redundancy if the employee still refuses to accept the change and subsequently leaves. The advantage of giving adequate notice of the change is that your employees are likely to be left with little or no time to protest after the change has been introduced because they have already had time to think it over.

A written contract is advisable

In previous articles¹ I have drawn attention to the benefits of having properly documented written contracts of employment for your staff. In particular, I have recommended general practitioners to satisfy their legal obligations by issuing to their staff written statements of the main terms and conditions of service. It is important to remember that a contract of employment exists between you and your staff irrespective of whether it has been expressed in writing. The industrial tribunals will not hesitate to interpret and clarify the terms of an unwritten contract by drawing on a knowledge of your verbal understandings and the customs and practices associated with your surgery and its staff. The advantage of a written contract, if it is properly drafted, is that it clarifies beyond any reasonable doubt the terms of service of your staff, including their duties and their hours of work. Furthermore, if the contract is properly drafted (as suggested above) it can allow you to introduce

the needs of your practice and the wishes of your staff. At this point you may even find yourself involved in some gentle and informal negotiations. A compromise is often possible and well worth looking for at the outset of the whole exercise. If you aim for a compromise this may lead you to increase marginally the extent of your original proposals, if only to enable you to demonstrate your own willingness to compromise.

If your staff consent to your proposed change

The crucial consideration when changing an employment contract is the matter of "consent," and this can be given by an employee in various ways.

(i) Consent given by express agreement

This may be given verbally, but to avoid problems of proof and disputes about who said what and when, it is preferable to obtain such agreement in writing. An employer is, in any case, required to put in writing the terms of the contract (as changed) if it relates to any one of those matters listed above.

If your employee has expressly consented to the change there is usually no doubt that the new terms of the contract is contractually binding. It is important to bear in mind that there is a difference between a position where your employee voluntarily accepts a new term and one where it is effectively imposed because the option of refusal is not a practical possibility. As you may expect, this matter turns on the question of what may be regarded as "reasonable." There are no hard and fast rules which can be applied here. What is and is not "reasonable" depends on the nature of the change, your reasons for introducing it, and the circumstances in which it is being implemented.

(ii) Consent demonstrated by implied agreement

Implied agreement is normally assumed if your employee continues to work under the new contract on the same terms without complaint. In fact it can be established by custom and practice if all the employees affected by the change are fully aware of it and continue to work. For this reason it is most important for an employer to make known any objection without delay and to ensure that the objection is clearly understood by the employee.

Your written contracts can allow for change

The contract itself may contain provisions that allow for changes in such matters as pay, the place of work, working hours, and the duties of the job. In these circumstances the actual change is a matter for the general practitioner to initiate as the employer and manager. This arrangement typically applies if the pay of your staff is increased annually as a consequence of pay settlements, classed as a "cost of living" adjustment.

The way in which change can be allowed for within the terms of a written contract is by "broad" drafting. For example, a receptionist's contract may say that her pay is to be determined by reference to a document setting out the rates of pay for National Health Service clerical and administrative staff. Similarly, the contract might state that the receptionist is required to work at the partner's premises, wherever these may be located in the practice area. In the job description reference may be made to "any other duties of a clerical or administrative nature that may be required from time to time."

The overall effect of drafting the contract in this way is to increase your rights, as the employer and manager of your staff, to alter your employees' duties, to change the location where they work, and even to vary their hours and shifts. Of course, on the other side of the equation, there is a corresponding loss of rights for your staff.

It is particularly important to note that the job descriptions

changes without the risk of incurring serious legal difficulties. There are some general practitioners who have provided their staff with written contracts and now believe that it is difficult, if not impossible, to change these. It must be emphasised that the issues in changing the terms of an employment contract are essentially the same irrespective of whether it is based primarily on a formal written agreement or simply consists of verbal agreements, understandings, and customary working practices. It is only the practicalities that may differ.

When deciding how to approach the business of varying a contract of employment it is vital to recognise that there are no firm guidelines on what is reasonable or unreasonable. We must point to general principles: the degree of the change derived from the case law of industrial tribunals and the courts.

Finally, there is an important adage which should always be borne in mind at the outset: you must never assume before you start that change cannot be made. The duties of your employees are debilitated by their own defeatist attitudes and consequently do not even begin to consider the options available to them.

I am grateful to Dr John Ball and Dr Ewen Bramwell for their advice. I am, of course, responsible for any omissions or errors. This article provides only a general guide to the provisions of existing legislation. It does not offer a definitive statement of law.

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ONE HUNDRED YEARS AGO Our Paris correspondent writes: The plague has broken out in the Ottoman territory, in the Bedra district. A sanitary inspection has ascertained that the plague has now attacked Bedra, Dvassan, Mendeli, and Zorbatia, also affecting the Arab tribes, wandering or settled, camped within this area. Bedra is about ten or fifteen hours' journey from Bagdad, but, at the present time, the inundation which is ravaging Mesopotamia renders communication laborious. The overflowing of the Tigris has converted Bagdad into an island, and couriers take eight days to go from Bagdad to Bedra and return. The danger of the plague spreading is centered in the town. Mendeli is already attacked. The road from Hannegine to Bagdad serves as the high road, and is traversed by all the pilgrims journeying from Persia to Mecca. The districts of Difaoul and Chuster lie to the south-east. If the epidemic reach the Lower Tigris, towards Kout-el-mara, it would probably travel along the innumerable canals which cut up this territory, and would devastate Irak-Arabi subinhabited, as happened in 1875, when more than twenty thousand inhabitants perished. Should the plague travel to the port of Basorah, the danger that would result is evident; also the necessity for framing protective measures. Egypt now expects twenty-four hours' surveillance on all importations from this port, and has rigorously prohibited the importation of rags, or of clothes already worn. It is stated that the plague appeared at Bedra two months ago, but it may really date from several months back. There are no precise data, and no one knows. There is one thing certain: the plague is endemic at Irak-Arabi. Since the terrible epidemic of 1830, it has never been quite stamped out any more than in Kurdistan in Persia. There are yearly epidemics of plague in the Persian Kurdistan. It exists also in the Persian Khurasan, probably in Afghanistan, and certainly in a permanent form southwards of the Anglo-Indian Himalayas. Specialists believe that it exists in Yunnan, China. In all the epidemics at Irak-Arabi a normal temperature of 40 Centigrade made it disappear. The International Sanitary Council of Constantinople has taken sanitary measures. Dr. Lobner, of Bagdad, Dr. Saad, of Hannegine, and Pardakli, of Basorah, are on the spot. They tend the plague-stricken, aided by indigenous civil and military medical men. (*British Medical Journal* 1884; 3: 964.)

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