UNDER EMBARGO UNTIL SATURDAY 4 JUNE 2011

SPEECH BY THE RT HON LORD OWEN CH FRCP
TO THE BRITISH ASSOCIATION OF PHYSICIANS OF INDIAN ORIGIN (BAPIO) CONFERENCE ON "NHS IN THE NEXT DECADE", BIRMINGHAM ICC
SATURDAY 4 JUNE 2011

"MEDICAL ETHICS – MEDICAL MARKETS"

How long will it be possible to confidently assert the primacy of the patient in their relationship with the doctor, the nurse and the disease? These are deep questions that the health professions and society needs to ask. How did we arrive at what I have called this 'fatally flawed' Health and Social Care Bill? How can it be that some politicians over the last few years have been able to reach a conclusion that health care is just like another utility? Why is it that they were prepared in this Bill to subject health care to the same rules of competition and cost effectiveness that cover the gas, electricity, transport and water industries? Why do they want the EU to become ever more involved in the NHS through EU competition and procurement laws? Why should anyone have ever thought that private equity and Southern Cross could be the model?

The health care professions have a responsibility more than ever to champion the vocational and ethical elements that make health care very different from the utilities. A responsibility to challenge the politicians to stop endlessly playing around with the structure of the NHS and let it deliver cost savings in a climate of trust and endeavour under the guideline, "Yes to the *internal* market – No to an *external* market in the NHS". What successful private business has performed well by endlessly reorganising the fundamental concepts of their business? Most settle the concepts and then manage. Why in a very different context of health, and where market forces do not and should not override all else, is health reform supposed to necessitate ever more complex legislation? David Cameron was right when he told the country in 2010 that there should be no more top down reorganisation in the NHS.

All professions are part of a worldwide trend towards greater cost effectiveness and accountability and health professionals cannot insulate themselves from this. With various levels of enthusiasm the health professions have accepted living within the framework of an *internal* market since 1988. That *internal* market has led to a number

of worthwhile innovations like general practitioner fundholding and the separation of the provider and the purchaser. But for some eight years some politicians, in all parties, have attempted to merge the *internal* market into an *external* market. **Their aim is explicit in this Bill launched in 2010 – that the NHS will be a state insurance provider not a state deliverer**. This flawed direction of travel reached its zenith with this legislation. Let us instead continue with the *internal* market and existing legislation that allows for a measure of competition but does not, as this Bill does, impose an *external* market. Let us use the discipline of evidential based medicine to let our NHS evolve, improving not through endless legislation but through the application of good practice. Trying to universalise best practice, by encouragement and incentives.

The concepts behind this Bill have but one destination – to move away from the one-on-one doctor/patient relationship that underpinned Hippocratic medicine. For this legendary Greek physician "The art has three factors, the disease, the patient, the physician". Modern medicine has, of course moved on since the Hippocratic era with a team of health professionals who care for patients. But some things are eternal and that is the value of knowing your patient and they knowing their health advisers. In Universities today a modern WHO-endorsed Hippocratic Oath is often said together by all members of the health professions at graduation, whether nurses, physiotherapists, speech therapists, radiographers, dentists or doctors. The oath, called the Geneva Declaration, is more general than the original but it is still a call to a vocation, a call to service, a call to remember that one's first duty is to the patient. Now more than at any time since the NHS came into existence, in 1948, we must reassert a value based NHS. There are also many traditions from different parts of the world that enrich our NHS. Not least from the Indian sub-continent, bringing in not just people, but also a more holistic philosophy, to our NHS.

Sir William Osler, the great physician in the early part of the 20th Century, who lived from 1848-1919, practised in Canada, the US and then at Oxford as Regius Professor of Medicine. He said "the good physician treats the disease but the great physician treats the patient". Let us never forget that simple truth. We are losing the concept of continuous care, knowing our patients from birth, even if we cannot, with today's lifespan, always know them to death.

Modern medicine has brought many improvements but is it really an advance that the average GP spends only 22.5 hours a week with patients according to McKinsey? Is it an advance that so many GP surgeries are closed all weekend? The medical profession cannot have it both ways; work office hours, pay insufficient attention to continuity of care, and then be surprised if politicians do not give sufficient regard to our vocational and ethical claims to be different. The same applies to the EU working hours directive; stronger more principled medical and nursing professionals should have exposed it for what it is - a nonsensical regimentation of professionals who have to be ready to adapt their hours of work and, from time to time, work longer hours following the demands of patients and their illnesses. Call that old-fashioned, if you wish, but once we behave as if office hours are the bottom line, then do not be too surprised if the momentum towards treating health as just another utility grows.

This Bill, conceptually, is flawed and marks the end of the NHS as conceived in 1948. It is almost impossible to amend a flawed concept. The listening exercise has revealed the extent to which patients, not just professionals, fear and reject the conceptual basis for much of this legislation. We are promised substantive amendments to come but even if some emerge Parliamentarians know it is very difficult to amend a Bill of this size and complexity. It is almost impossible to establish coherence by amendment when its basic concepts are to limit Parliament's role and the responsibility for comprehensive health care. A sufficient number of Liberal Democrat MPs can surely be found to vote this Bill down at Report Stage with the official Labour Opposition, some Northern Ireland MPs and Scottish and Welsh Nationalists, where such legislation would not have a hope of getting through their legislatures.

The coalition government, as is obvious to everyone, got this legislation badly wrong. Of course, the mantra of the government: "doing nothing is not an option", is true. But reform is already underway with the existing legislation of 2006 and in countless changes of attitude and approach within the NHS recently introduced. To proceed with legislation spatchcocked together is just an attempt to preserve the face of Ministers in the coalition government. It is this coalition government who produced this Bill without listening. Neither of the parties to the coalition chose to ask the electorate for a mandate for specific health reforms, indeed they implied there would be none. The

House of Commons Health Select Committee, chaired by Stephen Dorrell, on a bipartisan basis, in effect tried to re-write the Bill.

What I have heard back when I attended the so-called 'listening' exercise, now finished, is the NHS would improve more quickly by letting existing legislation evolve, tweaked perhaps by new and shorter minor legislation. To drop this massive legislative spanner into the works, not expected to be law now until 2012, would be a profound error.

Unless the health professions insist that this Bill is withdrawn and combine together to develop a modern social and ethical framework for health care, the best of Hippocratic medicine will die and with it the conceptual underpinning in England of the art of medicine involving the disease, the patient and the physician. Be under no illusion, it will not be allowed to die in Scotland or in Wales. Only in England is the NHS being pushed to conceptual destruction.

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