

Update

Your quarterly bulletin
on legal news and views
from Lanyon Bowdler

The NHS fails to learn from their mistakes

by Kay Kelly

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There is no system in place in the UK for our hospital trusts to learn from each others' mistakes.

Devastating consequences

As a solicitor specialising in the field of clinical negligence, I act on behalf of patients who have suffered serious injury as a result of mistakes or omissions in the management or treatment of their condition/illness. Negligence from our healthcare system is rare but it can have devastating consequences.

We are all aware of the lack of resources facing the NHS and although the number of claims reported has declined over the past two years, the amount paid out in damages and costs for successful clinical negligence claims has increased. It is logical to suggest that if we can decrease the legal costs more can be spent on medical staff, equipment, training etc.

I am aware of the statistics that many patients who are injured, potentially, as a result of medical mistakes do not go to solicitors. Most people feel very uncomfortable at complaining or even thinking of bringing a claim against the NHS. However, sometimes they have to because their lives have been effectively devastated and they are unable to work again or live with chronic pain and disability. Some of my clients feel guilty they are pursuing a claim, but I advise them that clinical negligence claims play a very important role in ensuring that standards in healthcare are maintained, and mistakes are brought to the notice of practitioners so that they are not repeated, and that there is a learning curve to improve care in the long run.

No system in place to learn from each other

Imagine my shock when I discovered recently from a leading Civil Servant, who is involved in introducing the fixed costs scheme for clinical negligence claims, that there is no system whatsoever in the United Kingdom for the various NHS Trusts to learn from each others' mistakes and so prevent further injury to patients.

Collaborative lawyers

The sudden closure of the Hereford, Shropshire and North Staffordshire branch of the relationship counselling charity Relate came as a real surprise and should be lamented.

The Charity which had offices in Shrewsbury and shops across the County ceased to trade at the end of October and over 70 jobs have been lost. Relate was able to offer subsidised counselling and family support.

It is unclear what now is to become of current clients of the service. Whether some other form of counselling can be put in place remains to be seen.

However, all is not lost.

Couples who recognise that their relationships have come to an end, but are striving to keep channels of communication open and seek a way of negotiating an amicable split of their finances and agree arrangements for contact with their children, can secure full support and assistance from the Shropshire Collaborative Lawyers Group.

The Group has just launched a fully revised and updated website, which gives full details of their members, the nature of the collaborative process and how to make contact.

Essentially the Group comprises experienced family solicitors who are committed to resolving relationship breakdown issues in a non-Court environment. The Group work to support couples who want to have a tailor made solution and engage in negotiations on a round table basis.

The Group is able to source family therapists and counsellors to work with couples where necessary alongside resolving the legal aspects of the case.

The Group can also recommend and engage with other experts such as accountants and pension advisers should those issues need to be addressed. The Group's website address is www.shropshirecollaborativelawyers.co.uk.

“Very informative, helpful, good advice.”

Ms E Miller, Oswestry

Drug driving - some progress at last by Stephen Scully



I have previously commented on the new drug driving offence that came into force in March 2015. Like so many others in the Criminal Justice system, we have been hoping for the Sentencing Guidelines Council to release a guideline to avoid the risk of inconsistent sentencing from one day to the next.

‘Guidance’ has now been released as there is still “insufficient reliable data available from the Department for Transport upon which the Sentencing Council can devise a full guideline”. The guidance can be summarised as follows:

Driving or attempting to drive

- No factors increasing seriousness - starting point of Band C Fine and a ban of 12-22 months.
- One or more factors increasing seriousness - starting point Community Order and a ban of 23-28 months
- One or more factors increasing seriousness and one or more aggravating factors that increase seriousness - starting point Custody threshold passed and a ban of 29-36 months
- Having established a starting point, the court should consider additional factors that may make the offence more or less serious (see below)

In charge

- No factors increasing seriousness - starting point of Band B Fine and licence endorsed by 10 penalty points.
- If there are factors increasing seriousness - court should increase sentence based on level of seriousness
- One or more factors increasing seriousness and one or more aggravating features - Community Order threshold likely to be passed and a ban should be considered
- One or more factors increasing seriousness and a greater number of aggravating features - a short custodial sentence of up to 12 weeks imprisonment and a ban should be considered.
- Having established a starting point, the court should consider additional factors that may make the offence more or less serious (see below)

Factors that increase seriousness (this is an exhaustive list)

- Evidence of another specified drug or of alcohol in the body*
- Evidence of an unacceptable standard of driving
- Driving (or in charge of) an LGV, HGV or PSV
- Driving (or in charge of) a vehicle driven for hire or reward

Aggravating factors (non-exhaustive)

- Previous convictions having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence;
- and b) the time that has elapsed since the conviction
- Location e.g. near school
- Carrying passengers
- High level of traffic or pedestrians in the vicinity
- Poor road or weather conditions

Mitigating factors (non-exhaustive)

- No previous convictions or no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Very short distance driven
- Genuine emergency established

One point of interest is that the Council have specified that Cocaine and Benzoylcegonine (BZE) shall be treated as one drug as they both occur in the body as a result of cocaine use rather than poly-drug use. I have recently successfully appealed a case at the Crown Court on behalf of a defendant submitting such an argument prior to release of this guidance.

The Council have also clarified that 6-Monoacetylmorphine and Morphine shall also be treated as one drug as they both occur in the body as a result of heroin use.

Likewise, Diazepam and Temazepam shall be treated as one drug as they also both occur in the body as a result of Temazepam use.

In light of this guidance, should anybody wish to discuss a pending case, or indeed a previous matter where they feel that the sentence was manifestly excessive then they should contact me for a discussion on 0800 652 3371.

“Lanyon Bowdler did exactly what they said they would do.”

Mr C Dean, Ruyton XI Towns

Cohabitation

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The fact that a Google search for the term “common law wife” (or husband) throws up so many respected sites all falling over themselves to disabuse people of the notion that the term has any legal status, is surely a reflection of how much people are still acting in the mistaken belief that they have more rights and protections than they actually do.

The law surrounding the property rights of unmarried couples when their relationship breaks down can be complex and remains hotly-debated. Three recent high-profile cases demonstrate that, even after complex and costly proceedings, the awards being made to successful claimants are quite modest. In fact, the Court of Appeal reduced the award of one claimant from £1.3 millions to £500,000 - a severe blow by anyone's standards but, lurking behind the scenes, there is often a procedural double-whammy in the form of an order that the unsuccessful party pays the other party's legal costs. The inevitable effect of the resulting financial hardship is amplified when there are dependent children.

As ever, prevention is better than cure and careful holistic advice at the outset can prevent a good deal of anguish and expense further down the line if all does not go to plan.



THE NHS FAILS TO LEARN FROM THEIR MISTAKES

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This information appalled me because we see the same incidents of negligence repeated again and again followed by the same defences and yet resulting in an award for damages for the injured patient. Legal costs are effectively driven up by the NHS fighting cases which they have lost in the past. Some examples are failures to carry out the mandatory triple assessment when a woman presents with a breast lump, leading to a long delay in diagnosis and treatment, failures to check blood test results after a patient has been discharged from hospital and ensure that abnormalities are investigated, failures to err on the side of caution and proceed to emergency caesarean section in labour when there are signs of maternal infection and baby in distress, and failures in surgery to check that nicked internal organs are repaired before closing.

Apparently lessons learned from clinical negligence cases may be communicated within a hospital trust but are not shared amongst the other hospital trusts in the UK. So if a mistake injures a patient in Bournemouth the circumstances will not be communicated to Shrewsbury.

The NHS is fundamentally failing the public

We all make mistakes all the time and the important thing is learning from them. This is something we tell our children from the age of infancy. The National Aviation Authority has mandatory occurrence reporting when something goes wrong. Learning from accidents and incidents is part of every safety professional's toolkit and yet our own National Health System has no provision for this learning. It is the way we all improve. Mistakes have the power to turn you into something better than you were before. If there are less mistakes there will be less claims and therefore legal costs will be reduced.

Instead the government is trying to reduce its legal costs bill by introducing fixed costs so that regardless of the amount of work undertaken, a solicitor will only be entitled to a finite sum for their efforts to win a case, and maximise damages for the injured patient.

We abandon many cases

In order to maintain profitability and remain in business, solicitors will have to ensure they work within the costs limits allowed rather than be paid for the work necessary on a case. I am afraid this will mean that it is not likely to be commercial for us to investigate and scrutinise the case in detail and question both lay and expert witnesses thoroughly, in order to obtain the best evidence. My department has been approaching cases like this for many years and consequently we win far more cases than the national average; we have a reputation for maximising damages and 'going the extra mile' for our clients. There are many cases that we abandon following investigation, because we discover the patient has been injured as a result of bad luck rather than negligence. Usually we are acting under a 'no win no fee' agreement and do not get paid for the work we have done in investigating the unsuccessful case.

Dropping cases due to lack of expert evidence is part of our work because although we are Law Society and AvMA panel specialist clinical negligence lawyers, we are not specialised doctors. We really only know whether a case is likely to be successful once we have instructed the correct medical expert, who has the specific intrinsic knowledge to provide an opinion upon what went wrong in a particular case. For example, if a patient suffers paralysis because red flag symptoms were missed indicating urgent spinal surgery, you need to go to a Consultant Neurosurgeon with significant experience in operating in these circumstances.

“Frequent and professional communication along with high quality service.”

Mr G Shuter, Oswestry

COHABITATION

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A couple wishing to move in together need to discuss with a property solicitor how they intend to own the property (ie, in joint names or in the sole name of one of them) and how their shares / investment are best reflected and protected.

It may be appropriate for a family law solicitor to become involved to advise on a cohabitation agreement and any other issues created by the individual family dynamic, such as step-parent Parental Responsibility.

The private client team should also be consulted to ensure that appropriate wills are in place for the couple in the event of the worst happening. This is especially important where there are children or if both parties have children from previous relationships. Private client will often work closely with the family law team to ensure that issues such as guardianship are addressed in the will.

All of this can appear unwieldy and potentially expensive. But at Lanyon Bowdler we pride ourselves on working together closely and drawing upon our individual expertise to bring about rounded advice and guidance, with as little duplication of work and costs as possible - surely a sound investment against the costs, uncertainty and heartache of litigation in the future?

THE NHS FAILS TO LEARN FROM THEIR MISTAKES

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The fact the government is putting its energy into effectively cutting legal fees available to injured patients, rather than firstly ensuring they learn lessons from the mistakes that are made time and time again, strikes me as a complete misunderstanding of the key issue causing the injuries in the first place.

Safety is a cheap and effective insurance policy

I have acted for a 40 year old mother of four children who was running a family business with her husband and was erroneously prescribed a huge overdose of high dose steroids. These effectively left her disabled and in chronic pain, requiring care and therapies for the remainder of her life.

I have acted for children who have sustained permanent brain injury because their deliveries were not managed properly and practitioners did not err on the side of safety.

I have acted for the families of many patients who have died due to negligent surgery, failure to recognise and treat sepsis, long delays in diagnosing cancer and even IV overdose of paracetamol in hospital leading to liver and multi organ failure.

Proud of our NHS

These claimants and their families were not after a “fast buck” by being litigious but their lives had been devastated by the injuries they shouldn’t have sustained.

As proud as we are of our NHS, we all know improvements can be made. However, that will be far more difficult if we take away the opportunity of injured patients bringing claims, which will compensate them for their injuries, and at the same time, try and ensure the same mistakes are not made again.

This shocking fact is obviously not publicised but I strongly feel that the general public should know about the failure of the NHS to learn from their mistakes between hospital trusts. Real change could be achieved if a system is put in place so that medical staff throughout the country are made aware of what can go wrong so that it doesn’t happen again.

Solicitors are not popular and our grumbles are easily dismissed. However, this information affects everybody. I personally could live with losing my job if care in the NHS is improved.

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