The true cost of Clinical Negligence?

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The true cost of clinical negligence?

- To a patient: pain, suffering, loss of amenity. Loss of life, independence, employment, quality of life, loved ones.

- To a Trust: Financial, respect and reputation

- To a Doctor (private or NHS): reputation, stress, increased insurance premiums, need for re-training

- To the NHS: a huge financial burden
One patient’s experience

+ Daisy - 24 years old, admitted for birth second child

+ Her own mother had suddenly died 4 weeks previously

+ Elective LSCS

+ Spinal anaesthesia contaminated by chlorhexidine

+ Rendered paraplegic
The cost to her

- Mental: delayed diagnosis of cause, and denial of liability

- Social: relationship broke down, lost custody of newborn son

- Independence: 24 hour dependent on (family provided) care until appropriate equipment/housing given to enable her to manage some aspects of daily living herself

- Dignity: inadequate housing, no access to bathroom or bedroom, left to soil herself in her wheelchair which was too wide for non-adapted doorways

- Financial: loss of employment, reliant on benefit provision
The cost to the NHS

- 1.45 million (2011) on 60% liability basis
- Re-training for theatre staff
- Reputation and public confidence
Number of clinical negligence claims

+ In 2006/7 there were 773,089 reported adverse incidents (National Reporting and Learning System NRLS) and 5,426 reported claims.

+ In 2013/14 there were 1,637,260 of which more than 10,500 resulted in severe harm or death, and 11,945 reported claims.

+ An increase of reported incidents of over 112% over 7 years.

+ The ratio of reported incidents to claims is however steady at around 0.007%.

Number of clinical negligence claims received in 2014/15 by specialty and value:

- 14% Orthopaedic Surgery – value 7%
- 12% Casualty/A & E – value 8%
- 11% General Surgery – value 4%
- 10% Obstetrics – value 41%
- 6% Gynaecology – value 2%
- 5% General Medicine – value 3%
- 3% Radiology – value 2%
- 3% Urology (data not given)
- 2% Gastroenterology (data not given)
- 2% Paediatrics – value 7%

(NHSLA annual accounts 2014/5, nb 54 smaller speciality groups amalgamated into ‘other’ at 32% of claims with 26% value)
NHSLA: financial picture

+ The NHS paid out £1.1bn to settle legal claims in 2014 compared to £633,325 in 2007/8

+ Highlights the huge cost to the NHS of medical accidents and on any measure, this shows that something is going wrong

+ NHSLA report suggests a third of spend is paid to the legal profession, most to claimant lawyers.

+ Is that an accurate picture?
Number of notified claims to the NHSLA significantly increased over past 7 years

- 2007/8 – 5,354
- 2014/5 – 11,497

Why?
- Ambulance chasers?
- Litigious society?
- Rising numbers of medical accidents?
- The public are now much more forthcoming about medical errors than they once were

Ref figures NHSLA Report and Accounts relevant years
The litigation process

- The law attempts to put the injured person back in the position they would have been in but for the negligence

- Burden of proof on the Claimant

- CN claims are difficult to prove, no reasonable doctor…

- Reliant on expert evidence on breach and causation, review of lengthy medical records and statements

- Disparity of fees Claimant/Defendant and in house provision, eg Legal Aid
Legal Costs

+ Have claimant legal costs risen disproportionately? No

+ 2007/8 claimants costs paid by NHSLA £108,626
+ 2014/5 claimants costs paid by NHSLA £259,252

+ Number of cases closed (settled or lost at trial) in 2014/5 was 246% higher than in 2007/8, but total all costs rose only by 188%

+ On analysis, average cost per case closed:
  + 2008: £94,823
  + 2014: £72,455

+ Ref A Ritchie QC ‘Should fixed fees be introduced to restrain lawyers who represent injured families?’ 1/9/15
Claimant clinical negligence lawyers experience

The conduct of the NHSLA has a profound impact on the level of costs.

Legal costs including court fees and expert witness costs are made much higher by Defendants failing to comply with pre-action protocols, contesting claims which should be admitted and delaying settlement to shortly before trial.

One large CN claimant firm reported the costs it received amounted to only eight per cent of the compensation secured for clients in 2014 (Telegraph 11/07/15).
Legal Costs – the reality

The majority of costs are not subject to a full assessment: they are agreed by the NHSLA.

Simple damages to costs ratios ignore the fact that low value claims can often involve complex issues. An infant death case, for example, will attract modest damages but may require a significant degree of expert evidence to prove.

There is a ‘check and balance’ on legal costs in the form of detailed assessment which ensures that losing parties do not have to pay unreasonable or disproportionate costs. Where high costs have been awarded, a judge has considered that such costs were justified.
The true cost of clinical incidents?

The Secretary of State for Health estimates there are 12,000 avoidable hospital deaths every year.

More than 10,000 serious incidents are reported to NHS England, out of a total of 1.4 million mostly low or no-harm incidents annually.

There were 338 recorded ‘never events’ (serious, largely preventable patient safety incidents that should not occur if available preventative measures have been implemented such as wrong site surgery) during 2013/4.

NHS England received 174,82 written complaints.

Why?

+ The processes for investigating and learning from incidents are complicated, take far too long and are preoccupied with blame or avoiding financial liability.

+ The quality of most investigations falls far below what most patients, their families and NHS staff are entitled to expect.

+ No single body or organisation responsible and accountable for the quality of clinical investigations or ensuring lessons learned drive improvement in safety across the NHS.

+ For CQC to implement…
Equipment error 1

+ Neil – diabetic

+ Died after being injected with syringes containing no insulin

+ Syringes filled with saline

+ Deprived of insulin for 13 hours, diabetic ketoacidosis

+ Multiple organ failure, death

+ Consider ‘value’ of claim if Neil working, and with/without dependants
Equipment Error 2

+ Luigi 43 year old father of 3, the third born post his death

+ Knee operation as part of a clinical trial to test new techniques for knee cartilage problems

+ Surgeon adapted a spray gun to close the wound in the knee, the technique caused an air embolism and cardiac arrest

+ Not in accordance with manufacturer’s guidelines, patient not informed of adaptations to device
Medication errors

Research evidence indicates the following medication error rates in hospital:

- Prescribing error in 7% of prescription items
- In General Practice, 5% of prescription errors, of which 0.18% were serious errors, which translates to a prediction of 1.8 million serious prescribing errors per annum
- In hospitals 0.02-2.27% of dispensed medicines
- In hospitals 3-8% medicine administration errors
A study conducted in two large hospitals in Merseyside to determine the current burden of adverse drug reactions found 1,820 patients admitted over 6 months with 1,225 for ADR’s with the ADR being the direct cause for admission in 80% cases.

72% of admissions judged avoidable.

Median bed stay 8 days

Accounting for 4% bed capacity

Projected annual cost of these admissions to NHS was £466 million

Back to Daisy

+ Periodical payments funded adaptation and move to suitable accommodation

+ She remained within her local community

+ Received an adapted vehicle and training to use this independently with transfers

+ Re-established contact with her infant son, and with an appropriate care package in place was able to parent him

+ Referred for rehabilitation to facilitate a return to the workplace
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