

HCUK Clinical Negligence Update for Clinicians & Managers 2023

The claimant position and expectations from the process

Lisa O'Dwyer

Director Medico Legal Services

Action against Medical Accidents (AvMA)

Why do patient's complain? The evidence

- A Review of the NHS Hospitals Complaints system, putting patients back in the picture: Clwyd Hart report. October 2013
- NHS Resolution Behavioural Insights Team Report. August 2017
- Evidence from AvMA's Client forms over the last 4 months
- Report on deaths of people with mental ill health, a learning disability or autism. INQUEST April 2023

Clwyd Hart Report – October 2013

Why do patient's complain?

- Lack of information
- Lack of compassion
- Lack of dignity and care given to patients
- Poor attitudes of clinical and non clinical staff
- Lack of resources (basic supplies and staff)

Behavioural Insight Team

Patient motivation to make a claim: Aug 2017

- No explanation given to them
- No apology or no sincere apology
- No confidence that an investigation into the incident had been carried out
- No action taken to prevent the same incident happening again
- No compassion
- NHS Staff reactions lacked professionalism and attitudes inappropriate
- Dissatisfaction with the complaints handling process

AvMA

Review of client forms January 2023:

“I have made a complaint about the level of care and how serious the incidents are even after a meeting these incidents have carried on” January 23

“I don’t want other women to go through this...”

“I am powerless to get any sort of response unless I hire a lawyer...”

“help us navigate the hospital system in order to: 1. understand what has happened 2. Help the appropriate NHS teams address their procedural failings to ensure this doesn’t happen to other people. 3. Help me understand why the hospital/NHS senior staff have not proactively discussed these issues with us”

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Review of client forms February 2023:

- “I require a full detailed explanation as to what happened, why the NHS protocols were not followed...I intend to take this matter to the highest level”
- “...during this time we have raised multiple concerns about her care and treatment none of which have been explained or resolved satisfactorily. We have reached a point where we need legal support to assist us with our concerns for negligence”

AvMA

Review of client forms – other quotes:

- “I feel even contacting the hospital is too much for me to deal with alone on behalf of my daughter...I really need support with this serious breach in terms of protecting future patients...”
- “The family can’t move on and are overwhelmed with grief. Some answers may help them start to heal. Also, we need to stop this happening to someone else...any negligence found will not bring him back...nearly 2 years have gone by but still no answer”
- “I feel completely let down by the services due to their lack of communication...I have complained to both gp and hospital and received responses but I am still not happy with the outcomes”

Why do patients litigate?

Last resort: Many feel driven to litigate to get answers

Distrust: The failure to be open and truthful from the outset

Accountability: There is a need for mistakes to be recognised and for individuals to take ownership of the mistake

Denials are challenging

Anger: at being misled, not being heard, having to take on a large government organisation like NHS is intimidating

Outraged: At the lack of effort, explanation, communication, compassion, trust, apology. Being made to feel like trouble because a complaint has been made. Sense of being patronised. Indifference

Why do patients litigate?

Quotes in support

“...if I got a proper a proper apology of just saying “hands up we’ve got this wrong” ...I would have left it there...” (BIT report)

“If they had turned around in the beginning within the first six months: yes we got that wrong, we are sorry about it, this is what we have done to change things...I would have closed it all down, because I would have got what I wanted (BIT report)

“I raised complaints but felt I was just seen as trouble...” (INQUEST report on deaths of people with mental health, learning disability or autism – April 2023)

- “It was just shock after shock, after shock...trying to navigate all this stuff you don’t know” (INQUEST report on deaths of people with mental health, learning disability or autism – April 2023)

What do patients expect from the litigation process?

- Pre and post representation expectations
- Expectations differ according to circumstance, the nature of person involved
- Stressful
- Fearful
- Slow
- Uncertain
- Hope for justice, need for redress: Answers and change. Need to right wrongs
- Overwhelming

Tips to avoid issues

The six “C”s

1. Care
2. Compassion
3. Competence
4. Communication
5. Courage
6. Commitment