An audit of litigation costs in four accident and emergency departments

D C Hulbert, W L Riddle, P M Longstaff, J S Belstead, M W Beckett

Abstract

Objective—To carry out an audit of cases of litigation relating to accident and emergency departments to determine the outcome and costs to the hospitals involved.

Methods—The experience of four similar hospitals was examined over a three year period. All cases which required at least an exchange of solicitors' letters were included.

Results—In total 32 claims were made, of which 17 were settled by solicitors' letters, six cases proceeded to court and were lost by the hospital involved, and in nine cases an out-of-court settlement was reached. The costs to the hospitals ranged from £180 to £30 000, with an average cost of £4080. Over the course of the audit the number of cases of litigation remained constant at three per year, while the number of complaints rose threefold to 150. The majority of successful claims concerned missed fractures.

Conclusions—Litigation is uncommon and litigation costs reasonable. Given the frequency of missed fractures as a reason for a successful claim, early x ray reporting probably reduces the risk of litigation. (J Accid Emerg Med 1996;13:400-401)

Key terms: litigation; accident and emergency; outcomes; costs

Ealing Hospital,
Uxbridge Road,
Southall, Middlesex,
United Kingdom
D C Hulbert
W L Riddle
P M Longstaff

Ashford Hospital,
London Road,
Ashford, Middlesex,
United Kingdom
J S Belstead

West Middlesex
University Hospital,
Twickenham Road,
Isleworth, Middlesex,
United Kingdom
M W Beckett

Correspondence to:
D C Hulbert, Senior
Registrar, Department of
Accident and Emergency,
West Middlesex University
Hospital, Isleworth,
Middlesex TW7 6AF.

Accepted for publication
4 June 1996

Accident and emergency departments have a large and varied workload, often carried out by poorly supervised junior staff. They are often seen as areas at high risk of litigation.¹ We examined recent experience in four West London departments.

Methods

Over a three year period, between 1990 and 1993, we examined all cases of litigation brought against the departments to determine the outcome and costs to the hospitals involved. All cases which required at least an exchange of solicitors' letters were included.

We investigated those cases which involved the accident and emergency departments in isolation, thus excluding all claims where patients had been treated or admitted by other teams.

There are three possible outcomes to litigation:

(1) The case can be dropped following an exchange of letters between the solicitors representing the hospital and the plaintiff, and

usually also a disclosure of notes. In these cases both sides only pay their own solicitors and no settlement is made.

(2) The case can proceed to court if the hospital feels that there is a case worth defending. In this instance the losing side is usually asked to pay the combined legal fees in addition to any settlement conferred.

(3) There can be an out-of-court settlement if both parties agree. Legally this does not mean that the hospital is agreeing to any degree of liability. In these cases the hospital pays the agreed settlement but both sides pay their own legal fees.

The hospitals involved were those contributing to the North West London Audit Group made up of the consultant and middle grade staff from four neighbouring accident and emergency departments. These are four similar departments serving a combined population of 800 000 people and having a total of 200 000 new patients each year.

Each department is led by one consultant with one senior house officer per 7000 new patients seen.

Results

The results are shown in tables 1 and 2. Over three years there were 32 cases, which cost the hospitals between £180 and £10 000 in legal fees, with an average of £1700. The cost of settlements made by the hospitals ranged from zero to £30 000, with an average of £4500. It is important to remember that in a number of these cases the plaintiff—that is, the patient—has paid legal fees in addition those being paid by the hospitals.

GROUP 1

There were 17 cases which were settled after an exchange of letters, the opinion being that there were insufficient grounds to proceed further. The range of expenditure by the hospital was between £180 and £400, with an average of £290. This is the sum spent by the hospital on legal fees, with a similar sum presumably paid to the patients' lawyers.

GROUP 2

There were six cases which proceeded to court, as agreement could not be reached between the two parties. In each case the judgement went against the hospital. The range of legal fees paid by the hospital was between £4000 and £10 000, with an average of £6000.

There was a range of settlements between £500 and £30 000 paid by the hospital, with an average of £9000.

Table 1 Cost of legal fees

Group	No of cases	Range	Average	Total
1 No settlement	17	£180-400	£290	£4930
2 Court settlement	6	£4000-10000	£6000	£36000
3 Out-of-court settlement	9	£500-4000	£1500	£13500
Total	32			£54430

Table 2 Cost of settlements

Group	No of cases	Range	Average	Total
1 No settlement	17			
2 Court settlement	6	£500-30000	£9000	£54000
3 Out-of-court settlement	9	£120-7500	£2500	£22500
Total	32			£76500

GROUP 3

There were nine cases where it was felt to be inappropriate to proceed to court, the plaintiff accepting an out-of-court settlement from the hospital.

The range of legal fees paid by the hospitals was between £500 and £4000, with an average of £1500. Presumably a similar fee was paid by the plaintiff.

The settlements paid by the hospitals ranged from £120 to £7500, with an average settlement of £2500.

In total, legal fees cost the hospitals £54 430, while the cost of settlements was £76 500. Thus a total of £130 930 was spent by the hospitals. Divided between four hospitals over three years, this is approximately equivalent to a sum of £11 000 per hospital per year. Three of the hospitals had a similar number of claims made against them, the fourth had considerably fewer.

Discussion

It is interesting to note the breakdown of cases (table 3), the majority of claims involving bony injuries, usually missed fractures. Guly also found that the most common missed diagnosis was fracture.² Obstetric and gynaecological cases make up the second group.

Other claims are uncommon, but do occur; for example, the missed perforated duodenal ulcer which caused a hypovolaemic cardiac arrest and eventual death. In fact, claims concerning sudden death are rare, as are those concerning medical conditions. This is in contrast to the United States of America, where studies show that missed cases of myocardial infarction, for example, are responsible for a significant number of claims.³

In the hospital with the lowest number of claims against it, the consultant in charge of the department reviews all *x* rays within 24 hours of their being taken. Berman *et al* found that 64% of hospitals they surveyed had *x* rays reported within 48 hours by a radiologist, and 35% by an accident and emergency consultant.⁴ This was not the case in the three other hospitals of our survey. Since so many

Table 3 Breakdown of cases by type

Specialty	Percent of claims
Orthopaedics	75
Obstetrics & gynaecology	20
Other	5

cases involve missed fractures, prompt *x* ray reporting is an effective strategy.

It is of interest that Guly showed that an *x* ray audit identifies 70% of all doctors' errors.²

It may seem surprising that litigation is not more common in view of the large number of complaints and the high profile of the complaints procedure. During the three year period of our study the number of cases against the hospitals remained constant, at three cases per department per year, but complaints increased threefold. The latter mainly related to waiting time and staff attitudes rather than to specific problems with medical management. A previous study by our group showed that poor staff communication is the most significant feature in the majority of complaints.

In conclusion we have shown that litigation against our departments is rare and that litigation costs are reasonable, at approximately £11 000 per hospital per year, an average of £4000 per case. These cases are at the lower end of the cost spectrum for damages in medical negligence litigation. The average cost of damages paid in the United Kingdom between 1990 and 1993 was £15-20 000 (S Payne, personal communication). As is clear from these relatively low legal costs, the cases were heard in the county courts rather than in the high court, where the average costs per day to each side is £10 000.

We have shown that 42% of the hospital's outlay is spent in legal fees, and that it is very much in the interest of the hospital to negotiate an out-of-court settlement.

In the United Kingdom overall, less than 0.1% of cases of medical negligence proceed to a court hearing; in this series, more than 20% of the cases went to court and all were lost by the hospital involved. This could be avoided by better case selection, which would produce a major financial saving in litigation costs. It is important to have expert advice at as early a stage as possible.

Given the frequency of missed fractures as a reason for a successful claim, early *x* ray reporting would probably reduce the risk of litigation.

- Staniforth P. Litigation in trauma. *Injury* 1990;21:321-4.
- Guly HR. Missed diagnoses in accident and emergency departments. *Injury* 1984;15:403-6.
- Rusnak RA, Stair TO, Hansen K, Fastow JS. Litigation against the emergency physician: common features in cases of missed myocardial infarction. *Ann Emerg Med* 1989;18:1029-34.
- Berman L, de Lacey G, Craig O. A survey of accident and emergency: results and implications. *Clin Radiol* 1985;36:483-4.