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Urological litigation in the UK National Health Service (NHS): an analysis of 14 years of successful claims

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OBJECTIVES

- To present a summary of the collected data on urological litigation within the UK National Health Service (NHS).
- Knowledge of the main areas of litigation is essential for maintaining good clinical practice as well as risk management procedures in any specialty.

MATERIALS AND METHODS

- Details of all claims closed with indemnity payment pertaining to the specialty of urology as practiced by urologists, general surgeons and paediatric surgeons was obtained from the NHS Litigation Authority (NHSLA) for the years since its creation in 1995 to 2009.
- The data was then classified and analysed.

RESULTS

- In all, 493 cases were closed with indemnity payment with a total of £20 508 686.18 paid. The average payment per claim was £41 599.77.
- Most of the claims were related to non-operative events (232), followed by postoperative events (168) and intraoperative events (92).
- The most common reason for non-operative-related claims was failure to diagnose/treat cancer (69), perforation/organ injury (38) was the highest intraoperative-related claim and a forgotten ureteric stent (23) was the most frequent postoperative-related claim.
- The five most commonly implicated procedures were ureteroscopy/ureteric stenting (45), transurethral resection of the prostate (30), nephrectomy (26), vasectomy (19) and urethral catheterisation (15).

What's known on the subject? and What does the study add?
There are no previous studies for urology in the UK but several studies from physician insurance groups in North America. There is anecdotal evidence of common reasons for litigation, e.g. missed testicular torsion.

This is the first analysis of the claims data compiled by the NHS litigation authority for the speciality of urology; it provides realistic insight into the areas and procedures of the speciality most commonly affected by litigation.

The article identifies areas of high risk, both clinical and medico-legal.

CONCLUSIONS

- The present study once again emphasizes the importance of thorough clinical assessment, record keeping and follow-up as well as informed consent and good communication with patients.
- Recognising the areas of highest risk and improving practice should limit future claims.

KEYWORDS

urological litigation, National Health Service (NHS), malpractice

INTRODUCTION

It is well known that surgical care is associated with iatrogenic injury and resulting patient harm. Over recent years this has increasingly led to medico-legal claims against NHS organisations with a significant financial impact [1]. In the UK several notable cases have been covered in the media and have brought medical error into the public eye. One of the most high profile of these involved Urologists in a case of wrong site nephrectomy [2]. The impact of this has been an increasing emphasis on clinical guidelines and risk management procedures.

Robust risk management procedures can improve the outcome for patients as well as limit litigation against surgeons. To understand which areas of practice should be targeted it is essential to understand the areas that are most prone to error and litigation data provides a possible resource for this. In the UK most claims against individual Hospital Trusts are dealt with by the NHS Litigation Authority (NHSLA) [3]. It holds the details of all claims, both clinical and non-clinical, from April 1995 onwards. During the interval 1995 to 2002, some trusts handled smaller claims by themselves but it is estimated that >90% of claims in this period reached the database.

There have not to our knowledge been any published systematic studies on litigation in the specialty of Urology in the UK NHS. The aim of the present study was determine the areas in Urology most prone to successful litigation claims and so provide a guide to where risk management procedures may need to be improved.

MATERIALS AND METHODS

The details of all successful claims (closed with indemnity payment) pertaining to the specialty of Urology as practiced by Urologists, General surgeons and Paediatric surgeons from 1995 to 2009 were obtained

Year	Number of claims	Total paid, £	Average paid, £
1995/1996	1	27 000	*27 000*
1996/1997	3	216 928.96	*72 309.65*
1997/1998	1	15 000	*15,000*
1998/1999	3	76 000	*25 333.33*
1999/2000	7	197 500	*28 214.29*
2000/2001	22	830 905	*37 768.45*
2001/2002	56	3 361 451.43	*60 025.92*
2002/2003	71	4 395 450.12	*61 907.75*
2003/2004	60	1 555 282.59	*25 921.38*
2004/2005	58	1 820 921.37	*31 395.20*
2005/2006	75	2 742 699.64	*36 569.33*
2006/2007	56	1 734 625.40	*30 975.45*
2007/2008	46	2 320 324.03	*50 441.43*
2008/2009	*34*	*1 214 596.66*	*35 723.43*

TABLE 1
Claims and damages paid by year

Category	Sub-category	*N*
Poor communication		4
Consent related		24
Failure to follow-up		14
Medication error		7
Nursing-care related		19
Unnecessary treatment		2
Failure to diagnose/treat:	stones	13
	renal impairment	7
	infection	11
	obstructed kidney/ hydronephrosis	4
	LUTS/BPH	4
	incontinence	3
	pain	2
	torsion	21
	trauma	2
	other	7
	not specified	17
Failure to diagnose/treat cancer:	bladder	25
	kidney	14
	penile	4
	prostate	15
	testicle	6
	not specified	5
Total		232

TABLE 2
Non-operative-related claims

from the NHSLA in the form of a data spreadsheet. The Data included the cost paid in damages and a short description of the nature of the claim. Each claim was then individually assessed and evaluated by a single investigator (N.I.O.) to ascertain the nature of the misadventure. All claims were classified as follows: (i) non-operative event (ii) intraoperative event and (iii) postoperative event. The claims were then classified further into subgroups as well as by procedure. All claims not arising from error involving the aforementioned specialties were excluded from the analysis. In addition, claims with missing descriptions were excluded.

RESULTS

Between the years 1995 to 2009 493 claims were closed with indemnity payment with an average of 35 successful claims per year (Table 1). In all, £20 508 686.18 was paid out to claimants and the average payment per claim was £41 599.77.

CLAIMS BY CATEGORY (Tables 2–4)

Most claims were related to non-operative events (232, 47.06%), followed by postoperative events (168, 34.08%) and intraoperative events (92, 18.66%).

The most common reason for non-operative-related claims was failure to diagnose/treat cancer (69), perforation/organ injury (38) was the highest intraoperative-related claim and a forgotten ureteric stent (23) was the most frequent postoperative-related claim.

CLAIMS BY PROCEDURE (Tables 5,6)

The five most commonly implicated procedures were ureteroscopy/ureteric stenting (45), TURP (30), nephrectomy (26), urethral catheterisation (15) and vasectomy (15).

DISCUSSION

The present study presents the first comprehensive collated information on successful medico-legal claims in urology published in the UK. Successful claims were specifically investigated as these are the claims that are more likely to actually represent clinical negligence. Most of these are settled out of court, mostly by the NHSLA. However, successful claims represent only the 'tip of the iceberg' of all claims against Hospital Trusts, many are discontinued because the claimant is advised that they are unlikely to win their case and others are unsuccessful after reaching court [4].

The largest category for dissatisfaction with care was non-operative. In this group most claims are related to failing to diagnose or treat both benign and malignant disease. Other claims in this category included those related to consenting, lost follow-up and communication. The second largest category was postoperative-related claims and within this the two most common reasons were a forgotten ureteric stent and retained surgical material. Intraoperative-related claims represent the smallest group with the most common misadventure being perforation/ organ injury. The most commonly implicated

TABLE 3 Intraoperative-related claims

Category	Sub-category	*N*
Unnecessary surgery		20
Wrong procedure		3
Wrong site		9
Bleeding/vascular injury		8
Burn (diathermy, chemical)		7
Equipment failure		2
Perforation/injury:	bowel	9
	bladder	11
	prostate	1
	kidney	2
	urethra	4
	ureter	11
Not specified		5
Total		92

TABLE 4 Postoperative-related claims

Category	*N*
Bleeding	8
Cardio-respiratory	6
Pain	7
Compartment syndrome	3
Cosmesis	8
Impotence/sexual dysfunction	3
Failed vasectomy	5
Fistula	3
Forgotten stent	23
Haematoma	6
Hernia	1
Incontinence	16
Infection	9
Infertility	1
Ischaemia	11
Neurological	8
Renal impairment	2
Retained surgical material	23
Retention	1
Stricture	2
Thrombo-embolism	1
Re-torsion	1
Not specified	20
Total	168

TABLE 5 Claims by procedure

Category (*n*)	Procedure	Number
Peno-scrotal (48)	Circumcision	8
	Epididymal cyst excision	4
	Sperm granuloma excision	1
	Hydrocele repair	2
	Varicocele repair	5
	Orchidectomy	9
	Orchidopexy	3
	Vasectomy	19
	Not specified	1
Reconstructive (20)	Gender surgery	2
	Phalloplasty	3
	Hypospadias	3
	Urethral diverticulum	1
	Peyronie's surgery	7
	Incontinence surgery	4
Lower urinary tract (48)	Bladder neck incision	2
	TURP	30
	TURBT	2
	Flexible cystoscopy	1
	Rigid cystoscopy	6
	Urethral dilatation	3
	Optical urethrotomy	2
	Not specified	2
Upper urinary tract (49)	Ureteroscopic	23
	Ureteric stenting	22
	Percutaneous nephrolithotomy	4
Open/laparoscopic (50)	Adrenelectomy	1
	Ileo-cystoplasty	3
	Cystectomy	7
	Radical prostatectomy	7
	Urinary diversion	1
	Pyeloplasty	2
	Nephrectomy	26
	Pyelolithotomy	1
	Not specified	2
Miscellaneous (26)	Urethral catheter	15
	Suprapubic catheter	6
	Nephrostomy	1
	Extracorporeal shockwave lithotripsy	2
	Intravesical chemotherapy	1
	TRUS biopsy	1
Not specified		40
Total		281

types of procedure were 'lower urinary tract', 'upper urinary tract' and 'open/laparoscopic' with a fairly even spread between the groups. These were followed by 'peno-scrotal', 'miscellaneous' and 'reconstructive' groups.

Many of the published reports about urological litigation come from physician insurance groups in the USA. One of the largest of these groups is the Physicians Insurance Association of America (PIAA). This is a group of companies, which between them provide insurance protection to >60% of private practitioners in the USA, and write ≈46% of the total industry premium. The PIAA's summary data of claims for urology from 1985–2007 showed a total of 5 577 claims with $285 million paid during the 22-year study period [5]. The average paid per claim was $174 245 which, using exchange rates at the time of writing, is more than double that in the present study. The two most common categories for claims were diagnostic errors and improper performance findings comparable with the present study where the most frequent reason was failure to

TABLE 6 Top three reasons for claims for the top five implicated procedures

Procedure	Reason for claim, *n*
Ureteroscopy/ stenting	Forgotten stent, 22
	Ureteric injury, 10
	Wrong site surgery, 3
TURP	Incontinence, 11
	Perforation, 5
	Bleeding/cardiac/not specified, all 2
Nephrectomy	Unnecessary surgery (benign histology), 11(9)
	Bleeding, 6
	Wrong site surgery/ NOS, all 2
Urethral catheterization	Trauma, 3
	Perforation, 3
	Bleeding, 2
Vasectomy	Failure, 5
	Haematoma, 5
	Ischaemia/chronic pain, all 2

diagnose/treat both benign and malignant conditions.

The present study has several limitations. Although only successful claims were studied, evidence indicates that in only 2% of cases with a poor outcome a claim is filed [6]. In the remaining cases patients do not take further action, adverse events are undetected and complaints are mediated and resolved by non-legal bodies such as patient advice and liaison service. Therefore this study may not provide a true representation of adverse outcomes but rather the factors associated with clinical negligence claims [7]. Another limitation is that NHSLA data are compiled primarily as a claims management tool rather than for risk management or research purposes [8]. This has resulted in a lack of depth of the case descriptions given in some cases and this accounts for a large proportion of the claims that were classified in the 'Not specified' category. The information held on the NHSLA database did not permit evaluation of patient demographics or doctors' characteristics such as grade and sub-specialisation. These factors could be important and may influence negligence claims.

Nevertheless, the present results serve the purpose of revealing common reasons for litigation and is largely in agreement with the anecdotal evidence [9]. Missed testicular torsion, post-TURP incontinence and vasectomy failure are all well represented as causes of litigation. The forgotten ureteric stent has previously been well described [10] with investigators implementing paper [11] as well as electronic stent registries [12]. Wrong-site surgery is never far from the attention of the surgical community as well as wider media. The introduction of mandatory preoperative marking as part of the WHO surgical checklist has attempted to eliminate this potentially catastrophic error. A surprising number of claims were for unnecessary surgery, this being the top reason for claims after nephrectomy where the specimen showed benign histology. This has clear implications for ensuring that patients are fully warned about this possibility before any cancer resection.

In conclusion the present study represents the first analysis of the claims data compiled by the NHSLA for the speciality of Urology. The results have provided a realistic insight into the areas and procedures of the speciality most commonly affected by litigation. This is important as it helps identify areas of high risk, both clinical and medico-legal. The data were not robust enough to derive further solid clinical conclusions and any future studies of claims data require a vast improvement in the quality of reporting. Nevertheless, the present study re-emphasises the importance of thorough clinical assessment, record keeping, follow-up, informed consent and communication with patients.

CONFLICT OF INTEREST

None declared.

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Abbreviations: **NHSLA**, NHS Litigation Authority; **PIAA**, Physicians Insurance Association of America.