

# 0.2% of medical negligence claims are successful

It is authoritatively shown that around 10 to 11 % of hospital admissions each year end in an 'adverse outcome' due to a medical incident. The British Medical Journal and the Public Accounts Committee respectively present figures for 850,000 and 974,000 patient safety incidents happening each year. The BMJ estimated that fifty percent of actual incidents were preventable, while the PAC found up to forty percent of 'near misses' go unreported.

In this week's Sunday Times, Rod Liddle quoted the Royal College of Physicians figure of 72,000 deaths in this country each year caused by "doctors and their mistakes".

[http://www.timesonline.co.uk/tol/comment/columnists/rod\\_liddle/article6962822.ece](http://www.timesonline.co.uk/tol/comment/columnists/rod_liddle/article6962822.ece)

Figures provided by the NHS Litigation Authority suggest the number of claims remains steady at around 5300 annually and, according to a Legal Services Commission survey, roughly one third of claims are successful. Crunching the figures therefore of the 850,000 "adverse events", only 0.6% of medical accident victims bother to lodge a claim, and only 0.2% of medical accident victims are successful.

As a leading medical negligence practice, Morrish Solicitors routinely acts for victims whose lives have been turned inside out as a result of 'patient safety incidents' and the fact is that, for the victim, the consequences are often dire, as shown in the tragic story of Rosemary MacFarlane.

Reports that are currently being drip-fed to the media deliberately fail to show the full story on the complexity of the conditional fee regime for medical negligence claims. The subsequent outrage appears reasonable but is misguided, including recent reports in The Times [http://www.timesonline.co.uk/tol/comment/leading\\_article/article6963411.ece](http://www.timesonline.co.uk/tol/comment/leading_article/article6963411.ece) and [http://www.timesonline.co.uk/tol/life\\_and\\_style/health/article6961087.ece](http://www.timesonline.co.uk/tol/life_and_style/health/article6961087.ece)

When the conditional fee regime was first introduced, many solicitors felt it was unsuitable for medical negligence cases which are complex and high risk. Legal aid funding of medical negligence claims is being effectively withdrawn while more user friendly insurance policies are being introduced, and as a result the NHS LA is faced with higher claimant fees. The widely quoted solicitors' costs include fees paid to specialist medical experts. This is a sizeable chunk of costs and is paid to doctors (not lawyers).

The high risk factor of medical negligence claims is one of the main reasons for higher fees. A higher proportion of cases are investigated and dropped with no fees being earned. For instance, from a basket of 10 enquiries, seven may be declined immediately and only three investigated. Of those three, one might be dropped following investigation, and two proceeded with where one is won and one is lost. So, where fees are concerned, the winning case effectively funds the other nine. This is inherent in the system's design, and is how it currently works. Until Jackson report concludes its investigations, , it is difficult to know whether he will take this into account in his analysis or recommendations. But it is important to understand that costs of a single successful claim impacts on many other claims, and the access to the justice for those victims.

Much discussion has focussed on legal costs of the victim. What of the defendant's legal costs? Health authorities and their insurers have deep pockets to defend a claim, and the victim has a right to fight their claim with equal tenacity. If a cap is proposed on claimant

costs, what of the defendant?

Nearly all medical negligence victims want to ensure the same thing does not happen again to someone else. The estimated rates in under-reporting of medical accidents and 'patient safety incidents' are truly alarming. If these incidents remain unreported, how can the medical staff continue to learn from their mistakes? Surely the relevant health authority should show more willingness to learn from mistakes (by reporting them rather than repeating them) and focus on risk prevention.

Creating media campaigns about lawyer costs does not change the fact that medical accidents – preventable medical accidents at that – happen every day. The lawyers are faced with the task of obtaining justice for the victim who has been seriously injured or killed through no fault of their own. This is a real person, with family, friends, a life that needs to be rectified and a right to equality of arms before the law. Newly invented phrases, such as "adverse outcome" and "iatrogenic deaths" and "patient safety incidents" come into the