Midwifery 30 (2014) e121–e130

Contents lists available at ScienceDirect

Midwifery

journal homepage: www.elsevier.com/midw

A phenomenological study of the effects of clinical negligence litigation on midwives in England: The personal perspective

Judith H. Robertson, PhD, LLB (Hons) (Qualified Midwife)*,
Ann M. Thomson, BA, MSc, RM, MTD (Professor (Emerita) of Midwifery, Emeritus Editor of Midwifery)

University of Manchester, UK

ARTICLE INFO

Article history:
Received 2 August 2013
Received in revised form
21 November 2013
Accepted 3 December 2013

Keywords:
Midwives
Litigation
Negligence
Qualitative study

ABSTRACT

Objective: to explore how midwives' personal involvement in clinical negligence litigation affects their emotional and psychological well-being.
Design: descriptive phenomenological study using semi-structured interviews.
Setting: in-depth interviews were conducted in participants' homes or at their place of work and focused on participants' experience of litigation. Participants were recruited from various regions of England.
Participants: 22 National Health Service (NHS) midwives who had been alleged negligent.
Findings: unfamiliarity with the legal process when writing statements, attending case conferences and being a witness in court provoked significant stress for midwives. This was exacerbated by the prolonged nature of maternity claims. Support ranged from good to inadequate. Participants who no longer worked for the defendant Trust felt unsupported. Stress could manifest as physical and mental ill-health. Some midwives internalised the allegations of negligence believing their whole career had become worthless. Previous knowledge of the legal process ameliorated the experience. Midwives also exhibited anger and resentment when litigation concluded and some took years to heal from the experience.
Key conclusions: midwives come from a caring and relational paradigm. When interfacing with the adversarial and contentious paradigm of tort law, midwives can abreact and suffer emotional, physical and psychological harm. Support for midwives experiencing litigation must be improved. Implications for practice: Understanding the effects of personal involvement in litigation is important in order to improve the quality of support for this group of midwives. It will also aid development of targeted education for undergraduate, post-graduate and in-service midwives. In the longer term it may help policy makers when considering reform of clinical negligence litigation and NHS employers to structure support mechanisms for staff involved.

Introduction

In this paper we provide an in-depth account of what it is like for National Health Service (NHS) midwives in England to be personally involved in clinical negligence litigation. Midwives in England provide support, care and advice throughout pregnancy, labour and the postpartum period, conduct births on their own responsibility, and provide care for the newborn baby and infant (International Confederation of Midwives, 2011). Government policy promotes midwives as the lead professional for women experiencing uncomplicated childbirth (Department of Health (DH), 1993; DH, 2007). This responsibility means the midwife alone is legally liable if injury has occurred to a woman or child through negligence and the midwife has assumed responsibility and not sought 'assistance when such assistance was necessary' (DH, 1993, p. 39).

Clinical negligence claims in England are civil claims and are governed by the law of tort. A claimant, for example a woman or child, who alleges a midwife has been negligent in providing care, must show that the midwife's practice fell below a reasonable and responsible standard of care (Bolam v Friern Hospital Management Committee, 1957). This standard is determined by asking expert opinion of those who possess the same professional skills. In Bolitho v City and Hackney Health Authority (1997) the House of Lords added the qualification that in rare instances, judges would be entitled to reject expert opinion if, after logical analysis, it cannot be supported. In essence the midwife must be found at '*Fault*' [sic] (Mason and Laurie, 2006, p. 306). If negligence is found and proved

* Correspondence to: Care of Ann Thomson, Professor (Emerita) of Midwifery, School of Nursing, Midwifery and Social Work, University of Manchester, Jean McFarlane Building, University Place, Oxford Road, Manchester, UK, M13 9PL.
E-mail addresses: j.robertson11@btinternet.com (J.H. Robertson), ann.thomson@manchester.ac.uk (A.M. Thomson).

0266-6138/$ - see front matter © 2013 Elsevier Ltd. All rights reserved.
http://dx.doi.org/10.1016/j.midw.2013.12.003

to have caused the injury, then an award of compensation is made to the claimant. In England the legal defendant which pays the compensation is an NHS Trust, yet it is the NHS midwife whose practice comes under legal scrutiny.

Litigation is increasing. New clinical negligence claims received by the NHS Litigation Authority (NHSLA) were 5470 in 2007/08 increasing to 9143 in 2011/12 (NHSLA, 2012a). In a 10 year period up to March 2010 the NHS paid out £3.1 billion in costs and compensation (NHSLA, 2012b). Maternity claims are acknowledged as particularly problematic for the NHS, in comparison to other specialties, because they are the highest in value and second highest in number of claims (NHSLA, 2012b). They are also adversarial and protracted in nature, particularly if the injury involves neurological impairment (National Audit Office (NAO), 2001; Symon, 2002; DH, 2003; Redfern and Norton, 2007). If successful the compensation awarded is usually millions of pounds because of the need for a lifetime of care (DH, 2003). Data requested by the first author from the NHSLA revealed that from 1 April 1995 until 8 July 2008 there was an average of 21 clinical negligence claims a year involving NHS midwives in England and Wales. Thus the nature and magnitude of maternity claims make it highly relevant that midwives, midwifery managers and those tasked with supporting midwives through litigation, understand the implications for midwives involved.

Although this study is the first to focus exclusively on the effects of litigation on midwives in England, a few researchers have described the emotional and psychological effects on doctors with survey methods predominating. Bark et al. (1997) surveyed consultants and senior registrars ($n=769$ responses) in acute hospitals in the south of England and found litigation prompted anger, distress and feeling personally attacked. Of those with personal experience of litigation ($n=288$), 19 per cent had considered leaving medicine, support from managers was poor, with embittered comments about unfair criticism, judgmental attitudes and lack of understanding of the doctors' needs. Nash et al. (2004) reviewed studies in this area and reported doctors' involvement in litigation resulted in extreme stress, depression, anger, insomnia and infrequently alcohol abuse, physical illness such as gastrointestinal symptoms and suicidal ideation with some citing litigation as their most stressful life experience. A landmark study by Symon (1998a) surveyed the perceptions and attitudes regarding litigation of obstetricians ($n=211$ responses) and, for the first time, midwives ($n=1790$ responses) in Scotland and two areas of England. A twentieth of midwives ($n=80$) had experienced personal involvement in litigation and a significantly larger proportion of these were based in England (Symon, 1998a). Comments made on the survey revealed these midwives felt demoralised, stressed, isolated with a general lack of support, particularly from midwifery managers 'quick to point the finger of blame' (Symon, 1998a, p. 22). However, a survey method is unable to explore personal experiences in-depth (Robson, 1993). Follow up interviews with 17 midwife respondents contained an unspecified number with personal involvement in litigation who described isolation, self-doubt, and distress at receiving legal letters at home, anger when aggressively cross-examined in court and emotional strain when waiting for a court date (Symon, 1998b).

Since Symon's (1998a) study the effects of litigation on midwives has been a neglected area of study in the United Kingdom. McCool et al. (2007) surveyed American College of Nurse-Midwives ($n=600$), approximately a quarter ($n=152$) had been named in a law suit. Their study focused on the incidence and outcomes of law suits and not the emotional and psychological effects. However, some insight was gained; midwives named in a law suit reported anxiety when making legal statements and 8 per cent of the 152 sought formal counselling. Lawyers were judged the most supportive (78.2 per cent) followed by midwifery and professional colleagues. An informal enquiry by senior colleagues of American perinatal nurses with personal involvement in litigation called for more scientific research (McCaffrey et al., 2008). When examined by lawyers about their legal statement, nurses became stressed manifesting as nightmares, fear, self-doubt, physical symptoms, anger and feelings of isolation; legal process education and support from employers was judged inadequate (McCaffrey et al., 2008). Earlier, Johnson and Wroblewski (1989) noticed that nurses unfamiliar with the legal process interpreted litigation as a personal attack which lowered their self-esteem. Hood et al. (2010) interviewed 16 midwives who gave evidence to a legal review of services in an Australian maternity hospital. While this was not litigation, midwives were unprepared for the intensity of the legal enquiry. Midwives felt threatened, intimidated, powerless, and anxious, overwhelmed and treated as guilty until proven innocent. Midwives perceived lack of support from the administration. Some stated they had been clinically depressed and one midwife admitted to suicidal ideation.

The deleterious effects of litigation on both patients and clinicians have prompted calls for reform (Kennedy, 2001) but to date suggestions for a no fault scheme (DH, 2003) have been rejected and the government has failed to implement a redress scheme, providing an alternative to litigation for low value claims, outlined in the NHS Redress Act 2006.

From our review of the literature there appeared to be no study which had explored the complexity of the lived experience of midwives in England with personal involvement in litigation using a descriptive phenomenological approach. How this affects midwives, whose role is promoted as caring and relational (DH, 1993; Kirkham, 2000; Shallow, 2003), is important regarding the well-being of the midwifery workforce. In this paper the psychological, emotional and physical effects of litigation on midwives are considered. Effects on midwifery practice will be the subject of a subsequent paper.

Methods

Our aim was to communicate to midwives, employers and policy makers what it is like to be a midwife who is alleged negligent in a clinical negligence claim. Therefore we chose Husserl's (1964, 1977, 1981) descriptive phenomenology as our theoretical perspective which seeks truth by describing what appears to the consciousness of the 'experiencer' (Moran, 2000, p. 4) as broadly and faithfully as possible. This results in a deeper understanding of a phenomenon, which is present in the life-world (every-day taken for granted world) of participants (Todres, 2005). An apodictic description is achieved through intuition. Intuition grasps insights into a phenomenon which are 'self-exhibiting' and 'self-giving' (Husserl, 1977, p. 57) rather than assembling insight through interpretation which uses our pre-existing knowledge. In our study the phenomenon *being alleged negligent* is described.

Ethical approval was obtained from a Multi-Centre Research Ethics Committee prior to recruitment to ensure that the 'dignity, rights, safety and well-being of participants' were safeguarded (DH, 2005, p. 7). NHS Research Governance (DH, 2005) approval was obtained prior to interview for the 18 participants who were currently employed by an NHS Trust. The population for this study (Parahoo, 2006) was midwives who were currently or previously employed by the NHS in England. Using purposive sampling (Todres, 2005) we sought midwives with the lived experience of the phenomenon, *being alleged negligent* in a clinical negligence claim. Experiences included writing a legal statement, attending case conferences with barristers and expert witnesses, and for two