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NHSLA litigation in hip fractures: Lessons learnt from NHSLA data

Joseph Ring*, Christopher Talbot, Charlotte Cross, Kunal Hinduja

Pennie Acute Hospital Trust, North Manchester General Hospital, Delaunays Rd, Manchester M8 5RB, United Kingdom

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ABSTRACT

Hip fractures are a major cause of trauma related death, usually occurring in vulnerable elderly patients. There are an estimated 70,000 hip fractures in the UK per year with numbers set to rise. The estimated annual cost to the healthcare economy is in the region of £2 billion. A 17-year review examining litigation related to hip fractures was undertaken.

Under a freedom of information request, data was obtained relating to all orthopaedic claims made to the NHS Litigation Authority (NHSLA) between 1995 and 2012. Data was filtered to identify cases involving hip fractures examining litigation trends related to this specific area.

10263 NHSLA orthopaedic cases were identified, of which 13.3% (n = 1364) cases related to the hip and femur. Hip fractures made up 16.7% (n = 229). The total cost of hip fracture litigation was over £7 million with an average cost per case of £32,700. The commonest reasons for litigation were diagnostic errors (30.6%), issues with care (24.9%) alleged incompetent surgery (15.7%) and development of pressure sores (5.7%).

This study highlights the main causes of litigation in patients sustaining hip fractures, with diagnosis in the emergency department and ward presenting a significant problem. In addition, the data identifies a range of care related issues, as well as several surgical factors and highlights the importance of pressure area care. We discuss these and make suggestions on how to improve practice in this area with the aim of improving patient care and reducing litigation.

Introduction

Worldwide, the total number of hip fractures is expected to surpass 6 million by the year 2050 [1] and in the UK alone 70 000 to 75 000 hip fractures occur annually with an approximate cost of £2 billion. Demographic projections indicate that the UK incidence will rise to 101 000 by 2020 due to our ageing population [1].

Hip fractures substantially increase the risk of death and major morbidity in the elderly and it is in this population which they most commonly occur. These risks are especially high among nursing home residents, particularly men, patients over age ninety, those with cognitive impairment and other comorbidities, individuals treated non-operatively, and those who cannot ambulate independently [2,3]. In-hospital mortality rates range from approximately 1 to 10 percent depending upon the location and patient characteristics, but rates are typically higher in men. One-year mortality rates have ranged from 12 to 37 percent, but are declining secondary to the introduction of the National Institute of Health and Clinical Excellence (NICE) guidelines[4] and the National Hip Fracture Database (NHFD) [5]. The NHFD reported a 30-day mortality rate of 8.02% for 2013, a reduction from 8.1% in 2012. In real terms 300 fewer people died at 30 days in 2013 [5].

For several years improving care and outcomes for adult hip fractures has been a key focus point, with the introduction of clinical guidelines [4,6], and the 2010 Best Practice Tariff (BPT) [7]. When looking to improve care in a specific patient population it is often most useful to look at prior mistakes which are often highlighted by previous litigation.

The National Health Service Litigation Authority (NHSLA) was set up in the United Kingdom with the duty of indemnifying legal claims. It has been managing all clinical negligence claims since 2002 and holds information on claims against the NHS. Compensation awarded to orthopaedic patients has been increasing steadily despite intense focus on patient safety over recent years. Litigation has been examined generally in orthopaedic practice [8] and specifically in the subspecialties of spine [9], lower limb arthroplasty [10], and shoulder and elbow [11].

* Corresponding author at: Department of Orthopaedics, Pennie Acute Hospital Trust, North Manchester General Hospital, Delaunays Rd, Manchester M8 5RB, United Kingdom.
E-mail address: drjow@hotmail.com (J. Ring).

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The purpose of this study was to assess the reasons for litigation surrounding hip fractures, and thus provide recommendations to health-care professionals involved in the diagnosis and management of hip fractures.

Methods

A request was made to the NHSLA for data from the financial years 1995–2012 (17 years) relating to all orthopaedic claims, using the Freedom of Information Act (2000). The data contained information on the year of the alleged incident, a description of the claim, NHSLA classification of claim type, information relating to claim closure, and any costs incurred and damages paid. All claims were assigned a body region. These claims were filtered to those related specifically to hip and proximal femoral fractures and then classified according to specific claim type. Any ambiguous areas were classified as other/unspecified.

The NHSLA gives a claim type based on their own system however this produces over 100 different categories. To simplify our analysis of the data and clarity of presentation we used broad categories for each claim (Table 1). The Department of Health (DOH) criteria were used for classification of 'never events' [13].

Results

There were 10273 Trauma and Orthopaedic NHSLA claims in this 17-year period. There were 1364 cases related to the hip and femur. Hip Fractures made up 16.7% (n = 229) of these. The total cost of hip fracture litigation was over £7 million for this period with an average cost per case of £32,700. The breakdown of all types of claim and relative costs are shown in Table 1.

Missed or delayed diagnosis was the commonest reason for litigation in this area, accounting for 30.6% of cases; an average cost of £35,000 per case. Missing or having a delay in the diagnosis of a hip fracture accounted for 85.7% of these diagnostic errors. The remaining claims were related to issues with diagnosis of complications such as infections, non-union, *peri*-prosthetic fracture, avascular necrosis, and pathological fractures (Table 2). Moreover, the highest individual successful claimant pay out was in this category. The commonest location for diagnostic errors was the Emergency Department (ED) accounting for 42.9% (n = 30) of cases. The second most common area was on the wards in hospitals, accounting for 12.9% (n = 9) of claims (Table 3).

Overall, the second most common reason for claims made was poor patient care accounting for 24.9% of claims with an average cost of £27,300. Furthermore, 5.7% of all claims were specifically related to pressure sores, with an average cost of £73,200.

The third most common reason for claims was alleged incompetent surgery, making up 15.7% of claims, with an average cost of £37,800. Dynamic hip screw fixation was the commonest procedure resulting in a claim (19.4%), followed by hemiarthroplasty (16.7%) and cannulated screw fixation (11.1%). (Table 4)

Seven never events were identified; wrong site surgery accounting 1.7% (n = 4) and retained material, 1.3% (n = 3). The average cost being £17,600 and £98,800 for wrong site surgery and retained material claims respectively. Three patients had the incorrect hip operated on following a hip fracture; one patient had a removal of metal work from the incorrect hip. Of the three claims submitted relating to retained material following hip fracture surgery, two resulted in a successful pay out to the claimant. These included; one for a retained screw following fracture fixation and one for a retained washer after metal work removal. All claims made for wrong site surgery, and equipment failure led to all claimants receiving a successful pay out (Table 1). All the wrong site surgery claims in this group occurred prior to June 2008 as did two of the retained material claims.

Discussion

Litigation in the NHS has been extensively reported [3–8,10,11]. No studies have made comment on litigation and causation in the hip fracture patient group. This study reports the overall pay-out for litigation costs in patients with hip fractures was £7 million. When considering hip fractures, we must remember that they most often occur in an elderly population often with pre-existing medical co-morbidities, following low energy falls. Hip fractures in patients less than 50 years old occur in around 3% of cases and are usually associated with higher level trauma [12].

The most common reason for claims was delayed, missed or incorrect diagnosis; accounting for 85.7% (n = 60) of claims. These findings are similar to previous reports reviewing injuries sustained in other body regions [11,14,15]. Furthermore, this injury was most commonly missed in the ED followed by inpatient wards. (Table 3) No single cause was identified, however, failure to perform appropriate imaging, failure to review imaging and failure to identify fractures on imaging were reasons identified. About 2% of all hip fractures are not diagnosed by simple radiographs [16,17]. This coupled with the stressful environment of, and lack of readily available additional imaging in the ED, may explain the reason for missed, delayed or incorrect diagnosis. The data does not specify the grade of doctor involved nor does it highlight how much orthopaedic input occurred in each case. Therefore, we cannot conclude that experience is associated with the failure to detect these injuries.

Table 1
Claim categories and representative contributions to litigation showing percentages contributions and associated costs (NB all cost figures are rounded to the nearest £100).

Claim Type	Total of settled cases% (n)	% claims lost (n)	Total Cost/£	Average cost/£	Highest Cost/£
Diagnosis	30.6(70)	38.6(27)	2,452,000	35,000	332,300
Care	24.9(57)	90.0(53)	1,553,900	27,300	154,600
Incompetent	15.7(36)	38.9(14)	1,360,800	37,800	153,400
Other	6.6(15)	46.7(7)	391,000	26,100	199,600
Mismanagement	6.1(14)	42.9(6)	255,000	18,200	76,400
Pressure Sore	5.7(13)	92.3(12)	913,100	73,200	231,300
Infection	3.9(9)	22.2(2)	171,800	19,100	129,400
Wrong site	1.7(4)	100.0(4)	70,400	17,600	24,400
Retained	1.3(3)	66.7(2)	296,300	98,800	236,400
Clot	1.3(3)	33.3(1)	5000	1700	5000
Neurovascular	0.87(2)	0.0(0)	–	–	–
Equipment	0.4(1)	100.0(1)	15,500	15,500	15,500
Consent	0.4(1)	0.0 (0)	–	–	–
Injury/burn	0.4(1)	0.0 (0)	–	–	–