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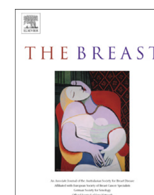

Original article

Trends in malpractice litigation in relation to the delivery of breast care in the National Health Service

Jenna L. Morgan*, Rajesh Vijh

Department of General Surgery, Scunthorpe General Hospital, Cliff Gardens, Scunthorpe DN15 7HB, UK

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ABSTRACT

Malpractice litigation involving the delivery of breast care has been evaluated in the United States of America (USA) but is a relatively new area of study in the United Kingdom (UK). We sought to study and evaluate the emerging trends in litigation claims in relation to breast disease with the National Health Service Litigation Authority (NHSLA) over the last 15 years, up to December 2010.

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Introduction

In the United States of America (USA), delayed diagnosis of breast cancer is an important cause of medical malpractice claims,[1] and according to findings of the Physicians Insurance Association of America (PIAA), breast cancer has been the second highest cause of indemnity payments by insurance companies in the USA.[2] Malpractice litigation related to the delivery of breast care in the UK is a relatively new area of study. All claims within the National Health Service (NHS) are handled by the National Health Service Litigation Authority (NHSLA). Analyses of NHSLA data on claims pertaining to breast care over the period of April 1995–September 2005 have previously been described.[3] We sought to study and evaluate the emerging trends in litigation claims in relation to breast disease with the NHSLA over the last 15 years, up to December 2010.

Method

A database concerning litigation claims involving breast care issues from April 1995 to September 2005 has previously been obtained from the NHSLA. We subsequently obtained a database for claims that were initiated between September 2005 and December 2010 in order to identify any emerging trends over the last five years.

The information provided included the date of the claim, description of the incident forming the basis for claim (including the cause, injury, location and speciality involved), total expenses incurred (legal expenses and damages) and the status of claim. In instances where more than one factor was identified as the cause, the option to record a second cause on the NHSLA database was available only after 1 April 2004.

The database from which this information is taken was designed primarily as a claims management tool, rather than for research purposes and as such, the coding used was not 100% consistent. However, as the database included brief details for each claim, it was possible to identify the cause and nature of the claims in a majority of cases. The information was then tabulated and the cause of claim, injury sustained, speciality involved, expense incurred and the claim status were analysed.

Results

Between April 1995 and December 2010, a total of 1322 claims were recorded, of which 22 did not pertain to breast disease and were therefore excluded. There were a total of 1300 documented litigation claims pertaining to breast care in the NHS between April 1995 and December 2010, and these were organised historically

* Corresponding author. Present address: University of Sheffield Medical School, EU25 (E Floor), Royal Hallamshire Hospital, Surgical Oncology, Glossop Road, Sheffield S10 2JF, UK. Tel.: +44 07738257127.
E-mail addresses: j.morgan@sheffield.ac.uk, jenna.morgan@doctors.org.uk (J.L. Morgan).

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Table 1
Reasons for seeking breast care between 1996 and 2010.

Reasons for seeking breast care	*n*	%
Indeterminate	114	
Investigation/management for suspected or proven breast malignancy	**915**	**77**
Final pathology:		
Malignant	797	87
Reconstruction	*117*	*15*
Benign	118	13
Cosmetic surgery in non-pathological breasts	**227**	**19**
Investigation/management for benign breast disease	**44**	**4**

according to 5-year time periods; there were 426 claims recorded between 1995 and 2000; 369 between 2001 and 2005; and 505 between 2006 and 2010.

As there is considerable overlap between benign, malignant and cosmetic breast problems, claims could not be grouped as such. An erroneously diagnosed malignant lesion would still fall into the benign group and vice versa. Similarly, a poor cosmetic result from any cancer operation would not be grouped in cosmetic breast operations, even though the reason for litigation is a poor cosmetic result.

Hence a classification based on the reason for seeking breast care was devised and these were considered according to three categories:

- Investigations/management of suspected or proven breast cancer
- Investigations/management of benign breast disease
- Cosmetic surgery in non-pathological breasts

The reason for seeking breast care could be determined in 1186 (91%) claims and was indeterminable in 114 (9%) cases (see Table 1). In the 915 claims for investigations/management for suspected or proven breast malignancy, the final pathology was benign in 13% and malignant in 87% of cases. Fifty of the claims in the latter group were for poor cosmetic results, with most of these (88%) occurring in the last five years, compared to only 12% in the previous 10 years. Additionally, 117 (15%) of the claims in patients with malignant disease were related to reconstructive surgery undertaken after treatment for malignant disease; with over half of these (57%) occurring within the last five years.

A total of 79 reasons for these 1186 claims were noted; we have considered the top three reasons for breast litigation. The three most common reasons were delay in diagnosis 552 (47%), followed by poor cosmetic result in 299 (25%) and wrong diagnosis in 98 cases (8%). Table 2 shows how the frequency of these three reasons for claiming have changed over time.

Claims for delayed diagnosis/treatment have remained relatively constant at 49% in the last five years, compared to 46% over the previous 10 years. The majority of claims where the primary reason for claiming was delay in diagnosis were against General Surgeons in 226 (41%) cases, followed by Radiologists (141; 26%) cases, Oncologists (106; 19%) cases and the remaining 14% were against multiple “other” specialities. In all except 4%, the delay in diagnosis was related to malignant or metastatic disease.

Table 2
Changes in the top three commonest reasons for claims.

	Before 2005 %	After 2005 %	Total *n* (%)
Delay in diagnosis	46	49	552 (47)
Poor cosmetic result	22	29	299 (25)
Wrong diagnosis	10	5	98 (8)

Table 3
Speciality against which claims were made.

	Before 2005 %	After 2005 %	Total *n* (%)
General surgery	43	50	506 (44%)
Plastic surgery	18	20	218 (19%)
Radiology	12	15	172 (15%)
Oncology	11	7	150 (13%)
Histology	6	3	59 (5%)
Other	10	5	48 (4%)

A poor cosmetic result was the primary reason for claim in 299 (25%) cases overall, and this has increased from 22% in the period 1995–2005, to 29% in the period 2006–2010. The distribution of specialities against which the claim was made in this area has also changed. Between 1995 and 2005 the bulk of claims for poor cosmetic results were against Plastic Surgeons (57%) followed by General Surgeons (36%). However between 2006 and 2010, these claims were against General Surgeons (48%) more often than Plastic Surgeons (32%). The reason for performing surgery in this category has also changed over recent years; previously the majority of the claims against Plastic Surgeons were for benign disease (90%) and only 10% for malignant disease. Over the last five years this has changed, so that 65% were related to malignant disease with only 35% relating to benign disease. General Surgeons were more likely to be defendants in malignant cases (61%) compared to benign cases (39%) and this has remained relatively constant over the three time periods.

In 98 (8%) cases, the primary reason for the claim was wrong diagnosis. This has decreased over time from 10% in the period 1995–2005 to 5% in the period 2006–2010. The eventual diagnosis was benign in 74% and malignant in 26%. The speciality involved was Histopathology in 39% of claims; General Surgery in 33%; Oncology in 7%; and Radiology in 3%.

Overall, the speciality against whom the claim was made was available in 1153 (97%) with a total of 21 specialities involved. Five specialities were involved in 1090 (92%) of the cases (see Table 3).

The total expenses incurred by the NHSLA for each claim were retrieved and analysed (see Table 4). Overall, the highest total expense paid out was £634,194 with an average of £36,047 per claim. Table 4 also compares the trends in average expenses incurred over the three time periods.

Discussion

Medical litigation in relation to breast care constituted 1300 claims received by the NHSLA under the clinical negligence scheme for trusts from April 1995 to December 2010. This represents about 2.5% of the total clinical claims (average 3550 claims every year) received by the NHSLA since April 1995.[4]

Earlier studies have mostly studied data from breast cancer patients; this study includes all breast care related patients where a claim for negligence was sought in the NHS.

Table 4
Costs incurred by NHSLA in breast care litigation.

	1995–2000	2000–2005	2005–2010
No payment made	60	76	87
Expenses incurred	320	132	135
Less than 100k	293	126	129
100k–200k	30	2	5
200k–300k	5	0	1
300k–400k	1	1	0
Over 600K	1	1	0
Mean pay-out	£44,171	£22,787	£29,758
Median pay-out	£27,139	£12,500	£17,358
Total expenses	£14,134,840	£3,007,899	£4,017,384

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