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Learning from lawsuits: Ten-years of NHS litigation authority claims against 11 surgical specialities in England

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ABSTRACT

Introduction: Medico-legal claims are a drain on NHS resources and promote defensive practice. The litigious burden of surgery in England has not been previously described. This paper describes trends over ten years of claims made against the NHS across 11 surgical specialities.

Materials and methods: Data were requested for all claims received by the NHS Litigation Authority (NHSLA) from 2004 to 2014. Surgical specialities included cardiothoracic, general, neurosurgery, obstetric, oral and maxillofacial (OMFS), orthopaedic, otorhinolaryngology, paediatric, plastic, urology and vascular surgery. A literature review of peer-reviewed publications was performed with search terms 'NHSLA' and 'Surgery'.

Results: The NHS paid out approximately £1.5 billion across 11 surgical specialities from 2004 to 2014. Orthopaedic, obstetric and general surgery received the largest number of claims per year, and paediatric surgery the least. The mean time from registration of claim with the NHSLA to settlement was 25.5 months (range 17.8 months–35 months). Neurosurgery was responsible for the highest average amount paid per claim, and OMFS the lowest. Failure/delay in treatment and/or diagnosis and failure to warn/adequately consent were the three leading types of claim. 806 never events were successfully claimed for during the ten-year period.

Discussion and conclusion: Sharing information and good practice should be a priority for surgical professionals. Lessons learnt from medico-legal claims are transferrable in strategic planning. This pan-speciality report has demonstrated considerable burden on the NHS and should promote improvement in practice on an individual level in addition to providing systems based recommendations to NHS and international organisations.

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Introduction

Most people will have surgery at some point in their lives. In England, 4.6 million hospital admissions lead to surgical care every year.¹ The NHS completed 64% more operations in 2013/14 compared to 2003/4.² The total expenditure on surgery by the National Health Service (NHS) is difficult to quantify but the Royal College of Surgeons of England (RCS) estimate that the total operating theatre costs in England amount to approximately £4.5 billion annually – 4.3% of the total NHS budget.¹

Medico-legal claims against NHS organisations have increased over the last thirty years, with significant financial impact.³ Healthcare workers and authorities have a duty to provide a reasonable standard of care. If a patient (or their representative) feel that this has been breached, they may pursue legal claims for compensation. In order for a claim to succeed the patient must prove four things: that they were owed a duty of care, the duty was breached, the breach caused or contributed to damage and there was loss or damage as a consequence.⁴

The National Health Service Litigation Authority (NHSLA) was established in 1995.⁵ Prior to this there was a fragmented approach to handling claims with individual clinicians and health authorities liable for claims made against them. The creation of the NHSLA by the government reflected a radical shift in thinking about the value of data provided by claimants. Traditionally viewed as little more than a drain on NHS resources among policy makers, a new focus on interrogating and making use of data provided by claims emerged.⁶

Previous reports of NHSLA claims have been speciality-focussed, and there has been no broad overview, across all surgical specialities. This is the first report of data describing claims relating to surgical conditions across specialities in the NHS. It aims to demonstrate the trend of medico-legal claims made by surgical healthcare users to help improve outcome and patient safety.

Materials and methods

Data were requested from the NHSLA under the Freedom of Information Act for claims and settlements across 11 surgical specialities from 2004 to 2014. The specialities included were the ten under the auspices of the RCS: cardiothoracic, general, neurosurgery, oral and maxillofacial (OMFS), orthopaedic, otorhinolaryngology (ENT), paediatric, plastic, urology and vascular surgery, plus obstetric surgery. Claims were recorded relating to the year the incident occurred, rather than the year the claim was registered with the NHSLA. Information was provided on: total number of claims; successful claims; unsuccessful claims; claims currently open; sum of damages paid to claimant; sum of defence and claimant costs paid; claim type and time to settlement.

Sub-analysis was carried out for total claims (open and closed), closed claims only (successful and unsuccessful) and for surgical sub-speciality over the ten-year period. Costs were analysed and the total amount paid out to claimants in each speciality was compared to the average amount received per

claim. The three leading successfully closed claims, and never events as primary code were analysed in addition to the time to settlement per speciality.

A literature review of peer-reviewed full text publications was performed using the PubMed database with search terms 'NHSLA' and 'Surgery' [All Fields], in July 2015. Papers were included if their methodology employed the NHSLA database for surgical claims. Eighteen studies were identified during the initial search, of which one was excluded on initial methodological screening. This paper was excluded because it analysed a regional claims database, not the NHSLA. An additional ten papers were identified for inclusion following backwards reference searching.

Results

A total of 31,697 claims were made over the ten-year period, of which 13,661 (43.1%) were successful; 8433 (26.6%) unsuccessful and 9603 (30.3%) open at time of data request. The number of claims per year is shown in Fig. 1. The number of claims increased in 2007 and continued increasing until 2011, where the total number of claims from 2010 to 11 was 4044. From 2011, the total number of claims decreased to 1391 in 2013–14. Additionally, from 2011/12–14, the number of open claims exceeded the number of settled claims (Fig. 1).

Open claims were excluded from the remainder of the analysis. When analysing closed claims over time, the proportion of successful claims to the claimant decreases (Fig. 2). In 2004–05, 59.7% of claims were successful; in 2007–08, 67.5% were successful and in 2013–14, 26.3% were successful. Approximately half (54%, range 50%–59%) of claims across all specialities were successful over the ten-year period.

Claims per surgical sub-speciality

The total number of closed claims per speciality per year was analysed (Fig. 3). The claim date relates to the year the event happened rather than the year the claim was registered. Orthopaedic, obstetric and general surgery consistently received the largest number of claims per year compared with the remaining eight specialities. Paediatric surgery received the least number of claims per year over the ten-year period, with the remaining specialities all receiving less than 160 claims

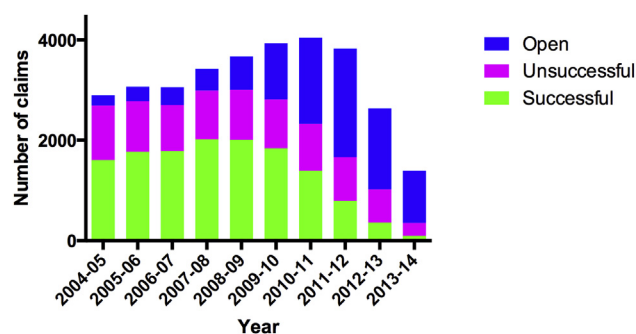


Fig. 1 – The number of claims per year across surgical specialities that were successful, unsuccessful and remain open (2004–14).

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