

Fact or Fear



Chris Dean looks at the rise and fall of dento-legal claims

It is now a matter of fact for every professional man and woman in this country, that negligence claims are part of working life. After all, every solicitor, surveyor, accountant in the land, has a professional indemnity insurance policy certificate tucked away in his or her desk draw, and will need to dust it off, and rely on it from time to time to ward off the inevitable critical client.

Dental professionals are no different in their exposure to risk – engaging in technically challenging precision work in a hostile environment, with demanding patients, while constantly battling time and financial constraints. Life in dental practice can feel like a constant struggle, with the added worry of the threat of litigation if things go wrong. But is life really like this for dentists?

An analysis of personal injury litigation for the year to March 2004, published in a report by Datamonitor, noted that the number of claims made in respect of all medical and dental claims made in 2004 had decreased by more than 10 per cent, compared with 2003, to just over 7,200 clinical claims in total for the year.

It appears that clinical claims are generally falling in number, but what about claims made specifically against dentists? Rupert Hoppenbrouwers, head the Dental Defence Union, and a leading authority in defendant dental negligence work, reportedly said: 'The trend seems to be that the number of claims against our members is not increasing'. This ties in

with my own experience at the Dental Law Partnership over the last year, where we have seen a similar steadying in the number of new claims brought by patients against their dentists.

By contrast with the reduction in the numbers of clinical claims reported by Datamonitor in its 2004 study, it found that the average value of each personal injury claim had risen by 15%. Again, this trend in personal injury claims matches that reported by the Dental Defence Union in dental claims. Rupert Hoppenbrouwers again, reports: "The costs of dental negligence claims are rising well above the rate of inflation". In his view, claims brought against dentists are 'generally well thought out and have a more realistic chance of succeeding'.

At the Dental Law Partnership we, too, have found that the size of the damages that are awarded to clients have increased. It is our view that the increase in higher value dental claims reflects the detailed analysis of dental and legal aspects of potential claims, which is now carried out by solicitors at an early stage, and the recognition of the severity of the injuries that the patient has suffered. Such injuries, particularly when multiple tooth loss is involved, may require patients to undergo extensive remedial treatment, often involving a consideration of implants replacement.

This type of increased value claim may be helpfully illustrated by a recent case where

the client was assisted by the Dental Law Partnership and the damages award reached £30,000, exclusive of costs.

The claim concerned Mrs X, a lady in her 40s, who unfortunately lost seven of her teeth due to untreated periodontal disease over a 13-year period and suffered innumerable episodes of infection treated with repeated courses of antibiotics. Over the years, her dentist routinely removed teeth without giving any consideration to the aetiology of the disease causing multiple infections, or the possibility of preventing further tooth loss or indeed, offering alternatives to extraction. On each occasion the dentist failed to take diagnostic radiographs to consider the prognosis of the infected tooth and failed to offer any alternative treatment options other than extraction. Unfortunately the dentist concerned did not provide periodontal monitoring of any description for the 13-year period, did not recognize the diagnosis of periodontal disease, had no apparent understanding that the treatment he was providing for Mrs X was not working, and he did not recognize that a referral to a specialist would assist her.

Mrs X suffered considerable pain and inconvenience over the 13-year period and has now had to endure extensive periodontal treatment- treatment which would have been far less radical had the condition been treated earlier. In order for Mrs X to replace the teeth lost due to negligence, multiple implants have been placed along with sinus augmentation to replace the alveolar bone lost due to unchecked disease activity, and hence the damages figure must cover that expensive and necessary treatment.

This very sad story is fairly typical of higher value claims and begs the question: could this case study be directly applicable to the majority of dentists in high street practices? The fearful reaction on the part of the embattled dental practitioner would be to expect an avalanche of cases all alleging gross breaches with large price tags for expensive implant treatment attached, but is this really warranted?

The case of Mrs X, and other high value cases like it, involve significant multiple breaches in the duty of care owed by dentists to their patients, often over a very long period of time. For all but a small

handful of dental professionals, no matter how difficult the working conditions imposed by the NHS, or how challenging the individuals concerned, the type of scenario which Mrs X went through over the 13 years simply does not occur. In our opinion, in general the high value cases of this type demonstrate repeated failures of clinical performance, which is way below the standard set in the average British dental practice. The emphasis on continuing professional development, and the high standards of the dental profession in this country means that for the overwhelming majority of dental practitioners today, an increase in the numbers of this type of high value dental negligence claim being brought by patients should have little impact on their working lives.

Dental negligence litigation is a fact of life for dentists, but at the Dental Law Partnership we recognize the need to identify the egregious cases at an early stage and at the same time bring unmeritorious claims, where the dentist has acted entirely properly, to a dead stop at an early stage.

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