

medical negligence matters

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We hear a lot these days about a so-called 'postcode lottery' that allegedly affects the medical treatment or care you get, according to where it is provided. It is a rather glib expression, but there is something in it, as highly publicised situations in certain hospitals and NHS Trusts have proved.

However, when it comes to medical negligence, it is always wrong to generalise. Many patients receive excellent treatment and care in hospitals that have been discredited; it cannot be assumed that all disappointing outcomes there have involved negligence. At the same time, hospitals with excellent reputations may be prone to occasional lapses.

The lesson from this, as our lead article by my fellow partner Madeline Seibert concludes, is that every case is different and must be judged on what actually happened to an individual patient. This makes it vitally important for prospective medical negligence cases to be expertly reviewed before claimants embark on legal action.

This newsletter outlines a number of cases where negligence was found to have occurred, resulting in awards from tens of thousands to millions of pounds. In one or two of them, the hospitals or senior medical staff involved sought unsuccessfully to avoid paying appropriate compensation. When a case is well founded, the Courts will rightly consider full and fair compensation.

With all best wishes,

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Realities of health 'postcode lottery'

Research by healthcare think-tank The King's Fund found that 22% of NHS hospitals foresaw a deficit by the current financial year-end, writes medical negligence partner, Madeline Seibert. Given such pressure, variations in service standards are unsurprising and point to a 'postcode lottery' in healthcare.

Admittedly, delivering consistently high standards on a national basis is not easy to achieve. Absolute consistency may never be more than an aspiration, but that should not inhibit efforts to meet the highest standards of treatment, aftercare and elderly care for all.

We often hear about this postcode lottery in healthcare: that fertility treatment, or a vital but costly cancer drug, is available in one part of the country but not another; or survival rates after major surgery vary from one hospital to the next.

Some variations in service are due to geography and demography. A person living in a remote rural area will not have such immediate access to a major hospital as someone in a large provincial city; but they may find it easier to fix a GP appointment. Some areas have more elderly residents to look after than others.

Ideally, the system should respond to varying requirements. How the NHS should be structured and managed has thus been one of the political hot potatoes of recent decades. On top of reorganisations, the NHS is constantly adapting to new demands.

New preventative screening and surgical techniques, breakthrough drugs and other innovative responses have greatly raised demand. They have also helped the population generally to live longer and require yet more treatment and elderly care.

Centrally-imposed budgets, structures and targets mean that Trusts must meet their obligations within constraints that may not fully reflect local conditions. The reality is that a patient in one place will not necessarily receive identical treatment to another elsewhere with the same condition. Variations in speed and effectiveness of treatment may occur for reasons that do not amount to medical negligence or mistreatment.

Prioritisation should mean that financial and human resources, and beds and operating theatres, are deployed to best effect – a major challenge for managements. Given the inevitability of some variations in service levels, the question arises as to what degree of variation is normal and what is excessive?

Well-publicised situations where NHS Trusts have been found lacking, with severe implications for many patients or their bereaved relatives, confirm that care quality blackspots may develop and fester, but can be remedied.

Within such large-scale failures in care quality, there are individual cases in which legal action against the healthcare provider would be justified. However, the existence of a major problem does not automatically indicate that every patient dying in that hospital was a medical negligence victim. Precise circumstances always matter.

Equally, healthcare providers that do well in a postcode lottery analysis may not be immune from isolated lapses. There may still be cases in the most highly regarded hospitals where patients suffer or die avoidably. Instances of medical negligence can arise anywhere and for a multitude of reasons.

City trader awarded £1.6m for birth injury

A high-achieving city trader has been awarded nearly £1.6m compensation after being left with life-changing injuries due to errors by her obstetrician when she was giving birth to her first child. Mrs D was earning more than £200,000 a year with Credit Suisse in London. Then, in 2008, she gave birth to her first child, at a privately run hospital in London. During labour, she suffered a severe tear that was not properly treated.

Mrs D later underwent reconstruction surgery, which brought some improvement, but she still experienced severe pain and had difficulty controlling her bowels. She was left with ongoing symptoms that caused her embarrassment and distress and prevented a return to work.

The obstetrician admitted liability and agreed damages for pain, suffering and future medical care, but disputed the claim for loss of past and future earnings. His lawyers argued that she had made a lifestyle choice to leave her highly paid job following the birth of her second and third children in 2010 and 2013. The court, however, rejected that argument, awarding Mrs D £1.59m in total to compensate for her injuries and loss of earnings.

Mrs Justice Andrews, who heard the case, said: *"It appears there was no proper examination carried out post-delivery, so that the severity of the tear remained undetected and thus it was not made the subject of immediate surgical repair and treatment with antibiotics. Mrs D's injury has put paid to her ability to return to any form of work in the financial sector and severely limited the nature of any future employment."*

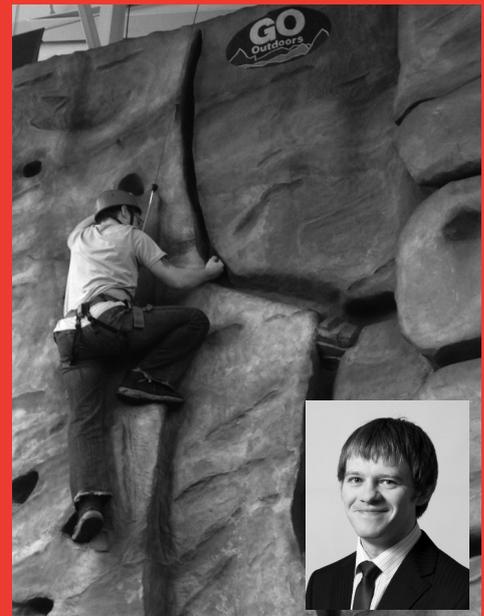
Climbing Kilimanjaro for charity

A Chartered Legal Executive on our team is planning a charity fundraising climb of Africa's highest mountain with others from De Montfort University, where he is undertaking his Legal Practice Course.

James Sherwin will make the sponsored ascent of Tanzania's 19,340-ft Mount Kilimanjaro in aid of Childreach International, which aims to unlock the potential of some of the world's most marginalised children.

James will start the 11-day trip in August, flying to the Kenyan capital Nairobi before crossing into Tanzania by bus to reach the town of Moshi. There his group will visit the Childreach project they are supporting, before setting off next day to Machame Gate and the start of the four-day climb to the summit.

"I'm really looking forward to the challenge and hope to raise lots of money for this fantastic cause." says James. *"My fundraising page can be found at <https://mydonate.bt.com/fundraisers/jamessherwin1> or you can contact me at our Harlow office for other ways to sponsor me. Every penny will help spur me on to the top!"*



Girl awarded millions over GOSH error

A 10-year-old girl was awarded £2.8m compensation after being left brain damaged because doctors injected her brain with medical glue after a syringe mix-up.

The child was being treated at Great Ormond Street Hospital for a rare condition that caused her arteries and veins to become entangled. The treatment involved two injections, one with a medical glue to prevent her arteries from bleeding, and one to add a dye to her blood so that the flow around the brain could be monitored.

The procedure was relatively straightforward and she had gone through it several times. However, on one occasion in 2010, the doctors administering the injections got the syringes mixed up, and the glue was injected directly into her brain. She was left permanently brain damaged and will need 24-hour care for the rest of her life.

The hospital admitted liability for the child's injuries and was ordered to pay a lump sum of £2.8m, plus £383,000 a year until she is 19, and £423,000 for the rest of her life. The child's father, said outside the Court: *"We are sad and devastated by what happened to our daughter. Her life is ruined."*

£1.5m over amputation after misdiagnosis

A man received £1.5m compensation after his leg was amputated because doctors failed to diagnose and treat his condition correctly. The man, 59, was admitted to hospital in September 2008, with a swollen ankle. He was in septic shock, clammy and pale and was suffering from vomiting and diarrhoea.

The doctors assumed he was suffering from cellulitis. His vomiting and diarrhoea were put down to an allergic reaction to his gout medication. The actual cause for his condition was septic arthritis in his ankle. His symptoms were consistent with this but it was not considered by the doctors.

Over the next few days, blood tests further pointed towards septic arthritis, but the doctors continued to work with the cellulitis diagnosis. The man remained feverish and uncomfortable in hospital for ten days before a different doctor correctly diagnosed septic arthritis.

A surgical washout of the ankle to clear the infection was requested but was not performed for two days. By this point, the infection was so severe that the man needed a below-the knee amputation. He was given an operation date and discharged from the hospital with antibiotics.

After the man had his leg amputated, he developed severe kyphosis of the spine, leaving him immobile and unable to walk, even when using crutches. He took action against the hospital, claiming that the misdiagnosis had been negligent, and was the cause for his leg amputation and spine condition.

The hospital admitted liability regarding the misdiagnosis causing the leg to be amputated, but disputed that his spine condition was a result of the same error. However, it agreed to an out-of-court settlement of £1.5m, to compensate the man for his injuries, the costs of his new living needs and loss of future earnings.

It is not uncommon for medical staff to stick too rigidly to their initial diagnosis. Sadly, in this case it has led to a man sustaining unnecessary injuries that have had a devastating effect on his life.

Solicitor Karen joins our team



We recently welcomed another qualified solicitor, Karen Webster, to our medical negligence team.

Karen gained a law degree at the University of Kent and then completed her Legal Practice Course. She excelled during her two years as a trainee solicitor with a respected Bedfordshire practice, qualifying as a solicitor in 2012 and specialising in medical negligence.

Karen, who lives in Stevenage and enjoys reading, pub quizzes and travel, commented: *"My previous firm prioritised expertise and understanding to ensure excellent advice and client care. I'm glad to say that Attwaters Jameson Hill shares that ethos."*

Negligent surgery reduced life expectancy

A woman was awarded £100,000 compensation after suffering complications during surgery that took an estimated nine years off her life expectancy. The 47-year-old catering assistant had become jaundiced after an operation to remove gallstones at a hospital run by the Shrewsbury and Telford Hospital NHS Trust.

She was told she had suffered a bile duct injury during the operation, but it later transpired that the surgeon had negligently placed a surgical clip on her bile duct. The woman had to remain in hospital for a further 10 days and spent 48 hours in intensive care. She was left with persistent pain in her upper right abdomen, fatigue, scarring, a future risk of further complications and a moderate psychiatric disorder. She was still very weak when she was discharged from hospital and needed substantial care from her husband.

The woman took legal action against the Trust, alleging that the surgeon had been negligent in placing a clip on her bile duct. The Trust admitted liability and agreed to an out-of-court settlement of £100,000 to compensate her for various factors, including her pain and suffering, the cost of care and assistance and the impact on her employability.

Operations such as removing gallstones are often regarded as quite routine but, as this case shows, things can still go badly wrong. When mistakes occur through negligence, victims are entitled to be compensated.

David named 'Lawyer of the Year'

David Kerry, our senior partner and Head of Medical Negligence, was declared a 'Lawyer of the Year' in his specialised field by international legal directory Best Lawyers. The '2013 London Clinical Negligence Lawyer of the Year' accolade, based upon the views of fellow legal professionals, was announced in December.

"David is making a habit of collecting awards," commented our firm's managing partner Andrew Flannagan. *"These are all well deserved, as he and his team work tirelessly on cases of inadequate, inappropriate or negligent medical treatment."*

Practising in all areas of clinical negligence, including cerebral palsy, deaths in hospitals, failure to diagnose, inquests and human rights issues, David Kerry often achieves substantial awards for our clients.

"I feel very privileged to have been chosen by Best Lawyers," said David. *"Only a single lawyer in each practice area, such as Clinical/Medical Negligence, in each region is honoured as 'Lawyer of the Year'."*

Priory Hospital failings preceded tube train tragedy

Our firm's Madeline Seibert acted in the case of a Surrey IT consultant, who died tragically when he was hit by a tube train after discharging himself from The Priory Hospital in southwest London. An Inquest into his death was held late last year at West London Coroner's Court.

Thirty-seven-year-old Mr C of East Ewell, who suffered from the rare neuro-otological disorder misophonia, had been admitted to The Priory Hospital in Roehampton, southwest London. He had been prescribed anti-depressants after expressing suicidal thoughts over his condition. He was on 'amber watch' and should have been checked every half-hour, but one afternoon in late 2012 those checks were not carried out properly.

The Assistant Coroner heard evidence of an 'unhappy and unsafe arrangement' within the unit at The Priory. In his report, he said that the observation record at The Priory had been 'falsified and added retrospectively'. Inquest evidence from a nurse at the private hospital had indicated that she had been very busy observing three patients on two floors that afternoon and it had not been possible to complete observation forms on time.

After the Assistant Coroner announced the inquest verdict pointing to gross failings at the hospital, Madeline Seibert made these comments: *"Mr C was admitted to The Priory Hospital as a voluntary patient to be treated for depression and misophonia. His family thought that he would receive excellent care but he was let down. Mr C left the hospital but no member of staff was aware of his disappearance until around 5 hours later, despite his doctor placing him on 30-minute observations. By this time, Mr C had died and valuable opportunities had been missed to locate him and bring him back to the hospital."*

contact us...

If you need help or advice about a medical negligence issue, contact our highly experienced and sympathetic team based at our Harlow office. Our range of other legal services is offered by our other offices in Hertford, Ware and Loughton.

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