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In the beginning....



Costs

- The annual cost of the clinical negligence for trusts has quadrupled over the last decade— from **£0.4 billion in 2006–07 to £1.6 billion in 2016–17**—taking already scarce resources away from frontline services and patients.
- From 2006–07 to 2016–17, the number of clinical negligence claims registered with NHS Resolution (operating name of the NHS Litigation Authority 2017) each year doubled, from **5,300 to 10,600**.
- Reference: House of Commons Committee of Public Accounts
Managing the costs of clinical negligence in hospital trusts
Fifth Report of Session 2017–19



Costs

- The estimated cost of settling future claims has risen from **£51 billion in 2015–16 to £60 billion in 2016–17.**



Culture

- **When things go wrong it appears the NHS is predominantly defensive, rather than candid and transparent, which limits its ability to learn lessons.**
- Public Accounts committee reported that a significant proportion of health workers were afraid to speak out.

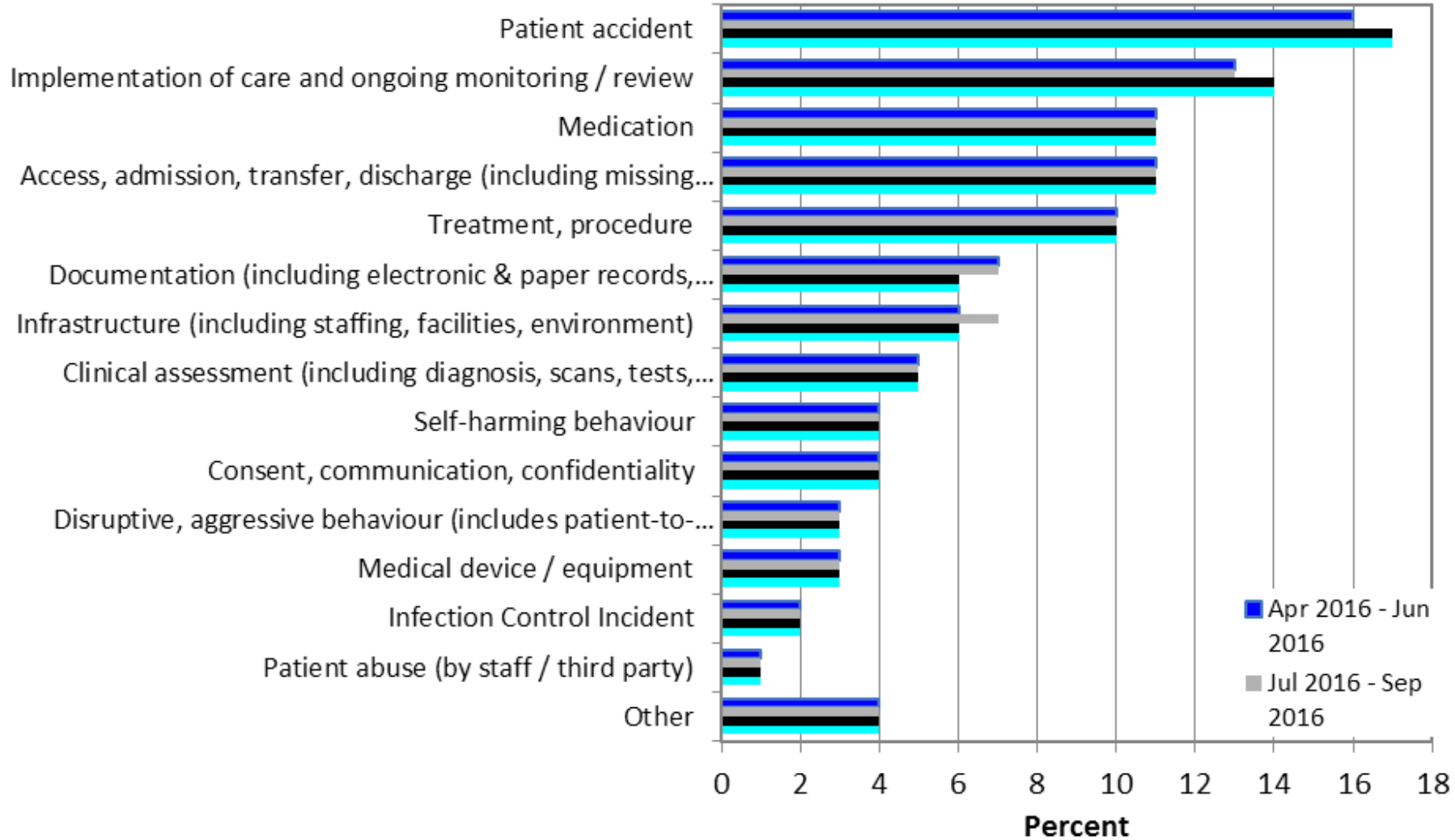


What can go wrong?

- At least **1400 patients are killed by NHS equipment failures** and worker shortage mean fatalities are rising
– The Mirror 25.7.14 (date collected from the Medicines and Healthcare products Regulatory Agency)
- **4,955 serious injuries** caused by faulty equipment, with **13,642 'adverse incidents'** reported in total.



Chart 2.1: Proportion of incidents in England, by incident type and quarter
Apr 2016 - Mar 2017



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Incident type	Number of incidents					Percent				
	Apr 2016 - Jun 2016	Jul 2016 - Sep 2016	Oct 2016 - Dec 2016	Jan 2017 - Mar 2017	TOTAL	Apr 2016 - Jun 2016	Jul 2016 - Sep 2016	Oct 2016 - Dec 2016	Jan 2017 - Mar 2017	TOTAL
ENGLAND										
Patient accident	77,031	76,418	77,905	76,621	307,975	16	16	17	17	17
Implementation of care and ongoing monitoring / review	62,491	59,854	64,810	65,485	252,640	13	13	14	14	14
Medication	50,331	49,683	50,392	48,537	198,943	11	11	11	11	11
Access, admission, transfer, discharge (including missing patient)	49,380	49,727	49,422	49,011	197,540	11	11	11	11	11
Treatment, procedure	47,482	46,926	46,613	45,729	186,750	10	10	10	10	10
Documentation (including electronic & paper records, identification and drug charts)	30,436	31,606	29,574	28,520	120,136	7	7	6	6	6
Infrastructure (including staffing, facilities, environment)	27,949	31,532	29,941	29,057	118,479	6	7	6	6	6
Clinical assessment (including diagnosis, scans, tests, assessments)	25,038	25,152	24,083	24,016	98,289	5	5	5	5	5
Self-harming behaviour	19,747	20,049	19,812	20,069	79,677	4	4	4	4	4
Consent, communication, confidentiality	19,386	18,614	18,518	17,931	74,449	4	4	4	4	4
Disruptive, aggressive behaviour (includes patient-to-patient)	13,860	14,125	12,705	12,121	52,811	3	3	3	3	3
Medical device / equipment	13,361	12,449	12,041	12,285	50,136	3	3	3	3	3
Infection Control Incident	7,910	8,048	8,321	8,536	32,815	2	2	2	2	2
Patient abuse (by staff / third party)	2,871	2,607	2,655	2,667	10,800	1	1	1	1	1
Other	19,765	19,578	20,521	20,277	80,141	4	4	4	4	4
Total	467,038	466,368	467,313	460,862	1,861,581	100	100	100	100	100



How data is collected:

- **NHS Resolution** collects data on claims, and shares this with trusts through an online portal
- **Trusts** collect data on incidents and complaints, though the National Reporting and Learning System (NRLS)
- Many trusts face **financial challenges and ever-rising demand**, including delivering stretching efficiency savings. The Care Quality Commission, in its 2016–17 State of Care Report, highlighted that future quality of care is precarious as the system struggles with **complex demand, access and cost pressures**.
- More and more patients waiting longer for their treatments. Almost 40% of clinical negligence claims against trusts are related to a failure or delay to diagnose or treat a patient. Therefore...



Most people just want an apology.....



What happens when it all goes the wrong way...?



Around 1% of all claims go to Court.....



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Are you indemnified?



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are you



Do you practice safely.....?

- A human business
- Mistakes happened
- Minimising mistakes
- Demonstrating how you arrive at your clinical decisions and being able to justify your actions, decisions and omissions.



It's a matter of risk and how far you are prepared to take that chance....?

- What is the risk?
- Who does it affect?
- How will you identify the risk?
- How do you quantify the risk?
- How do you know if the risk has been managed appropriately?
- Who criticises your analysis?



Risk.....

- Who sets the boundaries?
- Who breaks the boundaries?
- Who checks the detail?
- Have you complied with legislation?
- To whom are you responsible?
- Where does the buck stop?
- Who stands out from the crowd?
- Are you out of your comfort zone?



Valid excuses...?

- Time constraints
- Lack of training
- Lack of resources staff/equipment



.....red light



- “Ignorantia Juris Nemineum Excusat”

Ignorance is no excuse.



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The Law...

- Health and Safety at Work Act 1974
- Human Rights 1998
- Mental Capacity Act 2005
- MCA DOLs – Liberty Protection Safeguards March 2018
(necessary and proportionate)
- Equality Act 2010
- Health and Social Care (Safety and Quality) Act 2015
- General Data Protection Regulations 2018



Do you know your professional Code of Conduct?



- When were they last updated?
- Health & Care Professions Council
Jan 2016
- NMC
31.03.15
- GMC updated
29.04.14



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Who are your monitoring bodies? (CQC, MHRA, HSE, NHS England)



- What are their requirements?
- What are the organisational implications of getting it wrong?



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Compliance with

- Organisational Policies
- National Standards (Professional and DOH)
- Protocols
- Guidelines
- Professional Bodies – Codes of Conduct
- Contractual



Practice v Policy.....

- Who is your patient?
- Are they represented by an Attorney (LPAs)?
- What level of contact do you have with the patient?
- Do you advise in person, telephone, written format?
- Do you provide information/instructions for use to your patients?
- Do your Policies cover your levels of responsibility?



Risk Risk Risk Risk Risk

- Professional accountability and responsibility to manage risk – what are the differences?
- Accountable to....
- Responsible for...



Evidence....

- Oral
- Written
- Photographic
- Video
- Products
- Instruction leaflets and manuals
- PLUS all the of the relevant organisational, professional and legislative.



Anomalies...

- How do you record gut feelings?
- Instinct?
- Experience?
- De ja vue?



What are the sanctions when it all goes wrong...?

- Civil Court – balance of probability -sum of money
- Criminal Court – beyond all reasonable doubt - prison
- Coroners Court – Inquisitorial - ‘finding of fact’
- Professional Body - Professional conduct hearing - struck off
- Organisational – Disciplinary - sacked
- Could be combination of ‘all of the above’ ...



Civil proceedings

- Duty of Care – well established you owe a duty of care to your patients
- Breach – if you deliver substandard care you will be in breach
- Causation – there has to be a direct link between the sub standard care and the injuries suffered.
- Damage/injury' The 'but for' test ..it caused your injuries
- Burden of Proof - Claimant
- Limitation – 3 years. Can you recall your actions of 3 years ago or longer?



Examples of substandard care

- Failure to assess the patient (documentary Needs Assessment)
- Failure to provide a Risk Assessment around provision / reason for none provision (documentary evidence)
- Failure to demonstrate 'acceptable risk'
- Failure to allocate appropriate equipment
- Failure to be able to demonstrate the use of equipment
- Failure to provide adequate advice/instructions
- Failure to monitor annual maintenance
- Failure to adhere to policies and standards



Taking the stand is a lonely place

Preparation, preparation, preparation

- Address the Judge
- Self – calm and collected
- Evidence – witness statement - know the case
- Conduct – dress code, respect and demeanour



Here goes.....

- Cross examination



Are you left reaching for the glass.....



Think.....

3 things you cannot
recover in life: the
WORD after its
said, the
MOMENT after its
missed, and the
TIME after its
gone.



And breathe.....



Thank you for your attention
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