

# The most frequent complaints and claims in ophthalmology – a Medical Protection Society (MPS) analysis

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The authors look at the reasons behind medico-legal cases reported to MPS and share key learning points.

Complications following ophthalmology surgery are rare, however, medico-legal cases are not uncommon due to the significant impact they can have on patients' lifestyles.

The majority of cases reported to MPS relate to elective eye surgical procedures undertaken outside of the NHS. Patients who opt for elective surgery can choose to proceed with it at any time, or not at all. Many have the alternative option of staying in spectacles or contact lenses.

Claims in ophthalmology can sometimes lead to large financial settlements. The value of the settled claim will often include compensation for care and loss of earnings, if applicable, in addition to an award for the damage that resulted from a breach of duty. Complications can result in permanent, serious loss of vision (vision worse than the driving standard in the affected eye that cannot be corrected with spectacles or contact lenses). The value of each claim varies enormously, with our highest ophthalmology total case payment (claimant damages, costs and legal costs), being well in excess of £1 million.

Ophthalmologists work in complex and pressured environments, and we know following feedback from our members that experiencing a medico-legal case can add to the stress.

We have analysed almost 700 UK cases, including those claims defended, not pursued and settled, and identified some learning points as to the reasons why patients decide to take action, and why claims are settled.

**“There was evidence of inadequate consent.”**

Primary case type	Total
Claim and pre-claim	200
Complaint and ombudsman	100
Regulatory	50
Disciplinary	50
Inquest	10
	410

## Types of procedures leading to patients making a claim and common contributory factors

### Laser vision surgery

The highest number of claims related to laser vision surgery. The majority of claimants suffered from a deterioration in their vision following the surgery. Some claimants experienced complications following surgery, for example, an infection. In a quarter of claims that were settled, there was evidence of inadequate consent. A quarter required further surgery. The highest laser vision surgery total case payment was in excess of £1 million.

### Case study

A 30-year-old with myopia went to an optician to discuss laser vision surgery. She was seen by an optometrist, examined and advised treatment with LASIK. Her surgery was arranged for four weeks' time. She was asked to sign a consent form on the day of surgery by her ophthalmologist. A LASEK procedure was undertaken in both eyes. After three weeks she developed hazy vision and continued myopia.

Eighteen months later she had a second procedure by another ophthalmologist to remove corneal haze. There was no

improvement in her vision. She suffered from irritable dry eyes and still had to wear glasses as she could not tolerate contact lenses. She experienced ongoing dazzling with bright lights and was unable to drive at night. She was no longer able to continue her current job in the jewellery trade because of her poor vision. The expert did not criticise the surgical performance of our member in this case.

The case was settled for a large sum because:

- Consent was taken less than 30 minutes before the procedure.
- There was no documentation of a discussion of risks and benefits of all the available options, including not proceeding with surgery, that were relevant to this patient.
- No discussion took place indicating possible complications and their implications on future employment.
- The ophthalmologist did not adequately check that the patient understood what procedure she was having.

### Cataract surgery / intraocular lens implants

The second most frequent claim was following cataract surgery. Claimants frequently suffered deterioration in their vision and required further surgery. In a third of claims there was alleged failure to

warn of complications. A quarter alleged negligent cataract surgery which led to complications, e.g. retinal detachment after cataract surgery and chronic follicular conjunctivitis. Missed pre-existing diabetic retinopathy and incorrect lens implanted were also reported. The highest cataract surgery / intraocular lens implants total case payment was in excess of £80,000.

### **Intraocular lens (IOL) exchange**

Frequent claims followed intraocular lens exchange surgery. In half of the cases analysed there was alleged failure to obtain adequate consent. We are aware that pooling of patients for IOL operating lists does occur in some hospitals. As a consequence the operating consultant may see their patients for the first time on the day of surgery. Placing a heavy reliance on trainee doctors or nurse specialists to take IOL measurements and patient consent may have contributed to claims of incorrect lens insertion and inadequate consent.

Many claimants suffered from blurred vision and underwent revision surgery. Allegations were made that there was a failure to correct eyesight. Complications included dry eyes and retinal detachments. The highest IOL exchange surgery total case payment was in excess of £140,000.

### **Glaucoma**

There were some claims alleging failure to diagnose or appropriately manage glaucoma. A lack of timely measurement of intraocular pressures was found to be the root cause in some settled cases.

### **Blepharoplasty**

Dissatisfaction with the outcome following plastic surgery operations for correcting defects, deformities and disfigurements of the eyelid is the commonest reason for bringing a claim.

### **Wrong lens implant**

Despite wrong lens implant being classified as a 'Never Event', which is the kind of mistake that should never happen in the field of medical treatment and is largely preventable, we continue to see claims arising from these.

### **Patient complaints – common themes**

When we analysed the patient complaints reported by ophthalmologists to MPS there were some similar themes to the claims, but also some new themes:

- Unexpected outcomes following laser, cataract and lens exchange surgery – one of the precipitating factors was complainant dissatisfaction with the consent process.

- Failures and delays to diagnose – these include alleged missed retinal detachment, delay in referral for diagnosis of glaucoma and alleged failure to diagnose the cause of deteriorating vision.
- Poor manner and attitude during a consultation – some complainants reported being unhappy with their ophthalmologist's manner and attitude, rudeness during the consultation and inappropriate comments by their specialist.

### **Regulatory and disciplinary cases – common themes**

Regulatory and disciplinary cases can come from patients, senior and junior colleagues and can be related to clinical and non-clinical issues. For example:

- Performance concerns: operative skills, clinical judgement and communication
- Probity, e.g. private practice in NHS time, allegedly exaggerated training experiences
- Inappropriate personal behaviour / misconduct / boundaries and poor communication with colleagues
- Inappropriate delegation or supervision
- Clinician's health issues
- Inserted wrong lens into patient
- Alleged breach of contract / incorrect billing.

### **Ophthalmology in the UK – top tips to minimise risk**

Please note this not an exhaustive list of recommendations but key learning points from our analysis.

- Ensure your surgical technique is regularly updated and in line with current best practice such that it would be supported by your peers.
- Listen to what your patient would consider to be a successful outcome. Understand your patient's concerns and expectations.
- Be honest and let your patient know if the surgery can give them the result they want or not.
- Discuss the possible benefits and risks of all potential treatment options. Consider what is most important to that individual taking into account their current employment.
- Explain about frequent and serious complications and the implications for the individual patient if these occurred. Explain what you would do to correct complications or if you failed

to meet their expectations.

- Explain what the procedure will involve, the likely results, when you will see them afterwards.
- Your patients should be given clear information about ALL the costs involved and what their rights are to refunds / return of deposits if they change their mind after they have paid some or all of the costs.
- Never pressurise or rush patients into giving consent to have surgery (e.g. by providing special offers that are for a limited time only or any discounts in price).
- Double-check that the information has been understood and decisions are correctly informed.
- For elective operations, always leave sufficient time (e.g. at least a week) after the consultation before scheduling the procedure to allow the patient time to think things through, talk to their family or access more information.
- Be aware that delegating giving advice and taking consent for surgery increases the risk of patients taking action.
- Clearly document all the steps to provide evidence of a detailed interactive discussion; this is vital for legal purposes.

Perform pre-surgical, verbal 'time-out' checks against medical records of:

- Patient identity
- The eye to be operated on
- The proposed procedure
- Drug allergies
- Consent
- Implant make, model and dioptric power and spherical equivalent refractive target (for implants)
- The programmed treatment sphere, cylinder, axis and spherical equivalent refractive target (for laser refractive surgery).

It is important to ensure you are fully indemnified by your Medical Defence Organisation to carry out the relevant procedure in the UK.

“Some complainants reported being unhappy with their ophthalmologist's manner and attitude.”

## FURTHER READING

- MPS Workshops <https://www.medicalprotection.org/uk/education-and-events>
- GMC (2016) Guidance for doctors who offer cosmetic interventions - <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/cosmetic-interventions>
- The Royal College of Ophthalmologists (2017) Professional Standards for Refractive Surgery <https://www.rcophth.ac.uk/standards-publications-research/refractive-surgery-standards/>
- The Royal College of Ophthalmologists Standards, Publications and Research [www.rcophth.ac.uk/standards-publications-research/](http://www.rcophth.ac.uk/standards-publications-research/)

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