

Understanding medical negligence in the UK: a brief overview

BY ALI YAGAN

Medical negligence, or clinical negligence, refers to a breach of duty of care by healthcare professionals that results in harm or injury to a patient. In the UK, medical negligence is a serious issue that can have profound consequences for patients and their families. Understanding the basics of medical negligence is crucial for ensuring accountability and improving patient safety within the NHS. In this short article, I will explain some of the common concepts and examples of medical negligence in ophthalmology.

Legal framework

In the UK, medical negligence claims are typically pursued through the civil justice system. In order to establish a claim for medical negligence, certain elements must be proven:

Duty of care

The healthcare professional owed a duty of care to the patient. This duty arises from the professional relationship between the healthcare provider and the patient and is clearly set up, for example in the General Medical Council's (GMC's) Good Medical Practice guidance, including duties of a doctor and consent.

Breach of duty

The healthcare professional breached the duty of care owed to the patient by failing to meet the standard expected of a reasonably competent practitioner in the same field.

Causation

The breach of duty caused or materially contributed to the patient's injury or harm. It must be established that the harm suffered was a direct result of the healthcare professional's actions or omissions.

Damages

The patient suffered actual harm or loss as a result of the negligence. This can include physical injury, psychological harm, financial loss, or other forms of damage.

The Bolam and Bolitho tests are the pillars of the legal standards used in medical negligence cases in the UK to determine whether healthcare professionals have breached their duty of care towards patients. While both tests have similarities, they also have distinct features that

are important for understanding their application in different contexts.

The Bolam test

The Bolam test takes its name from the landmark case *Bolam v Friern Hospital Management Committee* (1957). This test sets out the standard by which the conduct of healthcare professionals is assessed in medical negligence cases. According to the Bolam test, a healthcare professional is not negligent if they have acted in accordance with a practice accepted as proper by a responsible body of medical opinion within the relevant specialty.

In other words, if the healthcare professional's actions or decisions are supported by a consensus within the medical community, they are less likely to be found negligent, even if another body of medical opinion exists that disagrees with their approach. This test places significant weight on the prevailing practices and opinions within the medical field, recognising that there may be different approaches to diagnosing and treating medical conditions.

The Bolitho test

The Bolitho test, established in the case *Bolitho v City and Hackney Health Authority* (1998), builds upon the Bolam test but introduces an additional layer of scrutiny. In this case, the House of Lords clarified that while the Bolam test is relevant, it is not the sole determinant of whether a healthcare professional has breached their duty of care. Instead, the Bolitho test requires that the court be satisfied that the healthcare professional's actions were capable of withstanding logical analysis and were not merely supported by a body of medical opinion.

Unlike the Bolam test, which focuses primarily on whether the defendant's actions align with accepted medical practice, the Bolitho test introduces a requirement for the court to assess the reasoning behind the defendant's actions. This means that even if a particular practice is widely accepted within the medical community, it may still be considered negligent if it cannot be logically justified.

Key differences and similarities between these concepts:

- The Bolam test emphasises the importance of agreement within the medical profession, whereas the Bolitho test places greater emphasis on the logical justification for the healthcare professional's actions.
- While the Bolam test relies heavily on the existence of a responsible body of medical opinion, the Bolitho test introduces a requirement for the court to assess the validity of that opinion.
- Both the Bolam and Bolitho tests play crucial roles in assessing medical negligence cases in the UK. While the Bolam test provides a framework for considering accepted medical practice, the Bolitho test adds an additional layer of scrutiny to ensure that the healthcare professional's actions are capable of withstanding logical analysis.
- These tests collectively contribute to the fair and just determination of medical negligence claims, balancing the need for professional autonomy with the duty to provide a high standard of care to patients.

Types of medical negligence

Medical negligence generally can take various forms, including:

TOP TIPS

Misdiagnosis or delayed diagnosis

Failing to correctly diagnose a medical condition or delaying diagnosis, leading to delayed treatment and worsening of the patient's condition.

Surgical errors

Mistakes (not complications) made during surgery, such as performing the wrong procedure, operating on the wrong body part, or leaving surgical instruments inside the patient's body (never events).

Medication errors

Administering the wrong medication, incorrect dosage, or failing to monitor for adverse drug reactions.

Birth injuries

Negligent care during childbirth leading to injuries to the mother or baby, such as brain damage due to oxygen deprivation.

Failure to obtain informed consent

Performing a medical procedure without adequately informing the patient of the risks, benefits, and alternatives. It is really important to understand that consent is not just providing the signature of the patient. It is a detailed process of informing the patient about possible options to manage their condition, risks and possible complications of each option as well as benefits of these treatment options.

Examples of medical negligence in ophthalmology

Medical negligence in ophthalmology in the UK can encompass a variety of scenarios where ophthalmic care falls below the accepted standard, resulting in harm or injury to patients. Here are some examples that get discussed commonly in cases of medical negligence claims:

Delayed diagnosis of glaucoma

As you know, glaucoma is a progressive condition that can lead to irreversible vision loss if not diagnosed and treated promptly. Medical negligence may occur if a healthcare professional fails to recognise the signs and symptoms of glaucoma during eye examinations, resulting in a delayed diagnosis and progression of the disease. This can also happen in delayed assessments of known glaucoma patients or newly referred glaucoma suspects leading to irreversible loss of visual functions.

Surgical errors during cataract surgery

Cataract surgery is the most common surgical procedure in the UK. Surgical errors or complications and damage to surrounding structures like the cornea or retina, can occur due to negligence. These errors can lead to vision impairment or other complications

requiring further treatment or corrective surgery. It is important to understand that complications are not necessarily due to negligence but it is also important to make the consent process clear and transparent in order to obtain informed consent from patients prior to surgery.

Incorrect medications for ophthalmic conditions

Ophthalmologists may prescribe medications to manage various eye conditions such as infections, inflammation, or glaucoma. Medical negligence may occur if the wrong medication or incorrect dosage is prescribed, leading to adverse effects, worsening of the condition, or complications.

Failure to refer for specialised treatment or care

In cases where a patient's eye condition requires subspecialty care beyond the expertise of a general ophthalmologist, medical negligence may occur if the healthcare provider fails to refer the patient to a specialist in a timely manner. Delayed referral can result in delayed diagnosis or treatment, leading to preventable vision loss or complications.

Inadequate monitoring of postoperative complications

After undergoing surgery, patients sometimes require careful monitoring for potential postoperative complications such as infection, inflammation, or intraocular pressure spikes. Medical negligence may occur if healthcare providers fail to adequately monitor patients postoperatively, leading to undetected complications and delayed intervention, which can worsen outcomes or result in irreversible damage and vision loss.

Failure to obtain informed consent

Ophthalmologists must obtain informed consent from patients before performing any procedures or treatments. Medical negligence may occur if patients are not adequately informed about the risks, benefits, and alternatives of a proposed treatment or procedure, leading to unexpected complications or dissatisfaction with the outcome.

Challenges and implications

It is important to understand that proving medical negligence can be complex and challenging. It often requires expert medical assessments to establish the standard of care and whether it was breached and, if it was breached, whether it led to patient harm and damage. It is also important to understand that pursuing a medical negligence claim can be emotionally difficult

for patients and their families as well as the healthcare professional under investigation.

Medical negligence not only has immediate consequences for the individuals involved but also broader implications for the healthcare system. It can erode trust in healthcare providers and lead to increased healthcare costs due to litigation but it also highlights areas where improvements are needed to enhance patient safety.

Conclusion

Medical negligence is a serious issue that requires vigilance and accountability within any healthcare system. While doctors and healthcare professionals strive to provide the best possible care to their patients, instances of negligence can occur. By understanding the legal framework, types of negligence, and the challenges involved, steps can be taken to mitigate risks, improve patient safety, and ensure that patients receive the standard of care they deserve.

References

1. Watane A, Kalavar M, Chen EM, et al. Medical Malpractice Lawsuits Involving Ophthalmology Trainees. *Ophthalmology* 2021;**128**(6):938–42.
2. Custer BL, Ballard SR, Carroll RB, et al. Refractive Surgery: Malpractice Litigation Outcomes. *Cornea* 2017;**36**(10):1243–8.
3. Engelhard SB, Justin GA, Craven ER, et al. Malpractice Litigation in Glaucoma. *Ophthalmol Glaucoma* 2021;**4**(4):405–10.
4. Engelhard SB, Collins M, Shah C, et al. Malpractice Litigation in Pediatric Ophthalmology. *JAMA Ophthalmol* 2016;**134**(11):1230–5.
5. Samanta A, Samanta J. Legal standard of care: a shift from the traditional Bolam test. *Clin Med (Lond)* 2003;**3**(5):443–6.
6. Barton-Hanson J, Barton-Hanson R. Bolam with the benefit of hindsight. *Med Sci Law* 2016;**56**(4):275–84.
7. General Medical Council. Good Medical Practice guidance (2024). <https://www.gmc-uk.org/professional-standards/professional-standards-for-doctors/good-medical-practice>
8. Royal College of Ophthalmologists. Prioritisation of Ophthalmic Procedures (2020). <https://www.rcophth.ac.uk/wp-content/uploads/2021/01/Prioritisation-of-ophthalmic-procedures-COVID19-1.pdf>

[All links last accessed February 2024]

SECTION EDITOR



Ali Yagan,

Consultant Ophthalmic Surgeon,
Neuro-ophthalmology and ocular motility,
Manchester Royal Eye Hospital, UK.

Declaration of competing interests:
None declared.