



No Win, No Fee



"Have you been a victim of a medical accident?" The question is posed. This is only the opening gambit. It is followed by the tantalising possibility of financial reward - "If so, you may be entitled to compensation for the pain and suffering and other losses and expenses. We offer an absolute and guaranteed 'No Win, No fee' service. This means there is no financial risk to you. It's that simple. We will get you the money you deserve."

These headlines and bylines of advertisements promoting the services of personal injury and professional negligence law firms, previously only seen on the other side of the Atlantic Ocean (USA), are now familiar and pervasive here in England. Disseminated through every available form of media, from print to television, the public is bombarded constantly and relentlessly with variants of the same message and they are enticed to consider pursuing claims for compensation. The carrots are dangled, the offer of free advice and consultation for a personal injury claim; a conditional fee agreement, commonly called a 'No Win, No fee' arrangement. There is even an online compensation calculator that may be used to provide an idea of the anticipated quantum of financial redress!

These advertisements, often fronted by media celebrities to increase mass appeal, make no bones about the claim management companies' motives; they are touting for business. Often disparagingly named 'ambulance chasers', their questionable conduct is further exemplified by the trading, or internet domain, names used by many of these law firms; for example, 'The Medical Mistake Helpline', 'InjuryLawyersForU', 'FirstForLawyers', 'Claim Squad', 'Claims Direct', 'One Call Claim', 'Not2Blame', 'Need2Claim', 'Been Let Down', and in case you fear you have no chance of winning, 'Underdog'. Reported to have recently opened in England to much media attention and to the embarrassment of repu-

table, honest and ethical personal injury law firms and practitioners, there is even a company named 'Pimp My Claim'.

There is no question that there is an inexorable rise in healthcare litigation, including in dentistry, in many countries in the world. It has been postulated that the poor fee structures in criminal law, the intense competition in 'bread and butter' services such as conveyancing, family and corporate law have all contributed to healthcare litigation being perceived by many in the legal profession as the only growth area. The consequences, as seen in England - the premiums for personal indemnity cover for healthcare practitioners is on an upwards trajectory, continuing to rise year by year; in some cases and depending on specialty, exponentially. Similarly, for those working in the National Health Service (NHS), covered by Crown Indemnity and funded by taxpayers, the NHS Litigation Authority has reported nearly a doubling of claims in just four years.

In dentistry, there are even specialist law firms in which the practitioners are not only dentally, but also, legally qualified. Are the gamekeepers now the poachers as well? With these specialist dental negligence law firms, it is not unknown that a patient pursuing a claim against their dentist, for example, for failed root canal treatment of a single tooth, is meticulously examined to identify other possible issues in their dentition to inflate the quantum of their claim. Are there defective margins in restorations in other teeth? Are there periodontal health issues which have not been addressed? Are there other teeth with suboptimal root fillings?

It should come as no surprise. You get that sinking feeling. Where is all of this heading? Everyday clinical practice is now no longer just about treating patients but also about risk management. Healthcare professionals have to be constantly on their toes; there

are not just patient management, moral and ethical issues to deal with on a daily basis but potentially, financial penalties to avoid. Healthcare professionals now practise more defensively and have become more risk averse. It is no longer about providing the best care but rather what may be considered least likely to get you into trouble. It can be a case of 'Damned if you do and damned if you don't'.

Ultimately, there are no winners except the lawyers, the sceptics may say. This editorial is not an attempt to run down the legal profession or personal injury practices but a 'wake-up' call. This phenomenon is not going away and it is unstoppable. So, how do we meet the challenges? There are no bulletproof, or easy, answers but the following may help:

- Keep up-to-date.
It is imperative to keep up-to-date as scientific knowledge, techniques and materials are constantly evolving. The day you leave dental school is not the end, but should be the beginning, of a commitment to continuing professional education.
- Think before acting.
Every case should be considered carefully and comprehensively. Check and double-check. For

example, if the diagnosis is unclear, it is better to delay irreversible intervention until there is clarity. As it has been said, 'Measure twice, cut once'.

- Practise within your own limitations.
Given the expansive spectrum in dentistry, it is impossible to be *au fait* with everything. With complex cases it may be better to refer it onwards for management: 'The only person who never experienced a failed endodontic case is one that does not do any endodontics.'
- Human beings are fallible.
Human fallibility is inescapable. Keep this in mind. I will leave the last words, applicable to dentists as well, to Atul Gawande from *Complications: A Surgeon's Notes on an Imperfect Science*: "No matter what measures are taken, doctors will sometimes falter, and it isn't reasonable to ask that we achieve perfection. What is reasonable is to ask that we never cease to aim for it."



BS Chong