

## Tackling NHS litigation costs needs better professional oversight

*Sir,*

If you work for a large organization, then you might think that spending about a quarter of a per cent of your total annual budget on legal fees is not bad.

But, what if that quarter per cent equated to £250 million? And what if your organization was making the case for £8 billion a year in extra funding by 2020? What if that organization was suffocating under the weight of demands for its resources, and was also expected to save tens of billions of pounds over the next 5 years?

That is the situation facing the NHS. Figures released in early July (BBC News, 2015) showed the health service was paying out more than a quarter of a billion pounds in legal fees associated with negligence claims against trusts and practitioners. On paper, it is simple. Cut the mistakes, cut the costs. An enormous saving is made.

But then the question is, how do you cut those costs? The answer is to ensure better patient care and greater transparency – creating a situation in which mistakes can be identified, whistleblowers can

come forward in safety, and patients are told if something goes wrong with their treatment.

It all sounds good in theory. And considering the regulation that doctors and nurses are subject to, along with the government's newly introduced 'duty of candour', it ought to deliver in practice. But there are gaping holes in addressing the NHS's legal costs and the broader issue of patient safety, which are a consequence of tens of thousands of specialist health practitioners remaining unregulated.

The duties that these clinical physiologists and others undertake include assessments of pacemakers and conducting tests and interventions that form a vital part of the diagnostic and treatment process. Their work, in short, represents a high level of risk to patients if not performed to the highest levels of skill and professionalism. By being unregulated, however, such practitioners are not subject to fitness to practice assessments. They also fall outside the duty of candour. It is extremely difficult to identify errors that such practitioners make. And it is harder to address those errors through training, professional warnings or even striking practitioners off.

To address this weakness in the NHS, the government must cast aside a longstanding ideological stance against regulation that in this particular instance is ill-suited to protect patients. Rather than champion-

ing voluntary registration which is limited in its scope, ministers and NHS England must reflect upon the roles that some unregulated practitioners fulfil, and understand that these roles come with potential risks to patients that can only be addressed by empowered statutory regulation.

Without such a move, the litigation costs will simply continue to rise.

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BBC News (2015) Medical legal costs 'excessive and should be capped'. [www.bbc.co.uk/news/health-33287879](http://www.bbc.co.uk/news/health-33287879) (accessed 18 August 2015)

## Erratum

The order of the authors in the article 'Tailoring HIV testing in a setting of late HIV diagnosis: is the tide turning?' (vol 76(10), 2015, p. 592) was incorrect. It should have read Dr Joseph Freer is Senior House Officer, Dr Monica Lascar is Consultant Physician (HIV/GUM) and Mr Elias Phiri is HIV Testing Co-ordinator in the Department of Sexual Health, Whipps Cross University Hospital, Barts Health NHS Trust, London E11 1NR. We apologise for any confusion caused.

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