



Litigation and HIV medicine: what's going on?

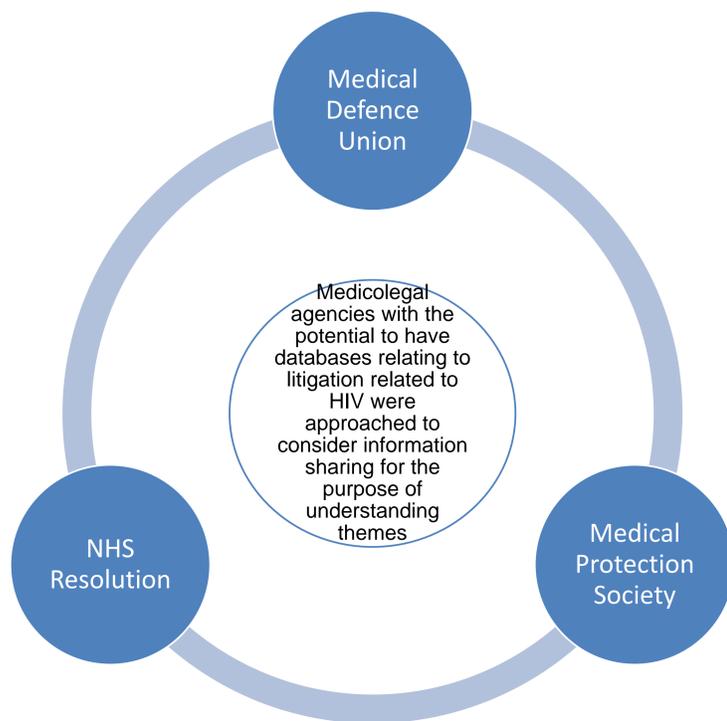
Phillips M^{1,2}

1: Cumbria Partnership NHS Foundation Trust 2: Lancaster Medical School
e-mail: matt.phillips2@nhs.net

Background

HIV and issues surrounding its diagnosis have been present for years within the specialty. Ten years ago, BHIVA published a guideline on HIV testing and indicator diseases that was supported by medical professional bodies outlining who should receive a test, and under what circumstances. After the test is performed, more medico-legal and ethical challenges may wait with who to tell, and whether disclosure is necessary to third parties. In 2013, the Medical Protection Society published an opinion piece that suggested that in some circumstances, failing to diagnose HIV might be construed as negligent². There exists a place between HIV Medicine and the Law where clinicians are afraid to tread. This piece of work aimed to reveal actual themes of legal conflict, from sources where information could be held centrally.

Results



All three agencies responded positively, with the defence associations sending narrative answers as their number of claims were too small to share precise data, and NHS resolution sending numerical data.

Medical Defence Union

"Over the past 10 years, there are only a very small number of cases in which we have been involved, they relate to alleged delayed diagnosis, or inadequate treatment"³.

Medical Protection Society

Types of requests seen include advice re confidentiality, delay in diagnosis, complaints re the manner of the treating clinician, prescribing/monitoring issues and advice re issues relating to contact tracing³.

NHS Resolution

Shared information via a Freedom of Information pathway. Between 2009-2017, a number of claims were settled via the NHS LA where HIV was named as one of the injuries. The cause of claim and sums associated are tabulated in table 1³.

Table 1: NHS Resolution data

Cause of Claim	Damages Paid (£)	Legal Costs Paid (£)	Total Paid (£)
Fail/ delay of treatment	430,718	293,898	724,616
Fail Antenatal Screening	625,000	268,215	893,215
Fail to act on abnormal test results	40,000	92,739	132,739
Failure to inform test results	620,000	530,302	1,150,302
Failure to perform tests	550,000	82,638	632,638
Failure/Delay Diagnosis	110,358	142,871	283,229
Wrong diagnosis	574,000	343,306	917,306
Grand Totals			5,181,298

Conclusions

Notwithstanding that claims may be being settled by individual trusts without recourse to NHS Resolution, there are individuals successfully finding legal recourse where diagnosis and management has not gone to plan. The issues being settled by NHS Resolution relate to appropriate diagnosis and acting on abnormal results. This should be a cautionary tale within the specialty and our allied specialties. Ten years on from BHIVA's publication, timely and appropriate testing and diagnosis remains a Gordian knot. It is not understood whether there is a general awareness amongst clinicians of any specialty that a failure to diagnose or act has the potential to lead to litigation.

I wish to thank the Medical Defence Union, Medical Protection Society and NHS Resolution for sharing their data

References

- 1: bhiva/ bashh/ bis uk National Guidelines for HIV Testing 2008: Available online 10th April 2018: <http://www.bhiva.org/documents/guidelines/testing/glineshivtest08.pdf>
- 2: Rayment M, Sullivan A. OPINION: Failure to test for HIV infection: A medicolegal question? MPS Casebook 2013: Available online 10th April 2018
- 3: Personal communication to author from respective organisation