



“He did everything he possibly could for me...” Medical malpractice claimants’ experiences of legal services

[Link to publication record in Manchester Research Explorer](#)

Citation for published version (APA):

Melville, A. L., Stephen, F. H., Irving, J., & Krause, T. (2012). “He did everything he possibly could for me...” *Medical malpractice claimants’ experiences of legal services*.

Citing this paper

Please note that where the full-text provided on Manchester Research Explorer is the Author Accepted Manuscript or Proof version this may differ from the final Published version. If citing, it is advised that you check and use the publisher's definitive version.

General rights

Copyright and moral rights for the publications made accessible in the Research Explorer are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

Takedown policy

If you believe that this document breaches copyright please refer to the University of Manchester's Takedown Procedures [<http://man.ac.uk/04Y6Bo>] or contact uml.scholarlycommunications@manchester.ac.uk providing relevant details, so we can investigate your claim.



“He did everything he possibly could for me...”

Medical malpractice claimants’ experiences of legal services

Angela L Melville, Frank H Stephen, Jamie Irving and Tammy Krause

Abstract

Previous research shows that legal clients are very satisfied with the services provided by their lawyer. Yet, research also demonstrates that lawyers often act in their own interests rather than their client’s, and that there is deep public scepticism concerning the legal profession. In-depth interviews with medical malpractice claimants and legal file analysis are used to unravel these paradoxes. We investigate how claimants experience their lawyer’s efforts, and examine which aspects of legal services drive client satisfaction and dissatisfaction. We find that lawyers are highly successful at deflecting client dissatisfaction onto other actors in the system, and this success also explains the apparent paradoxes in the lawyer-client literature.

Introduction: researching clients’ views of legal services

There have been few academic studies into which aspects of legal services are important to clients (Mather 2003:1071). Surveys of client satisfaction have largely been conducted by law firms (Cunningham 1998). The academic work that has been done has also generally drawn on surveys (eg Goriely et al. 2001, Harris 1994, Hunter et al. 2000, Moorhead et al. 2003:13-14, NAO 1992:36, Sherr et al. 1994). Surveys have not provided a sensitive method for distinguishing factors that drive client satisfaction, and most studies report undifferentiated high levels of satisfaction across

all aspects of lawyer's performance. The only distinction is with service aspects, such as the lawyers' communication skills, where clients are highly satisfied; and legal competence, with clients feeling less able to provide an input (Moorhead et al. 2003, LSBCP 2011).

The relative absence of qualitative research has meant that a nuanced understanding about what aspects of lawyers' performance are important to clients is still missing. An exception consists of Sommerlad's (2000) interviews with English legal aid clients concerning their views of legal services. Clients did not focus on their lawyer's legal competence and instead most appreciated aspects of service delivery, such as the promptness, clarity of communication and honesty of advice. Clients also focused on the personal qualities of their lawyer, and wanted an empathic lawyer whom they could trust and who provided individualised service, personal commitment, treated the client with respect, and listened to their views. Clients criticised lawyers who failed to develop a personal connection, were inefficient, and did not facilitate their client to develop a sense of ownership over the case (also see Sommerland & Wall 1999).

Sommerlad's (2000) research stresses the importance of process to clients, and is consistent with a large body of research that has examined clients' views of procedural justice. These studies show that a litigant may be satisfied with the outcome of their case, but still feel that the process was unfair, or vice versa (Lind & Tyler 1988, MacCoun 2005, Thibaut & Walker 1975, Vidmar 1990). These are important insights, however, studies have not focused on the lawyer-client relationship. Whereas clients focus on process, studies have shown that lawyers believe that a good service ensures achieving the best possible outcome for the client.

In medical malpractice claims, this means achieving the highest possible amount of financial compensation (Daniels & Martin 1999, Kritzer & Krishnan 1999, Relis 2006). This research suggests that lawyers and clients may have different views on what constitutes a good quality legal service. Most procedural justice research has taken a quantitative approach, and so the disjunctions between lawyers and clients have also not been explored in-depth.

The focus on service aspects also suggests that legal clients are not well-placed to judge other aspects, such as quality of legal advice. Most clients seek assistance only once or twice during their life-time. They also rarely compare different law firms when seeking a service provider (LSBCP 2011:11). Consequently, clients are not necessarily well placed to make informed decisions about the quality of legal services (Dingwall & Fenn 1987, Goriely 1994, Moorhead et al. 1994:194, 2003, NAO 1992: 31, Sherr et al. 1994:140, Stephen et al. 1994, Love & Paterson 1994, Paterson 1996, Stephen & Love 2000). Sommerlad (2000:469) argues that the assumption that clients lack the necessary expertise to judge quality has also dissuaded researchers from talking to clients.

Our research: why study the views of clients?

This paper provides an in-depth examination of the provision of legal services from the perspective of clients. It analyses interviews with medical malpractice claimants¹

¹ As most previous research has been conducted in the US, where negligence claims against medical professionals are called 'medical malpractice' claims, we have also used this term, although in England and Wales the terminology used is 'clinical negligence' claims. We have not, however, used the US term 'lawyer' to refer to the legal practitioners involved in our study. England and Wales has a divided bar, with solicitors being responsible for pre-court work on a file and most interaction with the client,

about the process of resolving their claim, starting from the claimant selecting a legal firm, investigation of the claim, settlement or withdrawal, and finally, claimants' views of outcomes. In particular, it focuses on which aspects of legal services are important to claimants, sources of satisfaction and dissatisfaction, and claimants' views on the relationship with their lawyer. In this way, we add a qualitative examination to the existing research on clients' perceptions of legal services. This examination allows a more nuanced understanding of clients' perspectives compared to previous research, which has predominantly taken a quantitative approach (Hickson et al. 1992, Huycke & Huycke 1994, May & Stengel 1990, Relis 2006, Shapiro et al. 1989, Sloan & Hsieh 1995, Vincent et al. 1994).

The significance of our study, we believe, goes beyond its insights into what aspects of legal service are important to clients. The inability of legal clients to assess legal competence means that lawyers are able to move clients towards their own perceptions of what constitutes a good outcome (Blumberg 1967, Moorhead et al. 1994, 2003, MacCoun 2005). Indeed, there is a large body of research which investigates how lawyers manage their clients' expectations, and persuade their clients to accept an outcome (eg. Eekelaar et al. 2000, Davis et al. 1994, Griffiths 1986, Hunter et al. 2000, Ingleby 1992, Kritzer 1998, Mather et al. 1995, 2001, Melville & Laing 2008, Sarat & Felstiner 1986, 1995).

These studies have predominantly drawn on lawyer interviews (eg. Daniels & Martin 1999) or lawyer-client observation (eg. Kritzer 1998, Sarat & Felstiner 1986).

However without directly talking to the client, their experiences of legal disputes can

and barristers providing expert advice and court representation. Some of our files involved both solicitors and barristers and so we have retained the terminology to reflect this difference.

only be inferred. This has meant that while previous work shows that lawyers dominant clients, the way in which clients experience this domination has not been investigated. This is a significant oversight, and as Moorhead (et al. 2003:14) stresses, the mismatch between client's views and lawyer's behaviour gets to the heart of an important paradox:

This could suggest that theories which emphasize a non-alignment of lawyer and client are, at least as far as clients are concerned, wide of the mark. Clients do not generally seem to perceive their lawyers as disengaged, uncaring, or otherwise inadequate... Some clients will not know what to expect and will be grateful for any show of interest or help. There are other possible explanations. Whilst, it is possible that through image management, and careful handling of the client, a lawyer could remain disengaged whilst appearing otherwise to their client, this seems unlikely.

Another unexplained paradox is that while clients are highly satisfied with the services that they receive from their individual lawyer, the legal profession generally has a very poor reputation. For instance, a recent survey in the UK showed that while consumers of legal services were very satisfied with the services they received from their individual lawyer, under half felt that the legal profession could be trusted to tell the truth (LSBCP 2011:23).

These results are similar to studies in the US. For instance, a survey commissioned by the American Bar Association showed that the majority of people who had consulted a lawyer in the last 10 years were satisfied or very satisfied with their lawyer's

performance. Yet, the legal profession overall was rated less favourably compared to other professions with the exceptions only of stockbrokers and politicians.

Respondents viewed lawyers as lacking compassion, being uncaring and greedy, and having poor ethical standards. In addition, public opinion of the legal profession appears to be getting worse (Hengstler 1993). A Gallop poll showed that in 1976, 27% of respondents rated lawyer honesty and ethical standards as low. By 1994, this figure had risen to 47% (cited in Galanter 2006:6). A Harris Poll showed that 75% of respondents in 1977 believed that the legal profession had considerable or very great prestige. By 1997, 47% of respondents felt that the legal profession had only some or hardly any prestige at all (cited in Kitei 1999:171).

Moorhead et al (2003:14) suggest that these discrepancies may reflect problems with the existing body of research, and that it is 'unlikely' that solicitors can be successful at managing their image. However, we do not agree with this view. Our investigation of legal services from the perspective of clients suggests an answer to this misalignment which is consistent with the previous studies.

Methods

There have been only seven previous studies that have directly involved medical malpractice negligence claimants. Six have been conducted in the US (Hickson et al. 1992, Huycke & Huycke 1994, May & Stengel 1990, Relis 2006, Shapiro et al. 1989, Sloan & Hsieh 1995), and one in the UK (Vincent et al. 1994). All focused almost exclusively on claimants' motivations, rather than examining other aspects of claimants' experiences, including claimants' relationships with lawyers.

Medical malpractice claims have a number of features which are likely to impact upon the lawyer-client relationship. Claims can be highly emotional. Many interviewees were clearly struggling to deal with the grief of an unexpected death or the aftermath of having suffered a serious injury. In England and Wales, there is no duty on medical providers to disclose to patients if a medical accident has occurred. This means that lawyers need to conduct considerable initial investigation before they can ascertain the merits of a claim. The need for investigation also means that client involvement in decision making is likely to be mitigated by the heavy reliance on expert evidence. As lawyers often initially accept the client without necessarily knowing if the case will succeed, many claims eventually withdraw. Even if the claimant wins, a fault based scheme limits the only possible guaranteed positive outcome to financial compensation². Other forms of outcome which may be equally important to the claimant, such as an explanation of what happened, an apology, and knowledge that ‘lessons have been learnt’ are not always forthcoming (Relis 2006).

Our research is based on 30 in-depth interviews with people who intimated a medical malpractice claim between January 2006 and June 2009. The sample consisted of 18 women and 12 men; five had suffered from minor injuries³, six from moderate injuries, eight from serious injuries; and in eleven cases a family member pursued a claim following the death of the patient. Sixteen claimants successfully settled, and

² England and Wales, as most other jurisdictions, operates a fault-based scheme, meaning that claimants must prove that their injury was caused by negligence, and outcomes are limited to financial compensation. The best-known alternative is the no-fault scheme operating in New Zealand (Bismark & Paterson 2006).

³ Claimants’ descriptions of injuries were classified according to the Judicial Studies Board guidelines (2008).

the remaining 14 withdrew following advice from their lawyer⁴. We also used a coding sheet to record data from claimant's legal files. The small sample of files limits quantitative analysis, however, the numerous internal memos provided insights into the lawyers' perspectives, and letters to the client revealed further information about the relationship between lawyers and clients. In some instances, there were discrepancies between the lawyer files and the clients' perceptions, suggesting that lawyers' and clients' views are, at times, divergent.

Claimants were accessed via a law firm in a northern English city that offers specialist medical malpractice legal representation. The firm holds a contract with the Legal Services Commission and has a high volume of claims⁵. It generally only accepts claimants if they have been seriously injured and there is a reasonable chance of winning the case. Some claimants with more minor injuries were included in our sample as the firm will take on occasional claimants if liability is clear, and settlement can be achieved with minimal expenditure. While it is not possible to ascertain the firm's representativeness, it matches the typical high-volume specialised personal injury lawyer firms operating in England and Wales (Kritzer 2001).

The firm was prevented by data protection legislation from disclosing clients' personal information, and so it sent out information letters and consent forms on our behalf. Some clients were not contacted, including those who had not responded after an initial inquiry, were suffering from a terminal illness, or who had a psychiatric condition, and so would find it difficult to cope with interviews. The firm was also

⁴ One claimant implied that her claim had proceeded to a final hearing, but the file showed that while there had been some initial court proceedings, the claim had ultimately withdrawn.

⁵ The Legal Services Commission provides state funding to claimants assessed to have a reasonable case and who do not have the economic means to hire a lawyer.

reluctant to allow contact with some disgruntled claimants. The firm did not disclose the number of uncontacted claimants, and so the response rate is unknown. While this method of accessing clients has undoubtedly biased our sample towards more satisfied clients, our results suggest that even claimants who were happy with their lawyer's service were still dissatisfied with some aspect of their claim. We would expect that the inclusion of more disgruntled claimants would have produced similar types of dissatisfaction, although in these cases the lawyer may have been less successful at deflecting this dissatisfaction onto other actors.

Our research has some limitations, most obviously, we cannot generalise from a small sample drawn from one law firm, especially as the firm had a hand in selecting the clients. The advantage of our research is not its breadth, but rather its depth. In-depth interviews provide a richer picture of the claimants' experiences than obtained from previous studies. With the exception of Relis (2006), all previous research obtained the claimant's perspective using a questionnaire.⁶ Many claimants pursued a claim as they had not felt listened to by medical professionals. The use of open-ended questions allowed claimants to give voice to their experiences. We did not want to further disempower claimants by using pre-set questions.

There are also some important differences between how medical malpractice claims are handled in England compared to other jurisdictions. Healthcare in the UK is provided free of charge by the National Health Service (NHS), and therefore the majority of claims are made against the NHS. In England and Wales claims are handled by the National Health Service Litigation Authority (NHSLA) which has its

⁶ Several previous studies describe their methods as involving 'in-depth interviews,' however, it is clear that these involved asking 'forced choice' questions such as likert responses (Huycke & Huycke 1994, Hickson et al. 1992, May & Stengal 1990).

own team of defence lawyers, whereas in many other jurisdictions, such as the US, the defendant is a private insurer.⁷ The majority of claimants in our sample were funded either by legal aid or by legal insurance and only a few were represented using a conditional-fee agreement. Conditional-fee agreements (CFAs) require a successful claimant to pay the legal fees plus an agreed additional percentage. In our sample the additional percentage ranged from 50% to 100%. In unsuccessful cases, the client only pays disbursements and not the legal fees. In the US, clients are represented on a contingency-fee basis, meaning that the successful lawyer is paid an ex ante agreed share of the final settlement or award. Additionally in England, losing parties are liable to pay the other side's legal expenses, which creates an additional risk for high-value claims⁸ (Kritzer 2001), whereas there is no fee-shifting arrangement in the US. Claims in England are decided by judges sitting alone, whereas juries determine compensation in the US (Vidmar 1998, Weiler 1991).

Choosing a law firm

When asked how they chose their solicitor, most claimants explained that they asked friends or family for advice, or they researched online. The firm was also recommended by an insurance company, the Legal Services Commission, police officers who had faced solicitors from the firm in court, and a hospital complaints department.

⁷ Most claims in Scotland are also made against the NHS, however, Scotland has its own health services (NHS Scotland), it is a separate jurisdiction, and claims are dealt with in a different way.

⁸ The uplift does not apply to legally aided cases. In November 2010, the government proposed to abolish both legal aid and after the event insurance for medical malpractice cases, considering that CFAs provide an adequate alternative funding source (Ministry of Justice 2010a:61). In addition, the need for ATE insurance would be reduced by requiring only claimants with the necessary financial means who have bought a reasonable case to pay the other side's costs (Qualified one way costs shifting). The government has also proposed to stop success fees being recovered from the losing side, and to increase general damages by 10% in order to assist claimants to pay the success fees (Ministry of Justice 2010b). These proposals are yet to be implemented.

Claimants explained that they had wanted a law firm with a 'good reputation' and several claimants had gone on-line in order to find a firm with specialist accreditation, had represented a similar case, and one claimant had also compared success rates. In addition, claimants searched for 'good' firms and did not mention the reputation of individual solicitor. Whereas other research has suggested that claimants lack expertise in selecting firms (LSBCP 2011), our research reveals that the internet is a useful resource for some clients to research a firm's reputation. The reliance of family and friends should also not be assumed to indicate a lack of skills in ascertaining quality of legal services. The family and friends that our interviewees turned to generally possessed legal expertise, were solicitors, worked in professions that regularly used legal services, or had contacts within the legal profession.

While some claimants clearly had strong research skills, this was not the case for all. Several complained that they had struggled to find appropriate legal advice. For instance:

Somebody told me the name of a solicitor and they turned out to be the solicitor for the NHS! And obviously I couldn't go with them and it seems like that we need assistance or help to be able to easily find [legal advice] (male claimant, serious injuries, settled)

While there appears to be a wide variety of methods used in selecting a solicitor, the legal files provided a different picture. The files show that nine claimants had been referred from other firms involved in a scheme whereby other solicitors connect

clients to a specialist in return for a referral fee. A further five claimants were referred from another firm that did not appear to be within this scheme. The files also revealed a number of referral sources not mentioned by claimants, including advocacy and advice groups, an accident helpline and a counsellor. Only five files recorded the claimant being referred by a friend or family member.

The claimant interviews suggest an explanation for the mismatch with the solicitor files. Some claimants reported that they had approached another firm first, but felt that they had been turned away. They explained that the initial firm lacked specialist expertise, the claim was too large for the firm to handle, the firm already had too many claims, or claimant felt that the other firm was 'not interested.' Whereas the solicitor files would suggest that solicitor see the move from a previous firm as a referral, for claimants, the suggestion that the client should seek alternative advice is seen to be rejection. Clients also did not appear to automatically follow the referral, but sought alternative advice from friends and family before they approached the law firm⁹.

One of the weaknesses of our research is that we have only spoken to claimants who obtained legal representation, and simply because a claimant seeks out a firm does not mean that the firm will accept the claimant. The firm had a comprehensive system for screening claimants, including employing in-house nurses who gave an initial impression of the potential merit of a case. The firm also explained that they decide to accept claimants based not only on merit, but also on value. Several smaller value claims were included in our sample, but these were claims where liability was clear

⁹ The disparity between the claimant interviews and lawyer files may also partly reflect the way in which information about referrals is recorded in the files. Information about referrals was recorded using a set of pre-set criteria, and this method is likely to miss some of the full range of referral sources.

and so expenditure was low. It is possible that claims with merit, but with little value, are not accepted.

Claimants' initial expectations

Most claimants explained that they did not have a clear idea of the merits of their case at the outset of their claim. Instead, they expected that their solicitor would make an initial assessment concerning whether they had a claim. As several claimants explained:

I didn't know what to expect really, what do you expect from it all? I don't really know, I just left it up to them, I didn't really know anything about any procedure like this... (female claimant, moderate injuries, withdrew)

I guess we wanted someone who knew more about these things to examine the case and see whether we did have a claim... (female claimant, serious injuries, withdrew)

In addition, claimants largely described their initial expectations in terms of what they 'hoped' to gain, rather what they 'expected'. Our interviews were conducted after the claim was resolved, and it is possible that claimants had initially entered the process with stronger expectations and that our findings reveal solicitors' success in dampening their client's expectations. Either way, these findings suggest that claimants felt that they were largely dependent on their solicitor's advice.

The merits of a medical malpractice case are often initially unclear. Solicitors appeared to be generally successful in communicating this uncertainty to their clients. Claimants were asked to recall their solicitor's original estimate of their claim. Just under half replied that their solicitor was initially reluctant to commit to a prediction of success. These claimants stated that they were told that their case was 'favourable' and 'probably looked like there was a case', rather than that their case was definitely going to be successful. Claimants also recalled that the solicitor had been careful to point out that the result would be dependent on the medical records and the views of an independent medical expert. These claimants generally described their claim as a process, with the first step involving the claim being assessed by an in-house nurse and then by an independent expert, before the solicitor was prepared to commit to a view concerning the possible outcome.

The uncertainty about a claim's prospects was not necessarily appreciated by all claimants. Some recalled their solicitor being careful not to imply certainty, however, they still believed that their solicitor felt that their claim would be successful even if this was not explicitly stated. These claimants seemed to be looking for some type of implied sign that they had a good case. For instance:

I think she couldn't actually tell me that I was going to win my case, but I just had this feeling... the more I went to see her the more I was aware of it, the more I began to realise that I did have a good case (female claimant, moderate injuries, settled)

She didn't say that it didn't seem like a case so, she seemed very interested in what I was telling her... (female claimant, death, settled)

These comments suggest that the task of managing clients' expectations is not easy. Just the act of taking a case on and holding an initial conversation with the claimant can be taken as an indication that the case is likely to win. In addition, some claimants also seemed to interpret the firm asking for payment upfront as a suggestion that their case was likely to win.

In addition, several claimants felt that their solicitor had stated that they clearly had a good case:

She looked at the case and said it was a very strong case of compensation. And she referred to some handbook that said under the circumstances we've got a very good claim... (male claimant, moderate injuries, withdrew)

...they felt I had quite a good case for clinical negligence so I went ahead with the case with them... (female claimant, moderate injuries, settled)

The legal files for the claimants, however, suggest that they were not promised a guaranteed outcome. These claimants had suffered from particularly traumatic incidents, and the files suggest that they very strongly believe that they had a case. For instance, one claimant sent the solicitor a newspaper story about a similar incidence that occurred at the same hospital, asserting that there was a pattern of problems.

The fact that claimants may not always appreciate that their claim was not guaranteed to win is not entirely unsurprising, especially considering the strong emotions associated with claims. For some claimants, any positive words about the claim from the solicitor, expert, barrister, or even someone from the other side, seemed to have been taken as providing emotional support. As several claimants stated:

...just by going to [the solicitor] and them saying yes, we're really sorry but yes you've got a really good case, that was quite cathartic in some ways although it was emotional, it made us realise that... we had the worst surgeon and the worst luck (female claimant, death, settled)

And the hospital also sent me to see their own gynaecologist and their own psychiatrist on their behalf to see if what I was saying was right, so to speak. Unbelievably, the gynaecologist that they sent me to see... he said to me, "you know, I can't believe these people have done this to you, and I think they should just pay up and admit liability." That was their own gynaecologist who said that, who was supporting the NHS and I knew, I thought I'm right. I felt so much better actually hearing somebody admit liability and say "you know, they've done you an injustice here, they should just admit liability and get it over with", oh I tell you that was the best feeling in the world! (female claimant, moderate injuries, settled)

Investigating the merits of a claim

Once the firm had decided to proceed with a claim, the first step involved gathering all of the medical records, followed by an assessment of the reports by an independent medical expert. The files showed that there was often a long gap between when the claimant's first contact with their solicitor and the intimation of the claim to the defender. In only 11 out of 30 claims, the solicitor wrote to the defender to notify a claim.¹⁰ In these instances, the mean of the number of days between the client being accepted by the firm and the notification of the claim was 382 days, with a median of 342 days. Much of the interaction during this long period of investigation consisted of sending the client written up-dates of progress rather than seeking instructions. There were only three cases where a complete set of medical records and independent advice were not sought. In these cases, the injury was relatively minor, liability appeared to be clear-cut, and the other side agreed to settle immediately. In all of the other cases, the bulk of the work done on the file consisted of the initial investigation and assessment of merit.

The files revealed that there was regular interaction between the solicitor and client during this initial investigation, although most of this interaction was not face-to-face. Instead, communication with clients largely occurred via written letters and telephone calls:

¹⁰ Following the initial investigation, the claim is intimated by the claimant's solicitor sending the defendant a 'letter of claim'. Until the defender receives this letter, they may only have a vague idea of that there is a potential claim, and up to this point the only information they may have received are requests for disclosure. The purpose of the letter of claim is to provide the defendant with sufficient information to carry out their own investigations. The defendant is required to respond within three months, with the response stating the defendant's position concerning liability (Cameron & Gumbel 2007:159-164).

...she came to the house once and that was it, and then everything was done by letters then, or I had to phone her and that was it (male claimant, serious injuries, withdrew)

I didn't [see the solicitor]. It was all done through the post. I just filled a form out... (male claimant, minor injuries, settled)

...it was mainly through the post, and I was still quite poorly at the time (female claimant, minor injuries, withdrawn)

The file analysis and claimant interviews suggested that some face-to-face meetings had occurred, but these were largely limited to an initial meeting or a later meeting in order to discuss settlement. There appeared to be several reasons for the relative lack of face-to-face interaction. Poor health meant that some claimants were unable to travel. In addition, during the investigation period, the solicitor's role involved asking the claimant's authority for obtaining medical records and informing clients once records were received, rather than needing to obtain further instructions.

The files also revealed that the collection of medical records can be difficult. In 19 out of 30 claims, there was a delay in the solicitor receiving the medical records.¹¹ The most common source of delay consisted of problems obtaining the medical records from the health provider, and these problems were both varied and frequent. For instance, in one case the doctor concerned retired and the surgery took six months to determine who had the authority to send the doctor's medical records. When the

¹¹ Delay was measured by recording any evidence that the lawyer needed to chase up medical reports, such as sending out a reminder letter.

records were finally sent, they were for the wrong patient. The other main source of delay in the investigation stage consisted of problems concerning the claimant. These included the claimant failing to send back documentation, losing paperwork, and missing appointments, although claimants made no mention of these problems. In addition, the main delay in intimating the claim to the defender was caused by medical experts failing to respond, or an expert withdrawing as there was a conflict of interest, leaving the solicitor needing to find another expert.

The files showed that solicitors dealt with delay caused by the other side by regularly reviewing the progress of the investigation, sending reminder letters, making regular telephone calls, and if all else failed, threatening court action. This threat was not actually carried out, although in instances where the limitation date was fast approaching the solicitor applied to the court for an extension. Solicitors appeared to be wary of carrying out the threat, for instance, in one case the NHS Trust had taken nine months to respond to requests for medical records, and the solicitor threatened the Trust with proceedings¹². However, there is an internal memo which states “we need to consider this step carefully in view of the limited value of the claim.”

Almost all claimants had kept the paperwork associated with their claim, which was described as consisting of ‘hundreds of letters’, ‘a massive file’ and a ‘big pile’ of documentation. Claimants appeared to see the sheer quantity of correspondence as an indication of their solicitor’s hard work, as several explained:

¹² Medical records should be produced by the defendant within 40 days, and unless there is a reasonable explanation for delay, the claimant’s solicitor is entitled to apply to the court for a disclosure order.

I've still got the documentation, .. it fills three large loose leaf binders and I know the hours that he put in on the case... (male claimant, serious injuries, withdrawn)

She went into it in such a lot of detail and depth, when it finished I had a pile of papers that must have been at least four feet off the ground, I still have those papers... So she went through it very, very thoroughly (male claimant, serious injury, settled)

Claimants also saw that of a large quantity of document as evidence that their solicitor was 'thorough', 'efficient', and above all, 'professional.' As one claimant commented:

It just felt very well managed from their point of view, because even he would send out an interim letter saying could you give us a timeline of when we would expect to hear back from him at each stage and then if we hadn't heard back you would get a letter in the post saying I'm still waiting for this or he'd ring. So it was very professional... it felt very well managed and we were kept informed what was happening and where we were up to and what we were still waiting for (female claimant, serious injuries, withdrew)

For most claimants, the lack of face-to-face contact was not problematic. Claimants explained that their solicitor had always been available over the telephone, and for most, the regular provision of letters showed they had not been forgotten:

She just phoned me every now and again, and said you know... this is what is happening, we've not heard anything yet, but we're going to pursue it, we're going to do this, we're going to do that. I didn't really have to phone her to chase her up for anything (female claimant, moderate injuries, settled)

...every month I got an update from the solicitor and I have to say the solicitor was superb because everything, I got an update even if it was a letter to say we're got nothing to report, I wasn't forgotten... (female claimant, death, settled)

Despite the lack of face-to-face contact, many claimants felt that they had developed a 'personal connection' with their solicitor:

The solicitor I found her very, very good, she was very concerned, she was very sympathetic. It felt very nice talking to her she was a really, really nice person, even her letters were really nice. I got a bit of comfort from talking to her, she was very good (female claimant, death, settled).

They were easy to approach and so they were so competent and so quiet and so nice. That was why with [the sol] and the other people we were on first name terms because it wasn't 'I'm a solicitor and you've whatever' and all the rest of it. It was all just so nice... (male claimant, serious injuries, settled)

While most claimants explained that they felt informed, approximately a third seemed to know little about the investigation process. For instance, when asked if the solicitor had obtained the claimants' medical records, some claimants seemed uncertain:

...you don't really hear too much you know because she's doing the liaison between themselves and the hospital solicitors so every now and again she would ring me and tell me something and that was that (male claimant, moderate injuries, settled)

I don't really know, I just left it up to them, I didn't know anything about any procedure like this... (female claimant, moderate injuries, withdrawn)

Sommerlad (2000) stressed that clients want a sense of ownership over their case, however our research shows that some claimants were content to leave the running of the claim to their solicitor. These claimants explained that their attention was more focused on battling a serious injury or dealing with grief. They also explained that the investigation had brought back difficult emotions, and they preferred not to be too involved. As one claimant explained:

[My son told me] once you've put it in her hands you won't have to deal with her, but you do, because she had to keep contacting us for different information and would we clarify this and it was all extra stuff. And it all churns your stomach over, it just makes you feel sick (female claimant, serious injuries, withdrawn)

Some claimants felt that their solicitor was mindful of that their claim was emotionally difficult, and had attempted to provide 'reassurance' and 'comfort':

...and when we had to have some quite serious meetings and go into things in depth he would always say to me if its getting too much for you if you're getting upset you just have to say so. He was very mindful of my feelings, that we're not talking about an unknown person here, we are talking about my husband and I was married for twenty five years so it wasn't sort of, he took all of that into account he didn't just go into legal mode, he was actually there's a human being here (female claimant, moderate injuries, settled)

These comments suggest that solicitor do more than manage client's expectations and investigate claims. The emotional care provided by solicitor was also evident in much of the correspondence on the legal files. There were many examples of letters where the solicitor was clearly trying to be sympathetic. For example, in one instance, the patient dies and the claim passes to his widow. The claim was approaching the limitation date, and so the solicitor needed to contact the claimant despite knowing that her husband had just died. The letters from the solicitor to the claimant reveal a gentle approach, as one opening sentence showed:

I am sorry to have to write to you at this very sad time but unfortunately, I have little option in view of the timescale involved... (female claimant, death, withdrawn)

Solicitors' efforts at maintaining a personal relationship with clients and providing emotional support, however, did not appear to be successful in all cases. Not all claimants were pleased with the form of interaction, and a few felt that the lack of face-to-face contact was too impersonal:

...just by somebody ringing me up and asking me question isn't a very good, is it really, I think (female claimant, moderate injuries, withdrawn)

...how would you judge somebody who you can't see, and you just get letters from and speak to over the phone, you know? As far as I know she seemed alright, yes, but I don't know, as I say speaking to her over the phone she sounded okay, but then as I say I don't know law people anyway they've all got their ways haven't they? I mean no offence, but they've got their ways of doing things and saying things and words that you can't understand (male claimant, moderate injuries, withdrawn)

A few claimants also felt that their solicitor was 'too professional'. As one claimant explained:

I think to be honest she was too professional... Very distant, very professional, you couldn't fault her; you couldn't be friendly with her or anything like that... It was all just very cut and dried sort of thing, but very nice (male claimant, moderate injuries, settled)

Receiving bad news and attributing blame

Approximately half of the claimants withdrew their claim following advice from their solicitor. This proportion is similar to national statistics, and the NHSLA (2011)

report that from 2001 to 2011, 38% of claims were abandoned¹³. Most unsuccessful claimants believed that their claim still had merit, and were disappointed that they were unable to continue. This suggests that solicitors need to break the bad news that the claim needs to be withdrawn, even though the claimant would continue to believe that if their claim proceeded they would eventually be successful. While most unsuccessful claimants expressed dissatisfaction with this outcome, very few felt that their solicitor was to blame. Instead, almost all of the unsuccessful claimants held the independent medical expert responsible for their failed claim.

The medical expert report is crucial to the success, or otherwise, of medical malpractice claims. Independent medical experts were largely asked to report on causality, and in all instances where the expert report suggested that the claim lacked merit, the solicitor decided that the claim should be withdrawn. The files reveal that the solicitor did not attempt to shield the claimants from negative expert reports. For instance, internal memos suggest that solicitors are upfront with bad news:

[The client is] very upset by [expert] report. I said that I anticipated that she would be and I was sorry for that but it was important that she sees it (female claimant, moderate injuries, withdrawn)

The files also suggested that many claimants found negative news to be distressful, and in addition, the interviews revealed that most unsuccessful claimants did not agree with the medical expert. In several instances, the claimants expressed their dissatisfaction to their solicitor, with the solicitor then asking the medical expert to

¹³ This figure refers to claims that were notified to the defendant, whereas our data suggests that many more claims are abandoned prior to this stage. Only 3% of claims proceed to court.

answer the claimant's questions. In these cases, the solicitor appeared to want to demonstrate to the claimant that the investigation was complete and that they had tried to do everything they could to support the claimant, rather than trying to persuade the experts to change their mind. The correspondence between the solicitors and experts suggest that asking the expert to do some further work is another strategy for managing a client's expectations. For example, one solicitor wrote:

While I doubt that this is relevant for the purpose of the claim, I think that it is important for peace of mind to have an answer to this question, so I would be very grateful if you would give it your consideration (female claimant, moderate injuries, withdrawn)

Solicitors also asked medical experts to further explain why their case is likely to fail. In one case, the solicitor writes to the expert stating:

[The client] does not accept your opinion but he is finding it difficult to understand that his treatment was acceptable in legal terms when he feels he is now so much worse off than he was before the surgery (female claimant, serious injuries, settled)

The files suggested that one of the skills that the solicitor looked for when selecting a medical expert is an understanding of the legal system, as well as medical expertise. In this instance, the medical expert's reply stresses that the claim would stand little chance in court:

I can understand [the claimant's] frustration but the problem is proving something in a Court of Law. [The claimant] may have a different perspective but it is what is written in the notes, which unfortunately carries weight in Court (female claimant, serious injuries, settled)

The claimant interviews also suggest that solicitor had explained that a negative medical expert report meant that the claimant would ultimately fail in court. As several claimants stated:

So at the finish [the solicitor] wrote to me and said in their opinion following [the expert's] report they don't think they should carry on with it and if it went to court that was it sort of thing, they couldn't win with that report so that was it, they'd finished with me and didn't want to know anymore (male claimant, moderate injuries, withdrawn)

...she said to us, if they say that before a judge, the judge would listen to the expert witness (male claimant, serious injuries, withdrawn)

Claimants presented the receipt of the negative medical report as being an end point. Their descriptions conveyed a sense of resignation, and most claimants explained that at this stage they realised that there was no point continuing 'to fight':

But I just think that ultimately we just thought well this isn't going to go any further (female claimant, serious injuries, withdrawn)

...when that [expert report] comes back and says no, he died of a stroke, that's the end of it then [the law firm] can't take it any further (female claimant, death, withdrawn)

Despite this resignation, very few claimants agreed with a negative medical expert report. The majority of unsuccessful claimants 'still believed' that negligence had occurred. Some described their medical error as being 'obvious', and struggled to understand why the medical expert would not agree with the cause of their injury. These claimants explained that if only the medical expert had 'listened' to them, then the outcome would have been different. The claimants felt that the medical expert had overlooked 'important aspects' of their claim, and was 'biased' towards the other side:

...an independent report supposedly but I think it was done in collusion with each other, one isn't going to criticise another one is he? Even though he might have been retired he's certainly not going to criticise another eye surgeon (male claimant, moderate injuries, withdrawn)

But you know, all these are colleagues between each other, so they always support each other. Don't doctors always find reasons for death. They don't let people know the real reason of death. So she shouldn't have died like that (male claimant, death, withdrawn)

And [the expert report] came back saying, "well actually we can't really say anyone was at fault as such"... this medical expert seemed to miss the point... (female claimant, serious injury, withdrawn)

In addition to medical experts, solicitors also sometimes obtained assistance from barristers. Barristers were used much less frequently than independent medical experts, although this may reflect the fact that none of our cases proceeded to judgement. Barristers were usually bought in to provide an opinion on the merit of continuing a case or to provide an estimation of damages.

Dissatisfied claimants felt that medical experts had not listened largely due to ‘bias’ but they felt that barristers had not listened due to lack of empathy:

...that part I didn’t actually enjoy because I didn’t think that barrister was for me if you understand what I mean. I didn’t feel as confident with him... (female claimant, death, settled)

Some claimants felt that their barrister was primarily interested in receiving a generous fee rather than providing a personalised service. Several also considered that the barrister’s privileged financial position meant that they were unable to sympathise with their own financial needs:

I have to say out of all the things that happened that irritated me the most. [The barrister suggested that the claimant should] “Take your money and run”, and I thought “I’ve got no chance, I’ve lived on eighty pounds a week sickness benefit!” (female claimant, death, settled)

As with complaints against the medical experts, disgruntled claimants did not necessarily understand the intent behind their barrister's questions:

I didn't feel comfortable with him, although he was a proper nice gentleman, I wouldn't say he wasn't, but I thought, when I were talking to, when he said he were talking to this doctor, I thought "what's this got to do with happened to my husband." (female claimant, death, settled)¹⁴

A few claimants also blamed 'the legal system' for the failure of their claim. For instance, one claimant explained that their case had failed due to 'technicalities', referring to the need to show causality. Another claimant also used the term 'technicalities' to mean that their claim fell outside the limitation date.

Finally, a few claimants explained that the failure of the claim was their responsibility. Several found the process to be too emotionally exhausting, and they withdrew. As one claimant explained:

I don't want to go any further with it and that's how I feel because I knew he was dying and I knew that I would have to deal with him dying and deal with this being brought up over and over and over again, and that's the only reason I didn't. I didn't want to harbour this hatred and hurt and pain... (female claimant, death, withdrawn)

Claimants' criticisms of solicitors

¹⁴ While each of the quotes concerning barristers are from claimants identified as women who had settled a claim after the death of a family member, each of these claimants are in fact different people.

For the most part, dissatisfaction with the process of resolving the claim was directed towards legal actors other than the solicitors. The majority of claimants expressed strong satisfaction with their solicitor's services. There were, however, a few claimants who raised criticisms.

Several claimants felt that their solicitor should have listened to them, rather than the expert:

Well this is what must have happened, instead of taking notice of the paper, the notes I sent him or listening to me, he listened to the consultant... (female claimant, death, settled)

...as a layman I think there was unnecessary suffering, because they didn't get it right from the beginning and I think that they should listen to what patients... tell them... (male claimant, serious injuries, withdrawn)

A few felt that they had been misled about their claim's merits, for instance:

It was just a very annoying thing after initial reaction from [the firm] oh yes, you've got a very, very strong case and then in a matter of weeks they changed their mind without really any expert advice (male claimant, moderate injuries, withdrawn)

The legal files made it clear that claimants had been informed of the costs of their case, including the difference between legal fees and disbursements. Notes on the file also suggested that the solicitor had discussed costs with the claimant. Nevertheless, a few claimants seemed confused about the difference between legal fees, which were covered by legal insurance, and disbursements which needed to be paid for by the client:

...I had to pay at the end of the day I had to pay over a thousand pounds but the funding didn't cover that and I don't know why (male claimant, moderate injuries, withdrawn)

A few were also disgruntled with the amount that they had to pay for disbursements, for example:

I would have to see another surgeon so I would have to go and see him and talk to him, we had to pay for that, I'd need photographs doing, so I would pay as I went along so that we didn't end up with a colossal bill at the end which is what I was worried about (female claimant, minor injuries, settled)

This confusion led to some dissatisfaction, with several claimants feeling as if their solicitor was primarily interested in making money.

Several claimants also felt that their solicitor had not 'fought' hard enough, and that once any doubts were expressed about the claim that the solicitor 'gave up':

She was good, she corresponded with us and go the Legal Aid and everything. But the day she went in court she didn't say a word she just sat there and said nothing, she didn't back [the patient] up or nothing like that... She didn't fight his case or nothing, so we was quite disappointed in that (male claimant, serious injury, withdrew)

For the most part, claimants did not act upon their criticisms of their solicitor. The files revealed instances where the claimant had questioned the independent medical expert's advice, or had asked for a change of barrister, but there was little evidence that they challenged their solicitor. Some claimants had come to the firm after being unhappy with the services that they had received from another firm. One also asked for the costs of their file to be reviewed, and had kept the file as they felt that the solicitor had mishandled their case. It may be that these few examples of claimant action reflect the fact that the firm had ensured that we did not contact particularly disgruntled clients, however, it should also be remembered that half of the claims eventually withdraw, and most claimants expressed dissatisfaction with some aspect of the claim.

Withdrawing from a claim

Approximately half of the claimants withdrew following the initial investigation. The files suggested that solicitors only recommended to their client that the claim should be discontinued as 'prospects are so poor', and the final decision about withdrawal was left to the clients. Letters from the solicitors, however, made it clear that there was little option left except to withdraw.

In instances where the client had legal aid funding or funding from an insurer, the solicitor made it clear that the client would now lose funding. The letter suggested that the client had the option of going to another solicitor, but that they would need to pay privately, and the solicitor did not offer the option of continuing themselves on a private basis. The interviews suggested that the loss of funding was an effective method for deterring claimants from continuing:

...there was nothing else that the solicitor could do because you only get Legal Aid for a certain amount of money and once I'd been to that lawyer [barrister] and they'd said "no", that was the money used up and I would have to pay, which would go to tens of thousands of pounds, and I haven't got tens of thousands of pounds to take it any further, like to the High Court. I could have done, had I had the money but I didn't have that sort of money at the time, my children were all pretty young and you know you can't do it can you, unless you've got a lot of money saved? So that was it, basically it was squashed sort of thing (female claimant, death, withdrawn)

The files suggested that this firm largely took on claimants if they were funded by legal aid or had legal insurance, and there were very few conditional fee agreements (CFAs). When CFAs were used, they were usually entered into only after the initial investigation suggested that the case had a reasonable chance of success. In cases where the investigation was negative, the solicitor's letter warned that there would be a 'good chance' that the claimant would end up paying all of the solicitors' costs, as

well as the costs to the other side. This warning also deterred claimants from continuing:

...she said we are happy to continue to pursue it, but she said at this point we're basically saying you're not going to win in a sort of way. And really if I took the claim further and lost then I would have all the other side's fees to pay...

(female claimant, minor injuries, withdrawn)

Rather than perceiving that the claim lacked merit, claimants seemed to blame themselves for not having the funds to continue. Unsuccessful claimants expressed a strong sense of regret that they could not continue, and most believed that if had they had the funds then that the outcome could have been different:

...sometimes... I think "oh, if only we could have both took it further really, I wish that it could be taken further" because I think if it wasn't a case of the money and it could have been taken further we would have got a better outcome

(female claimant, minor injuries, withdrawn)

Because of the funds, he said, if you cannot offer to continue its better for you to stop at the stage and leave the case and I said okay. But I was fighting all the way, if I had the money I would continue actually (male claimant, death, withdrawn)

The majority of unsuccessful claimants also did not blame their solicitor for the withdrawal of the claim, instead, they tended to stress that their solicitor was *not* at fault:

He was lovely, he did everything he possibly could for me, that solicitor he did yes. It's just, he was really sorry, he couldn't apologise enough, you know, it had to stop there, but he just couldn't take it any further. And it was shame really because I think had it been able to go further we might have got an outcome (female claimant, minor injuries, withdrawn)

...we were more than a bit annoyed, but it's not her fault, she did her best...
(male claimant, serious, withdrawn)

...and if we lose, we lose because I know that this team could not have worked any harder and I really mean that (female claimant, death, settled)

Settling a claim

Sixteen claimants accepted a settlement offer, with no cases proceeding to a court judgment. Table 1 presents the number of claims settled at each stage of offer and counter-offer. In five claims, the plaintiff made the first offer, with ten initial offers coming from the defendant¹⁵. The initial offer was accepted in only one instance.

INSERT TABLE 1 HERE

¹⁵ 16 of the files that were coded settled. One file, however, did not contain sufficient information in order to gauge interaction during the settlement stage.

The files reveal a number of reasons why the claimant (or their solicitor) rejected offers: principally because the offer was considered to be 'too low'; but also because the claimants' solicitor was still awaiting an expert report. In one instance, the claimant's offer does not receive a response from the defendant. Seven claims settle following an initial counter-offer. The claimants' descriptions in these cases present the settlement process as a straightforward transaction, rather than being adversarial:

And then when she got that [medical records] sorted, she said she would put in for a claim... (male claimant, minor injuries, settled)

...so it [the expert report] was put to the Health Authority and it just took its course then, letters backwards and forwards until finally... it was settled (female claimant, death, settled)

Eight claims involved further negotiation, with only one claim settling after a third offer, four more settling about a fourth offer, and finally, two claims settle on the fifth offer. Claimants involved in more protracted negotiation offered a different perspective than those who had claims that resolved relatively easily. These claimants tend to describe their solicitor in more adversarial terms ('fighting', withstanding 'pressure', 'threatening', 'attacking').

The claim interviewees suggest that solicitors perform a dual role within the negotiation process. First, they need to ensure that the claimant does not accept the first offer, and by so doing, settle too low. Claimants involved in protracted

negotiations explained that their solicitor had explicitly advised that the initial offer was too low. Several expressed appreciation of this advice, explaining that without their solicitor's support, they would have accepted a much lower offer. Second, solicitors need to persuade the client to accept what they believe is a reasonable offer.

The few initial offers made by the claimant (or their solicitor) were much higher than the eventual settlement figure (up to 2.3 times higher), and there might be a risk that claimants see this initial offer as indicating the claim's value. The files, however, revealed that the solicitor had explained that the initial figure was for negotiation purposes, and that the claimant should expect to ultimately receive a lower amount. For instance, one file note stated that the solicitor had told her client that:

I don't think for one minute that the defendant will pay this sum of money but it may prompt us to have further negotiations with them (female claimant, death, settled)

The interviews also suggested that claimants realised that the first offer was a strategic move. They also suggested that solicitors used a number of strategies to persuade their clients to accept an offer. Some claimants explained that they had accepted an offer rather than run the risk of going to court. For instance:

...so then they came up finally with an offer... and she said "did I want to go for more?" and I said "no, I'm happy with that". You see because all the time that you're saying no or she was turning it down or not letting it go, the worry is if

you do go to court, then you might get a lot less (male claimant, serious injuries, settled)

Several explained that they understood they have been given a good offer 'considering' a number of factors. These included the approaching limitation date, problems obtaining information from the other side, and problems trying to prove causality.

The process of making offers and counter-offers can extend the time taken to reach resolution. Claimants, however, did not perceive that the solicitor had delayed settlement. Instead, they saw that drawn out negotiations was an outcome of their solicitor's involvement in a 'long and hard' fight. They felt that their solicitor had done all they could in order to obtain the best financial outcome:

There was a point where we did come close to settling and the solicitor thought that this was it, he said we'll get back to you in a couple of weeks time we're having another look at this... but then obviously they had to look in more detail at everything and eventually they did, we did come to an out of court settlement but it was after twelve and a half years (male claimant, serious injuries, settled)

...but every little thing had to be taken into account... everything that my husband did was the things that a father would do rather than things that he had to do so, all that came into account, there were so many things that came into account... but it had taken all that time (female claimant, death, settled)

The files also revealed that the solicitor needed to make a decision about which negotiation style was most appropriate to the claim. Kritzer (2004) suggests that personal injury lawyers adopt one of two styles of lawyering. First, some take a 'case processing' approach, where they prepare the claim for settlement. These claims are also largely processed by non-legal staff. Second, some take a 'litigational' approach, where the lawyer prepares the case for suit. Genn (1987) suggests that solicitors who do not specialise in personal injury cases tend to take a more settlement oriented approach, and that this strategy produced lower levels of compensation for their clients. Specialists are more likely to bargain hard, meaning that they will hold out against pressure from the defender, and will continue to court if necessary in order to obtain the best result for their client.

We also found these two different approaches, but rather than being based on the individual solicitor or specialisation, the choice of approach was based on the type of cases. Lower value claims which settled early fitted within case processing/settlement orientated approach. In these instances, the claim was investigated by the in-house nurse rather than an external expert. Higher value claims or those where the defendant continued to deny liability fitted more within the litigational/hard bargaining approach, including the claimant solicitor threatening suit if the defendant would not settle. For instance, in one case, the claimant's solicitor writes to the other side:

...in light of the significant difference of opinion between us, we see no option than to commence the Legal Process [sic] which of course we have instructions to do (female claimant, death, settled)

The files also suggested that, for the most part, these were not empty threats and that the claimant's solicitor had been preparing for court proceedings. In all instances, the threat worked and the defendant settled.

Outcomes

Most claimants, regardless of whether they settled or withdrew, expressed some dissatisfaction with the outcome of their claim. This dissatisfaction, however, was usually not directed towards solicitors. The few previous studies that have shown that the desire for financial compensation is an important consideration, however, claimants had additional motives (Relis 2006, Vincent et al. 1994). Similarly, several claimants explained that obtaining financial compensation was important to them, but it was not their primary motivation for suing:

I wasn't bothered and I know it might sound ridiculous but I wasn't bothered because it had never been about the money, never... (female claimant, death, settled)

I wasn't really bothered about the money side of it, I just wanted some sort of recognition of what I'd been through, to know that I was right... (male claimant, moderate injuries, settled)

Claims in England and Wales are resolved through a tort based scheme, meaning that the only positive outcome that can be guaranteed is financial compensation. Some claimants explained that financial compensation was important as it was necessary.

These claimants had lost their jobs, the family's main income earner had died, or they were looking after someone who had been severely disabled, and so had pressing financial needs. Several claimants also saw financial compensation as having symbolic value. These claimants saw that compensation provided some recognition of what they 'had been through.' Not all successful claimants, however, felt that the financial compensation they received was sufficient to provide this recognition. For instance, one claimant had received compensation, but felt that there was still a lack of recognition for the loss of her baby son:

...there was nothing involved for [the death of my son], which was the whole point of my claim. When I look at the money even for losing your son, I had to have a caesarean, so I'm now limited to the number of children that I can have, who's to say I would ever have a boy again which I didn't, I've had a baby girl... I'll never take him to school, I'll never see him walk, I'll never share his first Christmas, I'll never see him get married, things like that, nothing like that is taken into consideration. It's all about what happened on the actual day but nothing kind of about what happens afterwards, so its all very, well there's just no emotion when you go to court for things like this (female claimant, death, settled)

Several claimants felt that their claim had failed to deliver the answers that they wanted, or did not provide an explanation of why the injury had occurred. As one claimant stated:

I'll never know now clearly we have our own ideas and suspicions, but I'll never know what happened... (female claimant, death, settled)

These comments do not necessarily mean that claimants were not provided with an explanation. In almost all cases, the claimant was provided with copies of the medical records and the opinion of an independent expert. In cases where the claim was withdrawn, the expert had usually explained that the injury had not been caused by negligence. However, it appears that many claimants wanted not so much an explanation *per se*, but an explanation that adhered to their belief that their injury had been caused by negligence.

Some claimants had hoped that going to court would provide the opportunity they wanted to put questions directly to the defendant. Going to court was also seen as a form of public retribution, as two claimants stated:

I was annoyed because I wanted it to go to court... I just wanted them to learn a good lesson from me taking it court, but the barrister thought we wouldn't get very far in court (female claimant, death, settled)

...it was getting them into court and getting them to answer some questions on all this list of things that I wanted to know about, but we never got that satisfaction I'm afraid (female claimant, death, settled)

A few claimants also felt that the defendant was not suitably punished, and that the doctor concerned should never be allowed to practice again. These comments also

focused on the defendant's privileged position, and claimants were upset that the doctor concerned had continued to earn high incomes, drive expensive cars, and as one claimant explains, be suspended on full pay:

He was suspended, from when the allegations first came to light that he had screwed up, he was suspended on full pay and he was suspended on full pay for around for two years... and a good many of the other ladies became very, very ill due to him and he gets full pay, you know, its just ludicrous really isn't it?
(female claimant, minor injuries, settled)

Several successful claimants explained that while they had won compensation, they still wanted an apology. As one claimant explained:

It would have been just nice at the end of the legal process just to get a letter saying we apologise for everything that you've been through and we will learn lessons from it, but no that doesn't happen, you don't get that you just get money. I got a letter from my solicitor saying they're now settled out of court and it got quite business like with the costs and all of that and then eventually I got a cheque and that was the end of it (female claimant, moderate injuries, settled)

Claimant's conception of what consisted an acceptable apology seemed to be quite complex. They wanted an apology which included an admission of liability, a sense of regret, and showed that lessons had been learnt. The majority of claimants, even those that were successful, did not receive an apology, and even when they did they felt that

an essential element was still missing. For instance, one claimant had received a verbal apology from the defendant, but was dissatisfied that the apology was not put in writing.

While most claimants expressed some level of dissatisfaction with the outcome of the claim, there were some positive comments. Outcomes that were described most favourably related to institutional change intended to prevent problems from reoccurring. These included change to hospital policy or practice, the institution being closed, and staff being retrained. In one instance, the claimant was told that her case was to be used as an example for training, and the claimant was somewhat happy with this:

...and it was a small comfort, if he was telling the truth and things have changed then, you know, it wasn't all in vain and that is what I just kind of hold on to, that they have learnt a lot of lessons because I've lost my confidence in hospitals (female claimant, death, settled)

Several claimants also felt that the process of investigation had provided them with an explanation of what had happened:

I'm glad that I went that far, I knew I wouldn't win I had no intentions of winning, I just wanted to get to the bottom of things if I could to a certain extent... (female claimant, death, withdrawn)

So by going through this legal process, I found out exactly what happened to him whereas I didn't know this beforehand... (female claimant, death, settled)

The files suggested that solicitors were aware that non-financial outcomes are important to claimants. In one instance, the claimant described how her solicitor had finally obtained the apology that she had wanted from the defendant:

They did say to me "they don't always apologise, they don't always send you the letter", and I said "no I want it written down and I want an apology off them" so she said "I'll see if they'll give you one" and I said "if not, I'll take it as far up as I possibly can until I get that apology off them." And they got me one (female claimant, death, settled)

In this instance, the claimant was very dogged in her pursuit of an apology. In other cases, rather than pursue non-financial outcomes, it appears that solicitors had a number of strategies intended to alleviate the claimant's disappointment with the outcome. Initial letters to the claimant showed that the firm had attempted to be clear from the very beginning that claims can only produce financial outcomes. Letters also suggested that the solicitor had stressed that even if the claimant had not received the outcome they wanted, they had at least achieved something. For instance, a letter from the solicitor stressed that although the claimant did not receive the apology that she wanted or have the opportunity to ask questions, she did receive an admission of liability:

I am pleased with the outcome of the claim and although it has taken some time, I am certainly satisfied with the sum of money obtained... I appreciate that the money is little compensation for the tragic and untimely loss of your husband, but as we discussed, you certainly felt that you have done the right thing and of course, there has been the admission of responsibility from the defendant, which is of some comfort to you (female claimant, death, settled)

In this claim, it was clear that the claimant did not see the admission of liability as providing an apology.

It also appeared that solicitors blamed the legal 'system' for the failure to produce non-financial outcomes, or the other side, as an internal memo demonstrates:

I explained that the NHSLA were taking a commercial view because it was their job to do that (female claimant, moderate injuries, settled)

In some instances, the outcome that the claimant appeared to want was an explanation which would make a sudden, life-changing and explicable event make sense. In these instances, the solicitor admitted that they could not help, as an internal memo illustrates:

[The claimant] found it very difficult to accept or understand the basis upon which we said the case could not progress. He kept repeatedly asking for an explanation as to the cause of his... problems and his now medical conditions

which means he can't work, his life is of poor quality etc etc. Unfortunately, none of us were able to assist (male claimant, serious injuries, withdrawn)

Discussion

In our introduction, we suggested four reasons for studying the views of clients about the quality of legal service. First, in-depth qualitative research is necessary to gain a nuanced understanding of client's views of legal services. Previous work has shown that clients almost universally praise all aspects of their solicitors' performance, although some studies have shown that clients focus more on service aspects relative to legal competence (Moorhead et al. 2003, Sommerlad 2000, LSCP 2011). Our research also demonstrates this divide. Claimants largely judged the quality of their solicitor's performance on service aspects, such as communication skills, professionalism measured by the quantity of paperwork produced, and emotional care. Claimants made little mention of the quality of legal advice, although a few had felt that their expectations had been falsely built up and that they had been misled.

Service factors should be an aspect of providing a good quality legal service, although the way in which service factors are measured has been a subject of debate. For instance, Sommerlad's (2000) research was conducted within the context of the Legal Services Commission in England and Wales developing indicators for measuring the quality of legal services. Sommerlad (2000) argues that such indicators, which largely measure quality of services based on the number of times a solicitor performs a certain technical task, do little to include aspects of services that are important to clients. She suggests that it is necessary to understand what aspects of legal services

are important to clients before evaluative tools can be developed, and that service factors should not be underestimated.

While it has been previously argued that clients' focus on process reflects their inability to assess legal competence (Goriely 1994, LSCP 2011, Moorhead et al. 1994, Paterson 1996, Sherr et al. 1994), our research suggests a further possible reason. Solicitors decided on whether to take on the client in the first place, selected appropriate experts, and conducted negotiations. These tasks are important, however, they do not make up the bulk of the solicitor's role. For the most part solicitors provided administrative services, such as collecting medical records, addressing delay and reporting back to the client. They also ensured that claimant's expectations of the legal system were realistic and provided emotional support. Previous research stresses that lawyers make decisions about liability and causality (Kritzer 2004). We found that the law firm made the initial decision concerning whether to accept or decline a potential claimant. However, final decisions about the merits of a case were left to the medical expert, with the solicitor following the expert's advice. In higher value or more complex cases, decisions about quantum were left to the barrister. Decisions about whether the claim should withdraw or whether the claimant should bear the risk of continuing against the expert advice were left to funders or the claimant themselves.

This relative lack of decision-making input, however, was not perceived by most claimants, who either did not mention legal competence at all, or assumed that the quantity of paperwork was an assurance of their solicitor's professionalism. In addition, solicitors' limited input into decisions throughout the case meant that they were then immune from accepting responsibility for claimants' discontent. The

problem of clients lacking the ability to judge legal competence is further exacerbated by their failure to 'shop around' (see also LSCP 2011). Our research suggests that some clients attempted to make informed decisions about the quality of the services offered by the firm, but not all clients did so. Clients also did not then use the first interview as a means to further judge the quality of service, but instead, most clients who changed firm had done so as the first firm had declined their case.

Unlike most previous studies, our research also demonstrates that clients are not universally satisfied with all aspects of service. The majority of clients expressed some level of dissatisfaction, and even clients who were successful were still often unhappy with the outcome of their claim. The largest source of dissatisfaction was the need to show causation. It was clear that client did not understand that the facts in their case could be contested. Instead, they were certain that they had been the victim of negligence, with unsuccessful claimants believing that had their claim continued, negligence would have eventually been proved.

Whereas previous research has suggested that lawyers focus on achieving a good outcome for their client (Daniels & Martin 1999, Kritzer & Krishnan 1999), our research suggest that procedural justice is just as important to clients, if not more so. It also suggests, however, that clients do not necessarily understand this process. Claimants felt that the experts would not listen, failed to ask the right questions, or were biased, and largely withdrew because of the lack of funds rather than because they could see that their case lacked merit. Similarly, O'Barr and Conley (1988) show that litigants do not necessarily understand the adversarial nature of civil disputes. Instead, litigants consider the facts of their case to be self-evident, and do not

appreciate that the facts need to be proven by expert witnesses, and would be contested by the other side.

The second reason for investigating claimant's views is that they provide insight into the lawyer-client relationship from the client's perspective. We reveal a number of strategies used by solicitor to manage their client. For instance, solicitors deflect claimant dissatisfaction onto medical experts, and stress the uncertainty of going to court in order to convince the claimant to accept a settlement offer. The types of strategies used by solicitors revealed by our research have also been observed in other studies. For instance, Kritzer (1998) shows that personal injury lawyers try to avoid talking about what the case may be worth, or if they do so, they stress limitations on damages, the uncertainty of outcomes, risks of going to court, and weaknesses in the case, in order to deflate the client's expectations. In order to persuade a client to accept a settlement offer, lawyers stress the amount that the claimant would walk away with, move to a graduated fee, or offer to accept a reduced fee. If a client is not amendable to their lawyer's persuasion, then the lawyer can emphasis the costs of proceeding to trial or ask another lawyer to evaluate the file.¹⁶

While previous studies show how lawyers dominate clients, they do not investigate how clients experience this domination. Our research shows that the claimant's role was largely restricted to waiting for reports to be forwarded, and following the solicitor's advice on either to withdrew or settle. Most claimants, however, did not suggest that they felt disempowered by their solicitors. It also appears that solicitors

¹⁶ These strategies are similar to those in other areas of legal practice, such as family law (for instance, see Mather et al. 2001:88).

were highly successful at deflecting blame for client dissatisfaction onto other legal actors, in particular, the independent medical expert, the other side, the legal system, or the claimant themselves for not having enough funds to continue.

Third, the study of client's experiences of legal services resolves the apparent paradox between lawyers exerting control over their clients, and the high level of client satisfaction uniformly reported in other studies. Lawyers have been shown to not only engage in strategies intended to keep their clients content with their services, regardless of their dissatisfaction with other aspects of their claim, but that these strategies are highly successful.

We argue that lawyers use these strategies in order to maintain the claimant's trust and to protect their reputation. Clients in the personal legal services market often have one-off issues and so lawyers need to ensure a steady stream of new clients. A major source of new clients is word-of-mouth recommendations from previous clients (Kritzer & Krishman 1999: 351, Daniels & Martin 1999), and so it is vital that clients are content with the service they receive (Kritzer 1998).

Finally, our findings help to resolve a further paradox, which is why public dissatisfaction with lawyers is so high, and yet clients express high level of satisfaction with their individual lawyer. Galanter (2006) argues that the growing public scepticism concerning the legal profession does not necessarily reflect a decline in professional standards. Instead, he asserts that it reflects a backlash which has been supported by corporate interests, such as insurance companies, against rising civil litigation rates and citizen's increased awareness of their legal rights. Groups that

have been reluctant to assert their rights, such as patients or workers, are now more likely to press a claim. However, the other side of rights is accountability. The backlash view asserts that people sue too readily, refuse to accept personal responsibility for injuries and accidents, and that this lack of responsibility is supported by avaricious lawyers.

Medical malpractice claimants, however, do not feel that they have sued too readily. Instead, they felt that they were victims of an inexplicable and devastating event, and that the defendant should be held accountable. From the client's perspective, their solicitor has taken their side and done all they can to protect their interests. The client sees that their solicitor is also fighting against a system that involves 'biased' medical experts, disinterested funders, adversarial defendants and unsympathetic judges. In fact, the solicitor is seen as the only legal actor who is on the side of the claimant. Maintaining this impression is also a vital strategy for solicitors in ensuring future recommendations.

Conclusion

Despite the existence of a large body of research examining the nature of lawyer-client relations, there is still a lack of information concerning how clients experience this relationship. We argue that without an understanding of how clients experience legal services, it is not possible to unravel two enduring paradoxes in the research on lawyers and clients.

First, research shows that lawyers dominate their clients and push their clients towards their own views on what constitutes a good outcome. Yet, clients almost universally praise all aspects of the services provided by their lawyer. Our research shows that claimants were dissatisfied with both the process and outcome of the claim, although they did not blame their solicitor for this. Solicitors engaged in a number of strategies in order to deflect claimant dissatisfaction and we argue that these strategies reflect solicitors' need to maintain a steady stream of referrals. The success of these strategies account for why clients are so satisfied despite their solicitor's domination. In addition, clients primarily judged their solicitor on service factors, such as communication skills, rather than legal competence. This is an outcome of service factors being the most visible aspect of legal services, and may also reflect that in English medical malpractice claims, the solicitor largely provides an administrative service rather than taking a major decision-making role.

Second, despite clients being highly satisfied with the services provided by their individual lawyer, the legal profession as a whole is seen by the public to be unethical, greedy and self-serving. Our research shows that claimants did not consider that their solicitor conformed to this stereotype and instead they felt that their solicitor was the only actor in the system who took their side. This paradox is also explained by solicitors' need to maintain their reputation in their clients' eyes in order to ensure future referrals.

In conclusion, whereas Moorhead et al (2003) suggests that the misalignment between client and lawyer interests suggests that previous research is "wide of the mark", our research suggests an explanation for this disjunction. Clients do not experience

solicitors' management of their expectations as domination, and instead perceive their solicitor to have provided emotional care, a professional and attentive service, and to have taken their side. In 1967, Blumberg suggested that the practice of law is a confidence game, and our findings provide evidence of how successful English medical malpractice solicitors are at playing this game.

References

Bismark, Marie & Paterson, Ron (2006) "No-fault compensation in New Zealand: harmnoizing injury compensation, provider accountability, and patient safety," 25(1) *Health Affairs* 278-283.

Blumberg, Abraham S. (1967) "The practice of law as a confidence game: cooptation of a profession," 1(2) *Law and Society Rev.* 15-40.

Cameron, Cecily & Gumbel, Elizabeth-Anne (2007) *Clinical Negligence: A Practitioner's Handbook*. Oxford University Press. Oxford.

Cunningham, Clark D. (1998) "Evaluating effective lawyer-client communication: an international project moving from research to reform," 67 *Fordham Law Rev.* 1959-1986.

Daniels, Stephen & Martin, Joanne (1999) "'It's Darwinism – survival of the fittest:' How markets and reputations shape the ways in which plaintiffs' lawyers obtain clients," 21(4) *Law and Policy* 377-399.

- Davis, Gwynn, Cretney, Stephen & Collins, Jean (1994) *Simple Quarrels: Negotiating Money and Property Disputes on Divorce*. Oxford. Clarendon Press.
- Dingwall, Robert & Fenn, Paul (1987) “‘A respectable profession’? sociological and economic perspective on the regulation of professional services,” 7(1) *International Rev. of Law and Economics* 51-64.
- Eekelaar, John, Maclean, Mavis & Beinart, Sarah (2000) *Family Lawyers: The Divorce Work of Solicitors*. Oxford. Hart Publishing.
- Galanter, Marc (2006) *Lowering the Bar: Lawyer Jokes and Legal Culture*. Wisconsin. University of Wisconsin Press.
- Genn, Hazel (1987) *Hard Bargaining: Out of Court Settlements in Personal Injury Actions*. Oxford. Oxford University Press.
- Goriely, Tamara (1994) “Debating the quality of legal services: differing models of the good lawyer,” 1(2) *International J. of the Legal Profession* 159-171.
- Griffiths, John (1986) “What do Dutch lawyers actually do in divorce cases,” 20 *Law and Society Rev.* 135–75.
- Harris, Neville (1994) *Solicitors and Client Care*. London. National Consumer Council.

Hengstler, Gary A. (1993) "Vox Populi - the public perception of lawyers: ABA poll," 79(9) *American Bar Association J.* 60-65.

Hickson, Gerald B., Clayton, Ellen W., Githens, Penny B., & Sloan, Frank A. (1992) "Factors that prompted families to file medical malpractice claims following perinatal injuries," 267 *JAMA* 1359-1363.

Hunter, Rosemary, Genovese, Ann, Melville, Angela & Chrzanowski, April (2000) *Legal Services in Family Law*. Sydney. Justice Research Centre.

Huycke, LaRae I. & Huycke, Mark M. (1994) "Characteristics of potential plaintiffs in medical malpractice litigation," 120 *Annals of Internal Medicine*, 792-798.

Ingleby, Richard (1992) *Solicitors and Divorce*. Oxford University Press. Oxford.

Judicial Studies Board (2008) *Guidelines for the Assessment of General Damages in Personal Injury Cases*. Oxford. Oxford University Press.

Kitei, Brett (1999) "The mass appeal of *The Practice* and *Ally McBeal*: an in-indepth analysis of the impact of these television shows on the public's perception of attorneys," 17(1) *UCLA Entertainment Law Rev.* 169-188.

Kritzer, Herbert, M. (1998) "Contingency-fee lawyers and their clients: settlement expectations, settlement realities, and issues of control in the lawyer-client relationship," 23(4) *Law and Social Inquiry* 795-821.

Kritzer, Herbert, M. & Krishnan, Jayanth. (1999) "Lawyers seeking clients, clients seeking lawyers: sources of contingency fee cases and their implications for case handling," 21(4) *Law and Policy* 347-375.

Kritzer, Herbert, M. (2001) "From litigators of ordinary cases to litigators of extraordinary cases: stratification of the plaintiffs' bar in the twenty-first century," 51 *De Paul Law Rev.* 219-240.

Kritzer, Herbert, M. (2004) *Risks, Reputations, and Rewards: Contingency Fee Legal Practice in the United States*. Stanford, California. Stanford University Press.

Legal Services Consumer Panel (2011) *Consumer Impact Report 2011*. Legal Services Board. London.

Lind, E. Allan & Tyler, Tom (1988) *The Social Psychology of Procedural Justice*. Plenum Press. New York.

Mather, Lynn, Maiman, Richard J., & McEwen, Craig A. (1995) "'The passenger decides on the destination and I decide on the route': are divorce lawyers 'expensive cab drivers?,'" 9(3) *Law, Policy and the Family* 286-310.

- Mather, Lynn, McEwen, Craig A. & Maiman, Richard J. (2001) *Divorce Lawyers at Work: Varieties of Professionalism in Practice*. Oxford: Oxford University Press.
- Mather, Lynn (2003) "What do clients want – what do lawyers do," *Emory Law J.* 52, 1965-1086.
- May, Marlynn L. & Stengel, Daniel B. (1990) "Who sues their doctors? How patients handle medical grievances," 24(1) *Law and Society Rev.* 105-120.
- McCoun, Robert, J. (2005) "Voice, control, and belonging: the double-edged sword of procedural fairness," 1 *Annual Review of Law and Social Science* 171-201.
- Melville, Angela & Laing, Karen (2008) "Personal Action Plans: evaluating self-management initiatives in family law," 4 *International J. of Law in Context* 149–67.
- Ministry of Justice (2010a) *Proposals for the Reform of Legal Aid in England and Wales*. Consultation Paper CP12/10. UK Stationary Office Limited: London.
- Ministry of Justice (2010b) *Proposals for Reform of Civil Litigation Funding and Costs in England and Wales: Implementation of Lord Jackson's Recommendations*. Consultation Paper CP13/10. UK Stationary Office Limited: London.
- Moorhead, Richard, Sherr, Avrom, & Paterson, Alan (1994) "Judging on results? Outcome measures: quality, strategy and the search for objectivity," 1(2) *International J. of the Legal Profession* 191-210.

Moorhead, Richard, Sherr, Avrom & Paterson, Alan (2003) "What clients know: client perspectives and legal competence," 10(1) *International J. of the Legal Profession* 5-35.

O'Barr, William, M. & Conley, John, M. (1988) "Lay expectations of the civil justice system," *Law and Society Rev.*, 22(1), 137-162.

National Audit Office (1992) *The Administration of Legal Aid in England and Wales*. HC 90. London: HMSO.

NHSLA (2010) *The NHS Litigation Authority Factsheet 3: Information of Claims*.
<http://www.nhsla.com/NR/rdonlyres/C1B3F310-E13D-4C71-B248-C5384438E603/0/NHSLAFactsheet320102011.doc>

Paterson, Alan, A. (1996) "Professionalism and the legal services market," 3(1) *International J. of the Legal Profession* 137-168.

Relis, Tamara (2006) "It's not about the money: a theory of misconceptions of plaintiffs' litigation aims," 68(2) *University of Pittsburgh Law Rev.* 41-386.

Sarat, Austin & Felstiner, William (1986) "Law and strategy in the divorce lawyer's office," 20(1) *Law and Society Rev.* 3-134.

Sarat, Austin & Felstiner, William (1995) *Divorce Lawyers and their Clients: Power and Meaning in the Legal Process*. New York: Oxford University Press.

Shapiro, Robyn S., Simpson, Deborah E., Lawrence, Steven L., Talsky, Anne M., Sobocinski, Kathleen A., & Schiedermayer, David L. (1989) "A survey of sued and nonsued physicians and suing patients," 149(10) *Archives of Internal Medicine* 190-2196.

Sherr, Avrom, Moorhead, Richard, & Paterson, Alan (1994) "Assessing the quality of legal work: measuring process," 1(2) *International J. of the Legal Profession* 135-158.

Sieg, Holgar (2000) "Estimating a bargaining model with asymmetric information: evidence from medical malpractice disputes," 108(5) *J of Political Economy* 1006-1021.

Sloan, Frank A. & Hsieh, Chee R. (1995) "Injury, liability, and the decision to file a medical malpractice claim" 29(3) *Law and Society Rev.* 413-436.

Sommerlad, Hilary (2000) "English perspectives on quality: the client-led model of quality - the third way," 33(2) *University of British Columbia Law Rev.* 491-518.

Sommerlad, Hilary & Wall, David, S (1999) *Legally Aided Clients and Their Solicitors: Qualitative Perspectives on Quality and Legal Aid*. London: Law Society of England and Wales.

Stephen, Frank H, & Love, James H (2000) "Regulation of legal profession," in B. Bouckaert & G. De Geest, eds., *Encyclopedia of Law and Economics, Vol. III: Regulation of Contracts*. Cheltenham: Edward Elgar Publishing.

Stephen, Frank H, Love, James H & Paterson, Alan A (1994) "Deregulation of conveyancing markets in England and Wales," 15(4) *Fiscal Studies* 102-18.

Thibaut, John W. & Walker, Laurens (1975) *Procedural Justice: A Psychological Analysis*. Hillsdale, New Jersey. L. Erlbaum Associates.

Vidmar, Neil. (1990) "The origins and consequences of procedural fairness," 15(4) *Law and Social Inquiry* 877-892.

Vidmar, Neil, Gross, Felicia & Rose, Mary (1998) "Jury awards for medical malpractice and post-verdict adjustments of those awards," 48(2) *DePaul Law Rev.* 265-300.

Vincent, Charles, Phillips, Angela & Young, Magi (1994) "Why do people sue doctors? A study of patients and relatives taking legal action," 343(8913) *The Lancet* 1609-1613.

Weiler, Paul, C. (1991) *Medical Malpractice on Trial*. Harvard. Harvard University Press.

Table 1: Stages of offer negotiation

Offer round	1	2	3	4	5
No of offers rejected	15	8	6	2	0
No of offers accepted	1	7	1	4	2
Total	16	15	8	6	2