

# Keep calm and carry on if you face a negligence claim

**Author :** ANDREW LEAKEY

**Categories :** [Business](#)

**Date :** December 1, 2011

Veterinary professionals face continuing scrutiny about the quality of their work and professional judgement. So, what should you do if it all goes wrong and you face a claim?

AS A VETERINARIAN you will be judged by the standard of your work. But what is that standard, how is it set and what could happen if it's missed?

Interestingly, all professionals, whether vets, solicitors or doctors, are judged by the same standard.

Set in the 1957 case of Bolam v Friern Hospital Management Committee, it's neatly summarised by the judgement that "if a doctor reaches the standard of a responsible body of medical opinion, he is not negligent".

So are you confident that you meet the required standards of your profession? Here are some tips to keep both you and your practice out of hot water.

## Flexibility

If trouble arises and a vet can show that he or she acted in accordance with a reasonable body of professional opinion, he or she will have a defence to an allegation of negligence. The standard is flexible – so a vet working under pressure in an emergency situation, in far from ideal conditions, will not be judged to the same standard as a vet working in a fully equipped operating theatre.

The case of Bolitho v City and Hackney Health Authority (1997) held that where a body of medical

opinion was relied on to show that a particular doctor was not negligent, it was also necessary to show such medical opinion itself was logical and reasonable. This also applies to vets – there is little point showing that you followed the illogical view of another vet.

Professionals are not required to know everything – the courts recognise this is an impossibility. So, cases have held that a practitioner not following the developments raised in a one-off article may be acceptable. However, where several articles have pointed to the same procedure, yet that is ignored, a successful claim is likely. A vet may still be liable in this scenario, even if he or she has not seen the articles. If they were widely published, and a reasonable person would have seen them, be prepared to put your hand in your pocket.

Vets are also liable for almost all acts carried out by their staff, including receptionists – although recent moves to make nurses professionally liable lighten the load – providing they are acting within the terms of their employment. The ambit of this vicarious liability can, therefore, be wide. For example, it may include financial loss arising from a receptionist wrongly turning away a client. Entire team training is the key here.

In addition to showing that a vet has failed to come up to standard, a claimant must show that the vet's (or his or her team's) actions have caused the financial loss. This causation argument can be difficult to show. If, for example, an animal would have died anyway, a vet cannot be successfully pursued for the death of the animal.

## **Cooperate**

Cooperation with your defence organisation and insurers is vital when handling any allegation. You do not want to be in a situation where your policy is voided for lack of cooperation. Your insurers will also no doubt have their own tips and procedures that may assist you in specific practice areas.

One area that has proved problematic is vetting services on purchase. Occasionally vets are alleged to have failed to spot medical conditions. Consider a scenario where Mrs Smith wants to buy a horse for her beloved daughter. She sees an animal described as “good with inexperienced riders” and goes along to the stable to inspect. Happy with what seems to be a docile animal, she returns with her daughter and a short ride around the yard takes place. Mrs Smith is content to agree to buy the horse, subject to veterinary inspection. The vet inspects, and provides a report, noting only minor concerns. Relying on this report, Mrs Smith buys the animal.

The next that the vet hears is the angry call from Mrs Smith stating this horse has laminitis, is extremely aggressive and won't allow anyone, never mind her daughter, to ride it. Was the animal drugged? Were blood samples taken by the vet? Was the inspection sufficiently thorough? Were x-rays taken? Clearly, the more complete the inspection, with more detailed notes, and medical procedure followed, the more chance of a successful defence.

Bear in mind that insurers are in the business of controlling risk. Ninety per cent of cases are settled before they reach trial. So don't be offended if an offer is recommended on a commercial basis, and certainly without admission of fault.

## **Trial costs**

Indeed, costs escalate rapidly as a case approaches trial. If a financial loss exceeds £5,000 then you are also likely to have to pay your opponent's legal costs should you lose. Making an early offer may protect you from some costs, particularly if a claimant fails to obtain a better result in court.

Settling a case early may be a cost-effective way of resolving a dispute and even keeping a valued client. Mediation can be a useful tool, allowing parties to explore the issues, find a solution they can both live with and, sometimes, maintain a business relationship.

A good mediator will allow both parties to express their views in an open meeting. He or she will then build a relationship with each party individually and explore where the real issues lie. Usually shuttling between the parties in separate rooms, the mediator will attempt to find common ground and then build on it to eventually settle a case. Different methods are employed, ranging from challenging views gently, to, frankly, banging the lawyers' heads together.

This can be frustrating for clients, leaving them with their own lawyer in a room for hours at a time. There is also an inevitable "I've had enough, I'm leaving" phase to the negotiation. If clients can be persuaded to suffer both these indignities, then settlement may be reached. Many lawyers have reported cases where business or neighbourly relationships have been at least preserved, if not fully repaired, in a mediation.

Again, this should only be tackled if insurers authorise it. Attempting these steps before speaking to an insurer could void a policy or cause difficulty down the line. Professionals will always be in the firing line, particularly because of the deep pockets that insurance cover provides. Specialists appointed by insurers should be able to assist you through any process.

Finally, a word about misconduct. Some claimants may prefer to pursue their issues as a complaint to the RCVS, avoiding the costs of going to court. Following investigatory stages, this can lead to an appearance before the disciplinary committee if the conduct is fundamentally incompatible with being a veterinary surgeon.

Once again, if you face such an allegation, it is worth reporting it to insurers early. They may be able to assist you in the process or point you in the direction of a specialist who can assist. Experience of disciplinary proceedings has shown that early intervention can assist, sometimes preventing issues from escalating, or leading to proceedings being withdrawn.

All in all, don't panic, but seek advice early.



***Professionals will always be in the firing line, particularly because of the deep pockets that insurance cover provides.***