

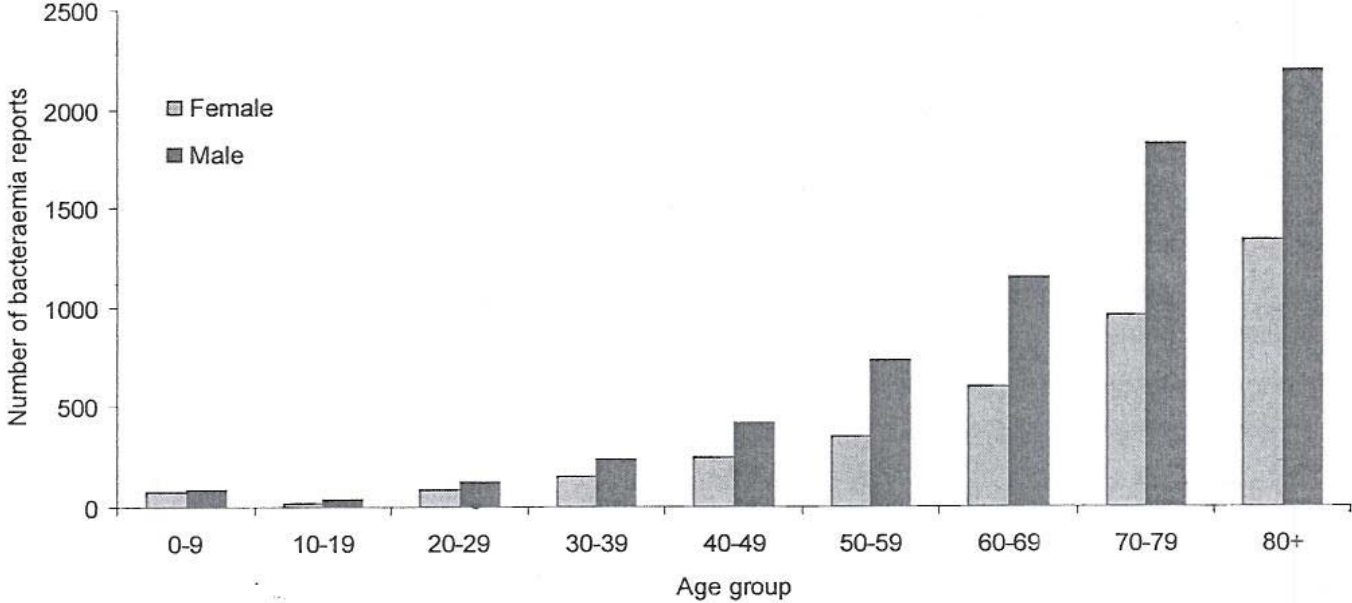
# The Legal Cost of Getting Infection Prevention and Control Wrong

Sarah Rowland, Associate Solicitor  
Irwin Mitchell

# MRSA – The Facts

- UK rates among the worst in Europe
- Health Protection Agency data from 2006 to 2008
  - 76% of cases of patients diagnosed with MRSA bloodstream infection aged over 60
  - Average age of patients with MRSA bloodstream infection was 69

Figure 6: Age and sex distribution, April 2006-March 2008

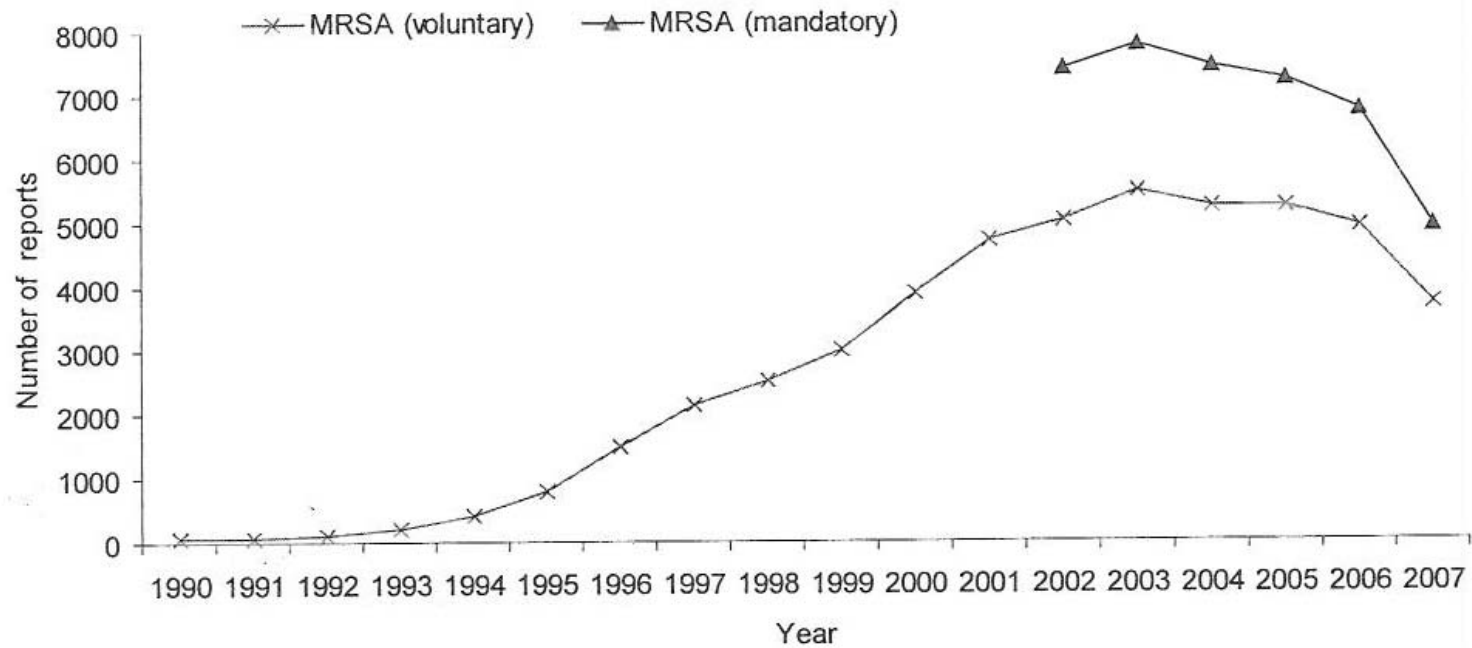


# MRSA – The Facts

## Deaths as a result of MRSA

- 51 deaths in 1993
- 1,593 in 2007
- April 2007 to March 2008 – 4,448 reported cases of MRSA bacteraemia

Figure 3: Meticillin-resistant *Staphylococcus aureus* bloodstream infection reports received under the voluntary and mandatory schemes in England, calendar year 1990 to 2007



## MRSA – The Facts

- When MRSA detected within 2 days of hospital admission
- 67% of patients admitted from home
- 18% of patients admitted from nursing home
- 8% of patients admitted from another hospital

(Health Protection Agency Surveillance of Healthcare Associated Infections Report 2008)

## Clostridium Difficile – The Facts

- Since January 2004, mandatory surveillance for over 65 year old patients
- Recorded incidence
  - 2004      44314
  - 2005      51767
  - 2006      55681
  - 2007      49785

## Clostridium Difficile – The Facts

- In 2007, 8,324 death certificates in England and Wales mentioned C.difficile
- Rise of 28% from 2006
- 82% of infections in the over 65's

# Cost of Healthcare Associated Infection

## Treatment Cost

- Estimated by National Audit Office to be £1bn p/a
- 1 in 10 hospital patients is affected
- Costs 3 times more to treat a patient with a HAI

## Litigation Cost

- > £10 million paid in damages since 2005

## Human Cost

- Pain and suffering
- Ongoing disabilities
- Ongoing treatment

# Types of Legal Claim

## 1. Negligent acquisition

Must prove, on the balance of probabilities (i.e. 51% chance or more) that

- The HCAI was acquired in the hospital/residential home
- The treatment given by the healthcare provider was substandard (negligent)
- If the treatment had not been substandard, the patient would not have acquired the infection

# Types of Legal Claim

## Legal Considerations

- Did the healthcare provider have proper policies in place to reduce the risk of infection?
- Were infection control policies correctly implemented?
- Is there evidence of a lack of hygiene?
- Were infected patients properly isolated and barrier nursed?

# Evidence

- Witness evidence from the patient and relatives
- Nursing/medical records
- Infection control policy documents
- Minutes of infection control team meetings
- Infection rates
- Inspection reports
- Expert evidence – nursing expert, microbiologist

# COSHH Argument

- Control of Substances Hazardous to Health 2002
- Infection is a biological agent so there is a duty under the Regulations to reduce exposure to the lowest possible level
- Failing to implement appropriate policies and procedures is a breach of the Regulations

But

- *Ndri v Moorfields Eye Hospital* (2006) – Court held that COSHH Regulations were not intended to apply to patients and so the claim failed

# Types of Legal Claim

## 2. Negligent treatment

Must prove, on the balance of probabilities (i.e. 51% chance or more) that

- The healthcare provider treated the infection in a substandard way
- The negligence caused injury and loss

# Legal Considerations

- Were signs of infection picked up quickly enough? e.g. stool samples taken
- Were positive results acted upon?
- Was appropriate medical treatment sought?
- Were appropriate antibiotics given?

# Cases

## Kitty Cope v Bro Morgannwg NHS Trust (2005)

- 87 year old Claimant contracted an MRSA infection following a hip replacement operation
- Prosthesis had to be removed, leading to significant disability
- Hospital accepted that it did not comply with its own infection control policies
- Settled out of Court

## Baumber v United Lincolnshire Hospitals (2006)

- 72 year old lady underwent hip replacement surgery
- Wound infected with MRSA
- Infection did not respond to antibiotics
- Entered bloodstream
- Patient died of MRSA septicaemia 10 months later
- Claim settled for £30,000

## Brown v Southend General Hospital (2003)

- 69 year old man had successful hospital treatment for bowel cancer
- While in hospital he developed pressure sores on his heel and sacrum
- The sores became infected with MRSA
- MRSA could not be controlled
- Claimant underwent below knee amputation of the leg
- Damages awarded of £100,000

## C v Maidstone Hospitals NHS Trust (2008)

- 78 year old man developed clostridium difficile in hospital
- Hospital admitted that it had failed to diagnose and properly treat the infection
- The infection contributed to C's decline and his death
- Damages awarded of £7,000

## Ash v Chelsea & Westminster Hospital (2008)

- Lesley Ash admitted to hospital with fractured ribs and punctured lung
- Epidural given for pain relief
- Developed MSSA at the epidural site
- Noticed boil on her back before discharge
- Mentioned to nurse but not examined
- Creeping paralysis started - infected abscess
- Emergency neurosurgery
- Left with permanent nerve damage and mobility problems

Questions?