Periodontal Disease: the Smoking Defence

By Sarah Mynard

Mrs Karen Haughton-v-Dr Minersh Patel

Bringing a claim for periodontal disease can be straightforward in terms of breach of duty. Causation can be more problematic. The recent QBD case of Karen Haughton-v-Dr Minersh Patel[1] is one such case and deserves further analysis in terms of how the Claimant was able to prove liability and recover substantial damages despite the complex causation arguments put forward by the Defendant and in particular the smoking defence.

What is Periodontal Disease?

Periodontal disease, known as gum disease, is a bacterial disease which affects the supporting structures of the teeth. The bacteria, known as plaque, is a sticky material consisting of **bacteria, mucus, and food debris** that adheres to the teeth and root surfaces. It manifests as a localised infection, known as gingivitis, where the gums become red and swollen and may bleed. The disease affects the supporting structures of the teeth known as the periodontal ligaments and as the disease takes hold it destroys the alveolar bone itself.

Periodontal ligaments are a group of specialised connective tissue fibres which attach the tooth to the alveolar bone within which it sits. **Alveolar bone** is the **bone** that surrounds the roots of the **teeth** forming **bone** sockets. Periodontal disease causes the gums to pull away from the teeth, bone is lost and ultimately the teeth loosen and fall out.

Many dental negligence claims relate to undiagnosed periodontitis. Patients, who are regular dental attendees and who are given clean bills of health by their GDPs, can be suffering from this disease, undetected for many years, even decades.

[1] [2017] EWHC 2316 (QBD)

Chronic Adult Periodontal Disease ("CAP")

The most common form of the disease is chronic adult periodontitis ("CAP") and is characterised by gum recession and gingival pockets. Deterioration usually occurs slowly and is the most likely actionable form of the disease for this reason.

Common defences put forward to causation in CAP claims are:

- Aggressive periodontitis which is the rapid progression of periodontitis. Claimants can exclude this type of the disease if there is no history of cyclical activity in the teenage years and/or where the bone loss is much greater than justified by the plaque levels present;

- Systemic periodontitis which is the development of gum disease due to systemic disease, conditions can include: diabetes, heart disease and respiratory disease. In these cases a careful analysis of the medical records is required and sometimes medical experts from other disciplines in order to exclude this defence;

- Smoking. There is a significant long-term influence of smoking on vertical bone loss making it a significant behavioural risk factor for periodontal bone loss.[2] Adults who have been smokers since their mid-teens are 7 times more likely to have established periodontitis. However, the effects can be reversible and if smoking cessation occurs, the periodontal benefits occur rapidly and it is much more likely the disease can be stabilised and additional bone loss and tooth loss prevented. [3]

The Case Facts

In the Haughton case, Mrs Haughton, at the age of 53 suffered from a stroke and lost movement down her left-hand side. She brought a claim against her GDP, Dr Patel, for his failure to diagnose, treat and/or refer her for specialist advice for her CAP. Dr Patel had been her GDP for 20 years. Dr Patel's Indemnity Organisation defended the claim, largely on causation.

[2] Article: Long-term effect of smoking on vertical periodontal bone loss, Baljoon et al, J Clin Periodontal 2005 Jul; 32(7):789-97
[3] Article: The natural history of periodontal attachment loss during the third and fourth decades of life, Thomson et al, J Clin Periodontal 2013 40: 672-680

Following her stroke, Mrs Haughton was admitted to Addenbrooke's Hospital in Cambridge where she remained as an inpatient for 4 weeks. Addenbrooke's diagnosed a cerebral intracranial abscess. Mrs Haughton lost 6 upper and lower posterior teeth and was away from work for 6 months.

Breach of Duty: Admissions

In terms of breach of duty, Dr Patel made several admissions of fact:

- No Basic Periodontal Examinations ("BPE") [4] took place between 1992-2006, a period of 14 years;
- No regular bi-annual screening radiographs took place between 1992-2006;
- No treatment plan put in place despite x-ray in 2002 showing CAP, 25% bone loss in upper jaw and 10% in lower jaw;
- No specialist referral made or specific advice given about tooth loss or that Mrs Haughton would not be accepted by a specialist dental hospital for treatment unless she stopped smoking and improved her dental hygiene.

Causation

In terms of causation Mrs Haughton and Dr Patel agreed that the intracranial abscess was caused by the Periodontal Disease as secondary to her mouth abscesses. Significantly Mrs Haughton and Dr Patel agreed that he had given her some advice to stop smoking but Mrs Haughton maintained that he had not made the course of the CAP sufficiently clear and that she may lose some/all of her teeth as a result. There was no suggestion that Dr Patel was under a duty to advise her that intracranial abscess was a rare consequence of CAP. Quantum was agreed in the sum of £40,000.

[4] All GDPs were required to carry out Basic Periodontal Examinations from at least 1991. The BPE was first developed by the British Society of Periodontology in 1986. It involved the GDP "walking" the probe around the gum pockets in all sextants of the patient's dentition and recording the highest probing depth found.

Dr Patel's Indemnity Organisation fought the case largely on the basis that Mrs Haughton was a habitual smoker and even if Dr Patel had not breached his duty of care to her she would still have suffered from chronic periodontal disease and hence would still have suffered her intracranial abscess and all of the sequalae and losses which followed as a result.

Both parties relied on Expert Evidence, the Claimant on a Specialist in Periodontics and the Defendant on a Consultant in Restorative Dentistry, a discipline choice often made by Defendants when defending these cases.

Mr Justice Holroyde had no choice but to grapple with the complexities of CAP and the impact of smoking upon the course of the disease and unravel this common defence which can lead to claims being discontinued, a finding of no liability or the claim reduced to one of accelerated loss.

Smoking

Mrs Haughton was a habitual heavy smoker. Smokers are at a greater risk of developing CAP and they suffer bone loss more rapidly than non-smokers.

She had been a patient of Dr Patel for 20 years. Dr Patel did not attend to give evidence. Dr Patel maintained that Mrs Haughton's claim should fail, despite the breaches of his professional duty of care to her because even if he had given Mrs Haughton the treatment and advice of the reasonable and competent GDP practising at that time, she would:

- not have listened to his advice;
- not have maintained exemplary oral hygiene;
- not have stopped smoking;
- as a smoker, could not have been referred/would not have been accepted to/by the local dental hospital in any event.

Mrs Haughton gave evidence to the effect that she thought her teeth were in good order because she regularly visited the dentist and she believed she had good oral hygiene. She admitted that although Dr Patel did give her advice to stop smoking and he had given her

advice that it was bad for her gums, he did not make it clear to her how bad it would be and that she may lose some of her teeth.

In October 2002, Dr Patel took radiographs which showed the presence of CAP and 25% bone loss in the upper jaw and 10% bone loss in the lower jaw. Despite this finding from the radiographs Dr Patel failed to put in place a treatment plan for CAP until January 2006.

Dr Patel recorded his first BPE for Mrs Haughton in January 2006. Despite the high scores indicating periodontal disease he failed to give Mrs Haughton any advice about the results. He made a note to his hygienist, "please provide 3-monthly clean" but no indication that the hygienist was made aware of the CAP or the very poor state of Mrs Haughton's health.

On 8th April 2010 Dr Patel's case was that he told Mrs Haughton that she had progressive bone loss and she required advanced periodontal treatment.

Judgment

Giving Judgment for the Claimant, Mr Justice Holroyde found:

- It was significant that the first time Mrs Haughton was given bad news was on 8th April 2010, 7 ½ years post the 2002 x-rays and no follow up took place at the next examination on 12th August 2010. He also found it to be significant that Mrs Haughton attended Dr Patel a total of 9 times between 2006 and 2010 without any advice being given to her that she was suffering from CAP.

- At no stage was Mrs Haughton properly advised as to the risks involved if she did not alter her conduct in respect of her oral hygiene and her smoking. How could Mrs Haughton be criticised if she was not advised by the person to whom she looked to for advice about those risks? Mrs Haughton had no clear understanding of the true state of her dental health or of the risks to it.

- If the risk had been brought home to Mrs Haughton, she would have taken action to stop her smoking and improve her oral hygiene.

- He was not required to take account of Mrs Haughton's knowledge of the risks of smoking to other aspects of her health, even if it be the case that heeding the advice

she received in that regard might also have assisted her in relation to her dental health.

- Finally, considering contributory negligence, the blameworthiness of Mrs Haughton in failing to stop smoking must be related to the advice she received in relation to smoking and dental health. Her general knowledge which she shared with virtually everyone in the country of the overall risks to other aspects of her health consequent upon smoking could not assist Dr Patel on this issue.

Accordingly, Judgment was given for the Claimant in the full sum of the agreed damages of £40,000.

Conclusion

Whether acting for Claimant or Defendant I would commend anyone conducting a Periodontal Disease Case to have a thorough read of the excellent Judgment of Holroyde J for its in depth analysis of Periodontal Disease and in particular it makes very interesting reading for Claimants when the smoking issue is raised by the Defence.

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