Preface

Our interest in clinical guidelines and the law of medical negligence was kindled some 20 years ago, having been ignited by sociological and legal doctrinal changes in the UK at that time. Evidence-based clinical guidelines, although in their infancy, were beginning to mushroom into a corpus of literature, and being considered as best practice. The articulation by Lord Browne-Wilkinson in *Bolitho*, that expert evidence should be questioned more inquiringly by the court to ascertain an underlying ‘logical basis’, was already beginning to place ‘customary practice’ in the shade as the accepted norm for medical litigation. The *Bolam* test was now on the back foot. Political leaders and policymakers, in an attempt to upscale and harmonise medical practice, created legislation that placed a duty of quality in clinical care upon a statutory footing, and organisations such as NICE, the National Institute for Health and Care Excellence (as it is now known), were rapidly formulating clinical guidelines based on evidence of efficacy and cost efficiency.

These triggers, along with data from the US that showed guidelines were already being used in court for medical malpractice cases (as well as in other initiatives designed to promote a reduction in litigation), stimulated us to propose that clinical guidelines would be likely to play a more proactive role in medical negligence law within England and Wales. Empirical work undertaken by us at that time¹ showed that a significant number of lawyers in the UK were aware of the potential for clinical guidelines in the determination of the legal standard for breach of duty, and additionally believed that their use would increase in the future. Our more recent research has confirmed these earlier prognostications.²

There is little doubt that there has been a lot of learned commentary on clinical guidelines. However, the literature sits in discrete silos contained within the discipline of medicine or law, with little interconnection between them.

¹ A Samanta, MM Mello, C Foster, J Tingle and J Samanta, ‘The role of clinical guidelines in medical negligence litigation: a shift from the *Bolam* standard?’ (2006) 14 *Medical Law Review* 321–66. Chapter 1 of this volume is largely based upon and partly reproduced (with permission) from this paper.

² A Samanta, J Samanta and J Beswick, ‘Responsible practice or restricted practice? An empirical study of the use of clinical guidelines in medical negligence litigation’ (2021) 2 *Medical Law Review* 205–32.

Most academic studies focus upon a very narrow perspective which provides a non-continuous static snapshot, thereby failing to illustrate the continuous reciprocity of the dynamics that exist between negligence law and guidelines, and furthermore do not provide a picture of the crucial interface of clinical guidelines as a potential determinant for breach of duty in law. This is an unsatisfactory position, as it does little to advance the real-time implications of the relationship between these two modalities.

The knowledge gap in this area acted as a stimulus for developing a text that might help to bridge this lacuna. Given the relative dearth of literature in this area, we felt that any attempt to add meaningfully to the knowledge-base ought to be based on intelligence using a different approach. With that in mind, we chose a wider and more holistic angle for developing this collection, based upon information gathering and acquiring data from across disciplines. We believe that this might provide the basis for a granular subsoil that furthers understanding in this area, and which we hope might advance academic enquiry at the guidelines-law interface.

We have been very fortunate in putting together a team of authors who are able to convey their scholarship, practical knowledge and real-world experience in their respective contributions to the chapters in this book. As a result perspectives are presented from the vantage points of legal academics, clinicians, solicitors and barristers, thereby weaving a fine tapestry from the threads of medicine and law. We hope this volume provides a useful source for developing a synaptic understanding of distinct strands and adds value to scholarship in the field of clinical guidelines and the law of medical negligence.

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