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Vexatious litigants and de Clerambault syndrome

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Vexatious litigants may be sufferers of a psychiatric disorder, believes Alan Murdie● the symptoms of de Clerambault's syndrome● recognition of the litigious form of the condition in Europe● the need to see litigants in medical terms

Procedural measures to deal with vexatious litigants have existed in the court system for over a century. The Vexatious Actions Act 1896 laid down the original formula for declaring any person who has “habitually and persistently and without any reasonable ground instituted vexatious civil proceedings” as a vexatious litigant. The same principles now form the basis of the Civil Practice Rules 1998 which enable a court to make an order today under s 42(1) of the Supreme Court Act 1981. Hitherto, the English legal system had dealt with the phenomena purely in terms of legal procedure. But, in my opinion, there is a strong case to suggest that vexatious litigants are in fact suffering from a little known form of a psychiatric disorder known as de Clerambault's syndrome.

In *A-G v Barker* (2000) *The Times*, March 7, CA (see also CPR 3.4.9), Lord Bingham of Cornhill LCJ set out the current Practice Direction which considers vexatious litigants purely in terms of legal procedure. Lord Bingham stated that the hallmark of a vexatious litigant was usually that the claimant sued the same party repeatedly in reliance on essen-

tially the same cause of action, perhaps with minor variations. A vexatious proceeding was one which had little or no basis in law and its effect, whatever its intention, was to subject the defendant to inconvenience. The essential vice of persistent and habitual litigious activity was "... keeping on and on litigating when earlier litigation had been unsuccessful and when on any rational and objective assessment the time had come to stop". The element of repetition did not need to be over a long period, but it had to be present. Similarly, a vexatious litigant might rely on essentially the same cause of action after it had been ruled on in actions against successive parties who, if they should have been sued at all, should have been joined in the same action. A vexatious litigant would also automatically challenge any order on appeal and ignore orders from the court.

In setting out the defining characteristics of a vexatious litigant, the Lord Chief Justice has produced a list of features that arguably mirror precisely the classic symptoms of a variant of de Clerambault's syndrome. Rather than being simply a troublesome or eccentric person who should be excluded from courts, it is submitted that the vexatious litigant is actually a person in need of psychiatric treatment and would be diagnosed as such in Europe.

Widely recognised in European psychiatry, the litigious form of the condition (which has been termed "querulant delusions") is little known in the UK. The syndrome is named after a French psychiatrist, Gaëtan de Clerambault who described three categories of the condition as "... erotomania, litigious behaviour and morbid jealousy" (see Baruk H, "Les délires passionnels" in (1959) 1 *Traité de Psychiatrie* pp 532–540 reproduced in *Themes and Variations in European Psychiatry* (1974) (editors Hirsch S and Shepherd M)). Anglo-Saxon perceptions of the syndrome have concentrated on the "erotomaniac" aspect, which in the English-speaking world was initially considered as being confined to women. This followed de Clerambault's study in 1921 of obsessed women patients who passionately believed that a particular man (usually in a position of authority) was in love with them. More recently R L Goldstein in "More forensic romances: De Clerambault's syndrome in Men" (1987) 15(3) *Journal of the American Academy of Psychiatric and Law* (pp 267–74), and GB Leong in "De Clerambault Syndrome (Erotomania) in the Criminal Justice System: Another look at this recurring problem" (1994) 39(2) *Journal of Forensic Sciences* (pp 378–385) have discussed the possibility that men can also suffer similar delusions. In addition, the syndrome has been specifically linked with so-called stalking behaviour, subsequently criminalised in England by the Protection from Harassment Act 1997. But de Clerambault's syndrome can take a number of forms, erotomania being just one type of "delusions of passion".

From at least 1869 Continental psychiatry has recognised that the intense delusional desire to vindicate oneself against others through litigation is a form of mental disorder. Writing of the litigious variety of the syndrome in 1959 the French psychiatrist H Baruk described patients "... who undertake a series of lawsuits, the first leading to others along with numerous pleas and hearings. The patients become threatening and insulting and often denounce magistrates, lodge repeated complaints and sometimes become dangerous."

The distinguishing feature of the illness is that patients "... have a precise aim in view from the onset of the illness, which brings the will into play from the beginning ... The patient suffering from delusions of passion is in a state of constant striving; he advances towards

his goal with conscious and clear-cut demands from the outset; he is deluded only about his own desires and his thoughts are polarised in relation to his will-power." De Clerambault's syndrome is distinguishable from other forms of paranoia. It does not involve hallucinations. Sufferers typically display a vehement and passionate attitude with unsustainable claims being made against others. Recovery supported by sympathetic relatives is possible over a long period but the condition can degenerate into violent actions.

Baruk cited a study by his father published in 1908 of a man from a French village near Alençon who was injured while shoeing a horse. He received a pension which he considered insufficient and began to claim part of a file had been removed:

"Then came a torrent of lawsuits and claims ... In the course of these incessant proceedings, the patient accused his counsel of not handing over one certificate to the Public Prosecutor. Although an enquiry was held, which showed that the certificate had been delivered, other accusations followed against the notary and solicitor. They were addressed to the Public Prosecutor, the Minister of Justice, and then to the Procurator General until the increasing number of people who were denounced included all the magistrates, notaries, solicitors, attorneys and business men of Alençon in general censure ..." Eventually the patient became violent; disrupting court proceedings, firing shots at neighbours and making threats to kill amid claims of an organised conspiracy against him by magistrates.

Continental psychiatrists have been at pains to stress that not all passions should be immediately labelled as examples of the syndrome. A defining characteristic of the psychiatric condition is that the litigation takes on an unreal character which nothing can penetrate and which loses all contact with reality. Certainly, there have been enough surprises in English justice in the last few decades to realise that we cannot automatically dismiss an unlikely sounding claim as being without merit. But the similarities between the repetitive element found in de Clerambault's syndrome and the legal concept of a vexatious litigant are, in my opinion, obvious. The cross-cultural nature of the phenomena and the fact that it has been a recognisable feature of the legal scene in England for more than a century suggests that vexatious litigants should not be simply dismissed as annoying eccentrics with nothing better to do with their lives, or followers of a peculiar social fashion or tendency.

Fortunately, it would appear that litigious disorders can be distinguished from general eccentricity. Eccentrics, in so far as they can be recognised as sharing common features, do not appear to be unhappy with their lives and do not display the anger of the vexatious litigant. The one major study of eccentricity undertaken through the Royal Edinburgh Hospital in the 1980s suggests there is no direct link between eccentricity and mental illness. With eccentric personalities, strange thought patterns may be deliberately adopted and these

tend to be functional rather than dysfunctional for the individual concerned; curiosity, happiness and a sense of humour emerging as common traits (see *Eccentrics*, Chaps 6–8 (1995) Weeks, David and James).

The fact that in other regards the sufferer from de Clerambault's syndrome may, in the early stages, be relatively normal is a factor which has contributed to the condition remaining little known among psychiatrists in the English-speaking world. The complexity of common law and civil procedures combined with the English traditions of free speech, access to the courts and a general social tolerance of eccentrics may also have inhibited diagnosis of the condition in England and determined legalistic, rather than medical, responses to sufferers hitherto. Indeed, it is conceivable that the obsession with suing through the courts so clearly demonstrated by vexatious litigants could even have deterred diagnosis or study by healthcare professionals who may have been afraid of becoming the targets of litigation themselves!

Many lawyers and advisers will have encountered people who appear to be suffering from the symptoms of de Clerambault's syndrome. Often vexatious litigants display high intelligence combined with determination which, if it had been properly applied in some other sphere, could have reaped great rewards for themselves or others. In addition to specific measures against vexatious litigants, the CPR also include other filters, such as the requirements for leave to appeal or to commence judicial review cases, thereby excluding what, in *Barrs v Bethell* [1982] Ch 294, Warner J once termed “cranks and busybodies”. As well as vexatious litigants in courts, there is a minority of people within the prison population who display similar symptoms, continuing to protest their innocence in the face of overwhelming evidence and repeatedly seeking to have their convictions over-turned. It may even be the case that some people develop the condition in the course of pursuing long-running and complex litigation. Further study of the condition and its modern expressions is arguably needed.

Indeed, the rules committee for the Supreme Court might well consider reviewing the relevant law on the basis of psychiatric opinions on the condition. Psychiatrists such as Baruch warned that, “The fact that some of these conditions develop in the direction of profound personality disorders and sometimes even schizophrenic illnesses testifies further to their pathological nature.” In other words, a passionate litigious obsession may be a warning symptom for the development of an even more severe disorder.

Increasingly, doctors and psychiatrist have to face the legal consequences of faulty diagnoses in psychiatric cases. It might be time for the legal profession, the judiciary and legislators to begin to re-assess the concept of the vexatious litigant in medical terms. Hopefully, an awareness that vexatious litigants are not simply people who are a nuisance to the court system but individuals in need of psychiatric attention will both help with our understanding of them and enable the formulation of more appropriate responses to a psychiatric, rather than legal condition.