

The laws of nature

On avoiding being sued

Julie Bond explores some legal pitfalls facing researchers.



Mark Hammsen/Alamy

As never before, the scientific community has greater opportunities to engage with commerce and industry, and modern technology allows research to get to more people faster. This is undoubtedly for the public good but it creates new pressures for scientists. Business leaders, when making commercial and financial decisions, recognise the value of scientific information as a useful component in the age-old process of maximising profit. There is nothing wrong with this, but when scientists get involved in commercial activities, they need to be aware that they are immediately subject to the same risks as everyone else in that world. This includes the risk of litigation.

Researchers, like other professions, can be sued for negligence. A professional person is negligent when his work departs from the standard to be expected of an averagely competent member of his profession and when, as a result, loss is caused to someone to whom he owes a duty of care.

The range of people to whom a scientist could owe a duty of care is very wide. The more people who use the research, the greater the risk that, if it is wrong, someone affected will look for a way to recover a loss. When something goes wrong in the commercial world it is considered routine to take legal action to make good these losses sustained as part of the ordinary course of business.

The risk is greatest in the predictive sciences, where models used to influence financial decisions will affect not only the institution to whom the information is given but their customers too. It is possible to imagine many scenarios in which flawed or misunderstood science could lead to claims, for example, from people whose homes had been rendered uninsurable by a mistaken prediction that it was likely to flood. Even if the

scientific work was not done for individual homeowners, they might still be able to show a duty of care was owed to them.

Scientists must understand the context in which they do their work, whether under a commercial contract or as part of publicly funded 'pure' research. Rapid electronic dissemination of research means it is also necessary for them to be aware that their work may be read and relied upon outside the narrow field which may previously have had access to it.

It is important to consider not only the design of the research project in this context but also the way the research is written up and presented. Scientists should avoid overhyping the significance of their results.

Obviously scientists do not want to work in a legally defensive climate.

There is no need to restrict the subject matter of research, but scientists must

be prepared to define and control what they are prepared to be responsible for. Contracts must be carefully drawn up to reflect the responsibilities scientists are willing to undertake.

Scientists need to evaluate research proposals to see whether there is likely to be public interest in the results and whether the research could affect the human population; to define in publications what is not to be covered by the research; to assess where the research will be published and how it will be disseminated; and, most important, what disclaimers they need to include in all publications to ensure that they are not misunderstood and cannot be improperly relied on. ❖

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