



Association of Personal Injury Lawyers

Briefing: Civil Liability Bill

Part 2 of the Bill – Personal Injury Discount Rate

Effect of the discount rate on the NHS

Much concern has been raised about the effect of the change in the discount rate on the NHS. After the Lord Chancellor announced the change in the rate in February 2017, the Chancellor of the Exchequer, in the Spring Budget, announced that the Government had set aside £5.9 billion to “protect the NHS”¹. It has since been revealed in the 2017/2018 NHS Resolution annual report that the discount rate change cost the NHS £406.3 million². While, on the face of things, this may seem to be a cause for concern, it is critical to recognise that this ‘increased cost’ to the NHS is not because of how the discount rate was set, but because the discount rate had been out of date and incorrect for many years. In effect the NHS has been under-compensating injured people for its negligence.

To put this into perspective, £406.3 million represents just 0.4 per cent of NHS England’s annual budget. By contrast, missed appointments cost the NHS £1 billion every year³ and medication errors waste £1.6 billion⁴.

The long overdue correction of the discount rate was the first change in the rate in 16 years, but it should not have come as a shock to those who are responsible for paying compensation. APIL first began judicial review proceedings against the Lord Chancellor in 2011, after an ongoing failure to review the discount rate.

¹ <https://www.gov.uk/government/speeches/spring-budget-2017-philip-hammonds-speech>

² NHS Resolution Annual Report and Accounts 2017/2018 page 16

³ <https://www.theguardian.com/society/2018/jan/02/patients-missing-their-appointments-cost-the-nhs-1bn-last-year>

⁴ <https://www.theguardian.com/society/2018/jan/02/patients-missing-their-appointments-cost-the-nhs-1bn-last-year>

A change should have been anticipated and planned for from that point. The fact that the rate fell so dramatically demonstrates that change was long overdue. The only way to mitigate the financial effect of a change in the discount rate is to have regular reviews of the rate, and the Bill provides for this. Regular reviews will ensure any changes should be more predictable for the NHS.

When considering what financial effect any compensation payment has on the NHS, it must be remembered that NHS Resolution is only liable to pay compensation when the NHS has injured a patient through negligence. That is exactly what the patient is entitled to expect. The NHS faces a really serious additional burden, though, when the discount rate is too high and it fails to meet the needs of injured people. The money will run out before the end of their lives, and they will then be forced to rely on the State – ie the NHS.

So, if the discount rate is set too high as a result of this legislation, the NHS will not only have to pay for its own negligence, but also the negligence of everyone else who causes needless catastrophic injuries.

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