Overview

Patients have every right to be able to put their trust in the NHS and, where the NHS is negligent and needless injury is the result, they have a right to pursue compensation to help put their lives back on track. Nothing should interfere with that right.

We can see the feasibility of reducing costs and improving the process for cases up to the value of £25,000. We have already undertaken a considerable amount of work on the development of such a system and the Government is aware of this. We are very willing to continue to work with the Government to develop such a scheme.

A huge amount of money is wasted by the NHS’ failure to learn lessons when things go wrong, and from its bureaucratic and antiquated approach to the claims process. It is completely unacceptable, for example, that 41 per cent of the value of compensation claims for medical negligence involve injuries to babies sustained at birth and that this figure has barely changed in the past ten years. The cost in human suffering and to the public purse is enormous.

Briefing

1. The Government is proposing to cut the fees available to lawyers who help injured patients to make claims against the NHS. This is not a new idea – APIL and Action Against Medical Accidents (AvMA) suggested such a system several years ago but negotiations with the NHS fell through.
2. People with potentially life-changing injuries which have been inflicted on them through the NHS’ own negligence need compensation to help them get their lives back on track. Government proposals, as they currently stand, would mean their ability to do this will be severely curtailed. This is unacceptable.

3. Medical claims are complex – they require specialised lawyers with real expertise and fees must be set at a level which allows lawyers to do the work. Failure to do this will inevitably mean the work will be conducted by inexperienced practitioners which, in turn, will mean that issues will be missed, unmeritorious claims will not be stopped at source and larger claims won’t be handled properly, generating higher costs both for the NHS and the injured patient.

4. Screening is a key part of the process and our research shows that 85 per cent of cases are dropped at an early stage by solicitors. This happens even before the NHS Litigation Authority (NHSLA)\(^1\) has any knowledge that a claim is being considered. It is a time-consuming, expensive process, conducted by experienced lawyers. If fees are fixed too low this process will almost certainly become an unaffordable luxury, and all claims will be passed to the NHSLA which will then have to conduct the screening itself, at an extra cost to the public purse.

5. There are other ways for the NHS to cut waste from the system:
   - Admit liability when failures have happened: there is currently a routine ‘deny, defend, delay’ tactic which drags cases out, driving up costs, only for the case to be settled at the door of the court, if at all. It’s worth remembering that the injured patient has to prove he has been injured, which takes time and is costly: the NHS has all the information at its fingertips. The NHS should admit liability much sooner.
   - The cost of expert witness reports increases dramatically if cases reach the court. These costs could be saved if admissions of liability are made earlier.
   - The NHS currently operates a three-tier legal system, which is bureaucratic and wasteful. Trusts have their own legal teams who deal with claims at the outset; they are then passed to the NHSLA. If the claim is issued in court, it is passed to external defendant lawyers. This causes inconsistency and delay: when a complaint becomes a claim, it should be passed automatically to the NHSLA.

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\(^1\) ‘NHS Legal and Risk Services’ in Wales
6. Moreover the Government’s proposals are premature because it has not taken into account the impact of its previous cost-cutting measures. According to our research, the NHS will save around a third of costs and expenses from the implementation of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act. In effect, it will make substantial savings by doing nothing at all.

7. We do accept that there is room to make savings in cases up to the value of £25,000, as outlined earlier in this document. But the Government’s assertion that cases up to the value of £250,000 are ‘low value’ clearly does not hold water. A quarter of a million pounds can in no way be considered ‘low value’.

8. In focusing its attention on cutting legal fees the Government is aiming at the wrong target. According to health secretary Jeremy Hunt, nearly half a million people are harmed unnecessarily every year in the NHS. This is the key problem. It generates a cost in human suffering to patients and their families and a financial cost to the NHS.

9. For example, hundreds of babies are left brain-damaged each year because the NHS does not learn from its failures. The number of claims for cerebral palsy and brain damage sustained at birth has barely changed since 2006/7. These claims account for 41 per cent of the value of compensation claims for medical negligence. A severely disabled child needs round-the-clock care, adapted housing, wheelchairs and other equipment. These cases cost millions of pounds which could be wiped off the balance sheet at a stroke, if the NHS were to learn the lessons of its failures.

Ends

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