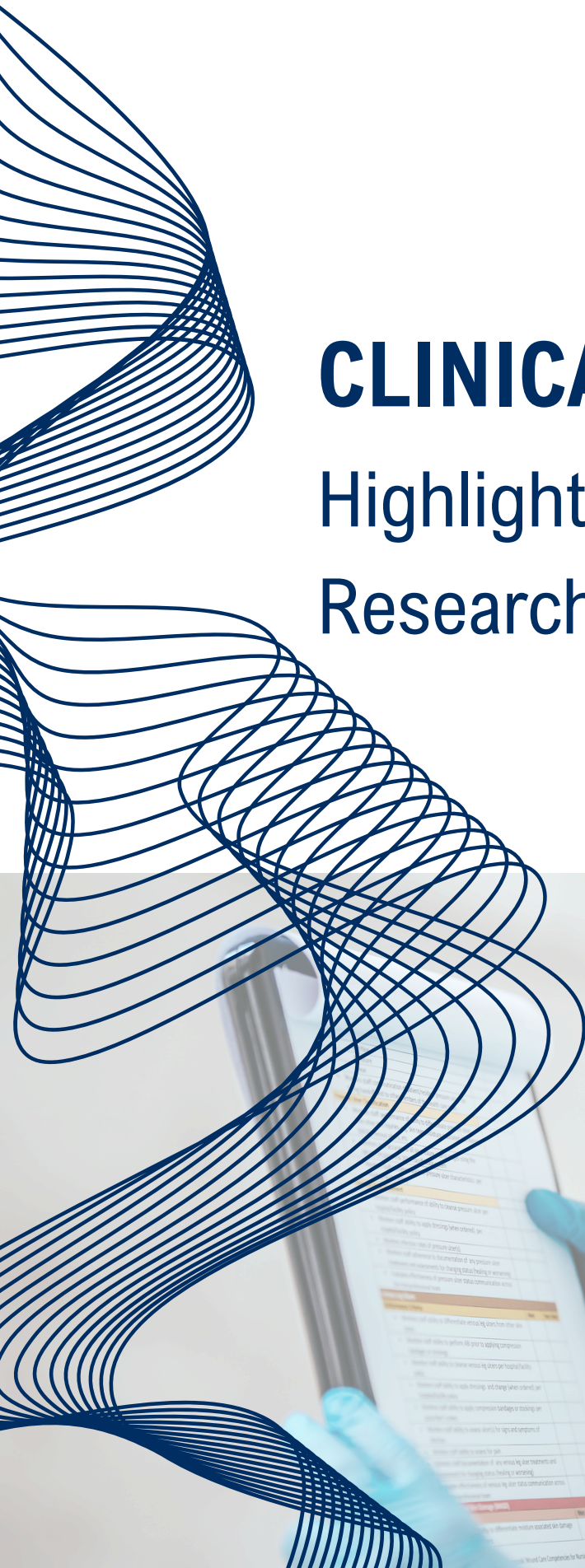


CLINICAL NEGLIGENCE

Highlights from APIL's Research



THE CONTEXT

Clinical negligence compensation is subject to increasing public scrutiny. In October, the National Audit Office (NAO) will publish a report looking at trends in these costs, and what lies behind these changes. This will be followed by a Public Accounts Committee inquiry.

Alongside this, the Department of Health and Social Care (DHSC) has asked David Lock KC to provide advice on “the rising legal costs of clinical negligence claims”. David Lock’s advice will inform a forthcoming DHSC review of clinical negligence which is “aimed at improving the patient experience and reducing the financial burden of litigation on the NHS”.

These developments are likely to be exploited by those who want to reduce access to full compensation and legal support. Specific proposals include capping damages, fixing legal costs, and removing the right to claim for private treatment costs.

In response, APIL has conducted a series of research projects to understand public opinion about clinical negligence compensation, examine the likely impacts of proposed changes, and identify what is leading to increased spending. This report outlines the key findings from this research.

A TINY FRACTION OF THOSE HARMED GO ON TO CLAIM

22% of UK adults say they have experienced harm as a result of negligent NHS care, opinion polling commissioned by APIL shows. **6%** suffered this harm in the last year.

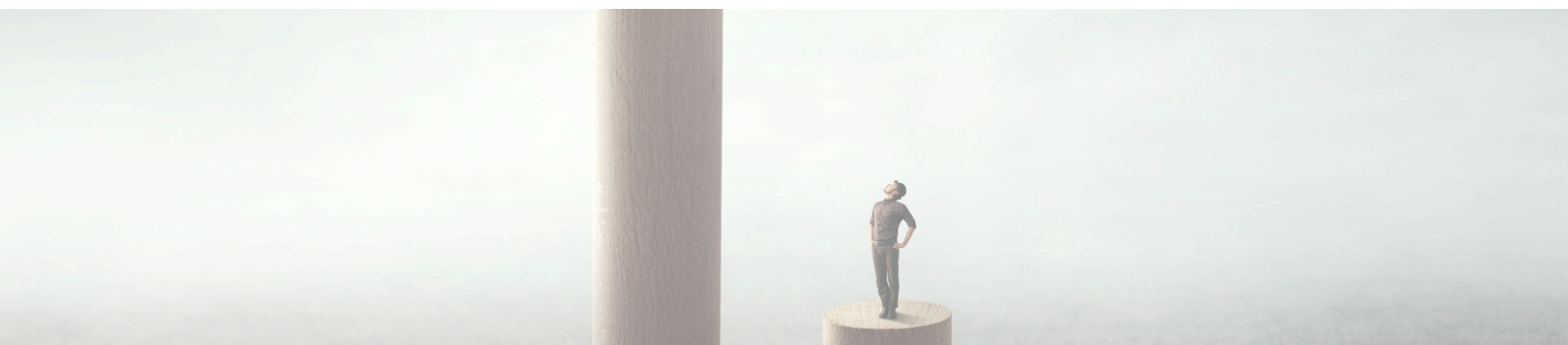
 **1 in 5** UK ADULTS HARMED DUE TO NHS NEGLIGENCE

This means that 3.2 million adults were harmed by the NHS in the last year alone. Just 0.5% of these people go on to make a claim for compensation, Compensation Recovery Unit (CRU) data shows.



~ 0.5 % OF HARMED INDIVIDUALS GO ON TO MAKE A CLAIM

There is clearly no 'compensation culture' when it comes to claims against the NHS.



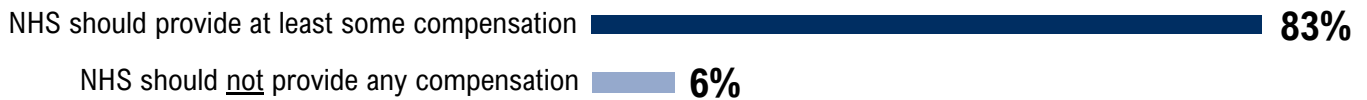
STRONG PUBLIC SUPPORT FOR CLINICAL NEGLIGENCE COMPENSATION

APIL's polling found that **an overwhelming majority of the public think that the NHS should provide compensation to those it harms**. For example, **83%** think that, if they were negligently harmed, the NHS should cover the costs of the aids and equipment they might need. **77%** think the NHS should cover the social care costs which they would need to meet.

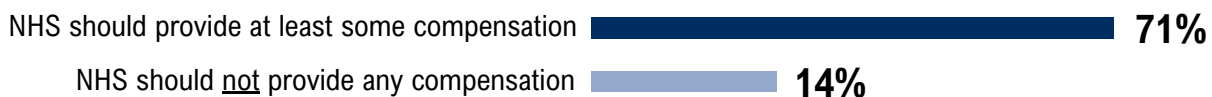
SOCIAL CARE COSTS



AIDS & EQUIPMENT



LOST INCOME



Most people would expect to receive compensation from the NHS if they were harmed. Only a tiny minority of the public would support exempting the NHS from providing compensation.



RISING SPENDING REFLECTS THE DAMAGE CAUSED BY NEGLIGENCE

Our analysis of NHS Resolution's (NHSR) data shows that, fundamentally, clinical negligence costs are driven by the NHS's safety failures.

Virtually all clinical negligence spending, including damages and legal costs for both sides, only arises from **cases where negligence has been established**. In the long-term, costs would fall if these incidents were prevented.

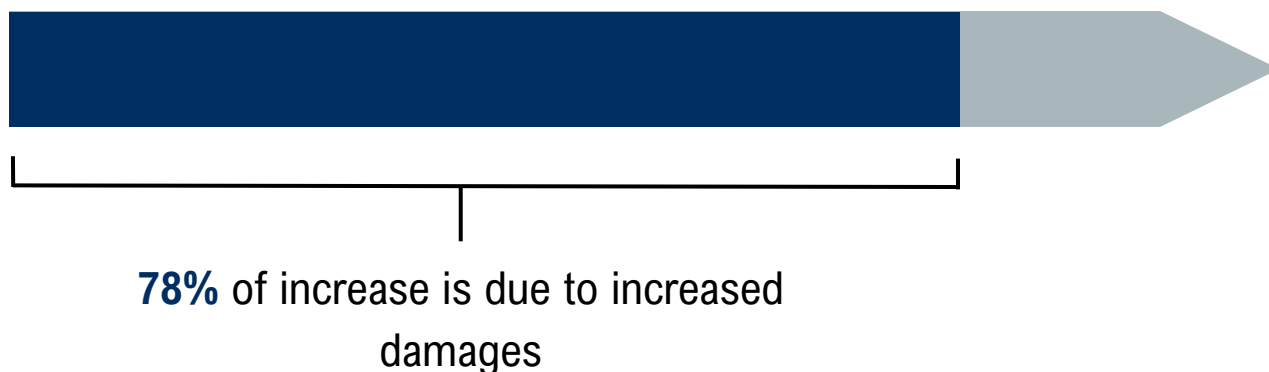


99.7%

OF CLINICAL NEGLIGENCE SPENDING IS
A RESULT OF SUCCESSFUL CLAIMS

NHSR's data also shows that increased clinical negligence spending is overwhelmingly driven by the damages which result from this negligence. For example, between 2013/14 and 2023/24, more than three quarters (**78%**) of increased clinical negligence spending was accounted for by rising damages.

TOTAL INCREASE IN CLINICAL NEGLIGENCE SPENDING



Evidently, **legal costs** have played a minor role in recent increases to clinical negligence spending.



DELAYS ARE PUSHING UP LEGAL COSTS

Data obtained by APIL shows that, while claimant legal costs have risen slightly over the past decade, these increased costs are likely to be driven by a significant increase in delays to claim settlements.



According to NHSR data, the average waiting time from claim notification to settlement is now **51%** longer than it was ten years ago.

These delays have an inevitable impact on costs. Indeed, NHSR themselves acknowledge that “the longer cases run for, the higher the costs”.

‘THE LONGER CASES RUN FOR, THE HIGHER THE COSTS’.

In lower value claims, increased delays over the past decade have far surpassed rising legal costs

1% INCREASE IN AVERAGE CLAIMANT LEGAL COSTS
(INFLATION ADJUSTED, 2013/14-2023/24)

49% INCREASE IN CLAIM DELAYS

Delays have affected claims of all values. For example, compared to a decade ago, claims valued at £1,501 - £25,000 are now taking, on average, six months longer to settle. Claims valued at £1 million - £2 million are taking over twelve months longer to settle.

Legal costs could be reduced if delays were tackled, yet attention continues to focus on fixing claimant legal fees.

THE MAJORITY OF THE PUBLIC OPPOSE THE REPEAL OF SECTION 2(4)

The Medical Defence Union (MDU) has called for the repeal of Section 2(4) of the Law Reform (Personal Injuries) Act 1948. Under Section 2(4), victims of negligence are able to claim compensation for private healthcare costs and the availability of NHS treatment is disregarded when calculating compensation.

However, APIL's opinion polling shows that these changes would **not** have public support. If they needed to be treated for harm caused by NHS negligence, **51%** of UK adults think the NHS should pay for them to be privately treated. Only around a third (**35%**) think the NHS should not cover these private treatment costs.



51 %

THINK THE NHS SHOULD PAY FOR
PRIVATE TREATMENT

THINK THE NHS SHOULD NOT PAY
FOR PRIVATE TREATMENT

35 %



Furthermore, public support for Section 2(4) is rising. In 2018, only 32% thought the NHS should pay for private treatment. Since then, there has been a **19 percentage point** increase in public support for the idea that the NHS should cover these costs.



HARMED PATIENTS WOULD BE RE-TRAUMATISED IF THEY HAD TO RETURN TO THE NHS

Our opinion polling also shows that those who have been harmed by the NHS would be re-traumatised if they had to return to the NHS to be treated.

64 % OF THOSE HARMED BY THE NHS WOULD FEEL ANXIOUS, SCARED, DISTRESSED, UNHAPPY OR ANGRY IF THEY HAD TO RETURN TO THE NHS TO BE TREATED.



Breaking down the results, **41%** of those harmed would feel anxious about going back to the NHS for future treatment. This was the most commonly reported emotion. **22%** would feel scared, while **21%** would feel distressed.

In contrast, just **17%** say they would be happy about returning to the NHS.

These results highlight that, wherever possible, victims of NHS negligence should not have to rely on NHS treatment. It is, therefore, vitally important that compensation covers private healthcare costs.



REPEAL OF SECTION 2(4) WOULD HAVE A LIMITED IMPACT ON SPENDING

Opposition to the NHS covering private healthcare costs is, unsurprisingly, driven by concerns about the impact this has on NHS finances and resources. However, APIL's research shows that, in reality, Section 2(4) adds a small amount to the overall compensation bill.

For example, government analysis uncovered by APIL shows that only **4%** of all clinical negligence damages spending relates to therapy and treatment. These costs include private healthcare services which can be claimed for **because of the existence of Section 2(4)**. In contrast, the vast majority of damages spending relates to losses, such as social care, which would be unaffected by changes to Section 2(4).

Only 4% of damages spending is impacted by the existence of Section 2(4)



This demonstrates that section 2(4) does not have a significant impact on clinical negligence spending, and that its repeal would fail to significantly reduce costs. Repeal would only serve to deprive victims of negligence of the private treatment which they need.



NO-FAULT COMPENSATION WOULD SEE COSTS SPIRAL

Some present an alternative ‘no-fault’ compensation system as the answer to rising clinical negligence costs. New Zealand, which has long run a no-fault compensation scheme for treatment injuries, is pointed to as an exemplar of how this can be done. However, **APIL’s research shows that the cost of New Zealand’s no-fault treatment injury scheme is spiralling.**

This research shows that New Zealand’s total spending on treatment injury claims almost doubled between 2018/19 and 2023/24.



During the same period, clinical negligence costs in England fell after adjusting for inflation. **Rather than solving the NHS’s financial challenges, a no-fault system would pose a significant financial risk.**



COMPENSATION WOULD COLLAPSE UNDER A NO-FAULT SYSTEM

Those who are injured as a result of negligence would see their compensation plummet if a no-fault scheme were introduced. Data obtained by APIL shows that the average compensation provided to each successful claimant in New Zealand was just £7,856 in 2023/24. In England, this figure stands at over £200,000.

As a result, each successful claimant in New Zealand's no-fault system can expect to receive 96% less compensation than a successful claimant in England.

Average compensation - England  £213,371

Average compensation - New Zealand  £7,856

Alternatively, if a no-fault scheme were to be introduced which did not cut compensation, costs would rise uncontrollably. Analysis undertaken by APIL in 2022 found that, if compensation awards in England were maintained at current levels, a new 'administrative' scheme, without any legal fees, would cost up to thirteen times more than the current system. **Spending on compensation claims would rise from less than 2% of NHS England's annual budget to as much as 19%.**

**Spending would rise to
19% of the NHS's budget**



A NO-FAULT SYSTEM IS NOT THE ANSWER TO THE PATIENT SAFETY CRISIS

Research also clearly shows that changing our compensation system would not solve the NHS's patient safety crisis. The case of Australia, with its tort-based system, makes this clear.



AUSTRALIA, WITH ITS TORT-BASED COMPENSATION SYSTEM, RANKS WITHIN THE TOP 10 COUNTRIES FOR PATIENT SAFETY.

In a ranking of thirty-eight countries by Imperial College London, Australia came among the top ten in the world for patient safety. This was ahead of New Zealand, Denmark and Sweden, all countries with no-fault or administrative compensation systems.

As a result, world-class patient safety can be achieved within the UK's tort-based compensation system.



EVIDENCE FROM EXISTING NO-FAULT SCHEMES REVEALS SYSTEMIC FLAWS

Advocates of alternative compensation schemes say that these systems represent a far more humane process for obtaining financial support. However, Britain's existing no-fault or administrative compensation schemes show what claimants would be likely to face in reality...

EXISTING NO-FAULT/ ADMINISTRATIVE SCHEMES

Armed Forces Compensation Scheme

Research by the All-Party Parliamentary Group for Veterans revealed that the process left applicants "mentally broken" and "suicidal":



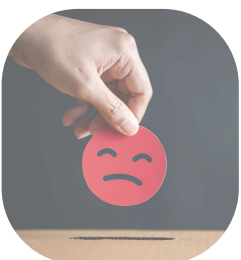
76% RATED THEIR OVERALL EXPERIENCE OF THE PROCESS AS **POOR/VERY POOR**

84% SAID THAT THE CONSIDERATION GIVEN TO THEIR MENTAL AND PHYSICAL HEALTH WAS **POOR/VERY POOR**

Parliamentarians have also criticised the scheme for being inherently distrustful of applicants, and as putting cost-cutting above the interests of veterans.

Criminal Injuries Compensation Scheme

Research has repeatedly found that those who apply for compensation through the scheme face a complex, time-consuming and inhumane process. For example, a survey involving survivors of terrorism revealed that:



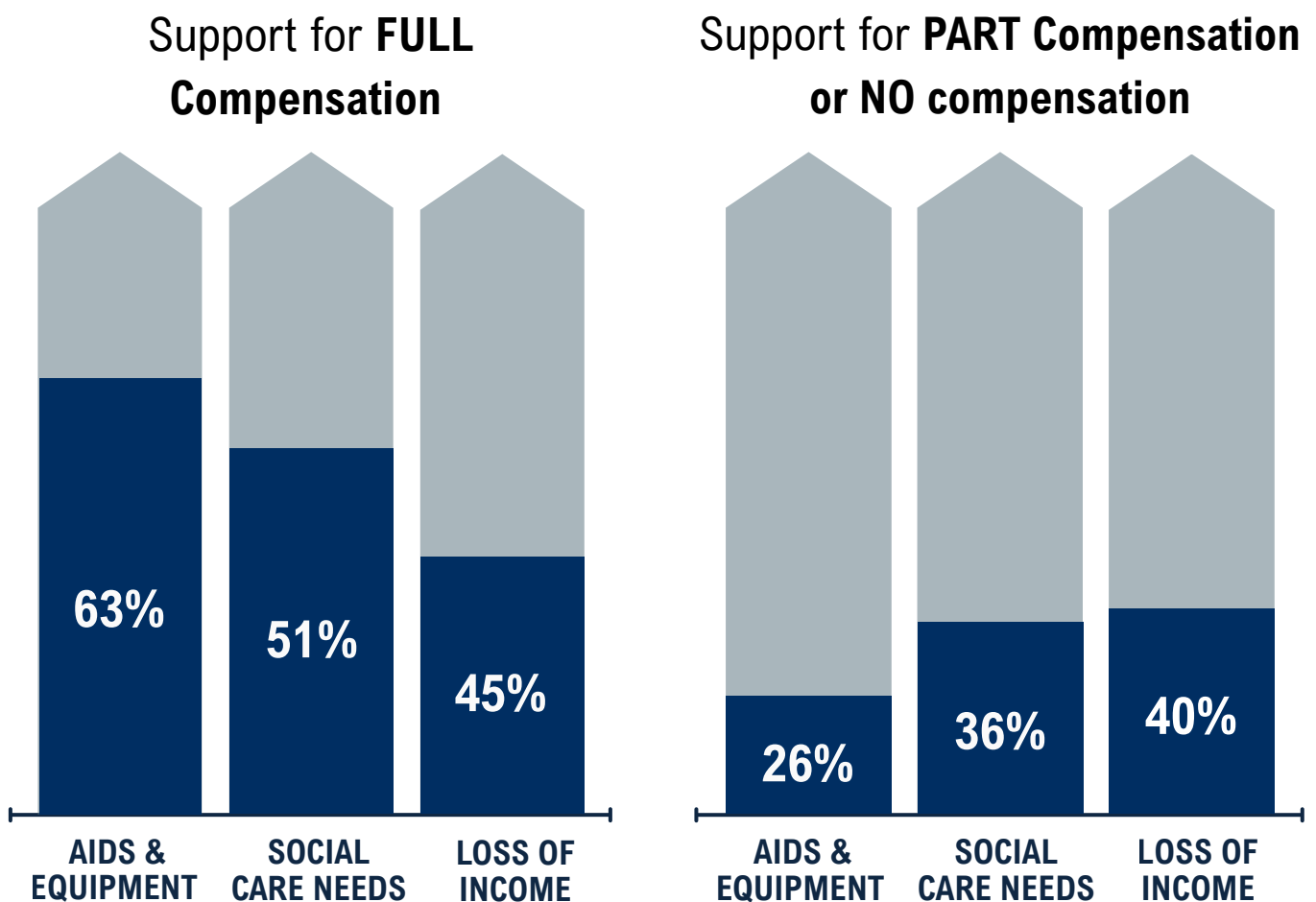
62% DID **NOT** FEEL TREATED WITH EMPATHY AND RESPECT

7% FELT THAT THE SYSTEM **WAS SYMPATHETIC TO THEIR NEEDS**

ONLY A MINORITY OF THE PUBLIC WOULD SUPPORT CAPS ON COMPENSATION

The Medical Defence Union is proposing caps on the amount of compensation which is provided to victims of clinical negligence, in particular for lost income. However, APIL's opinion polling indicates that only a minority of the public would support these proposals.

This polling indicates that, across key heads of loss, **public support for full compensation for victims of NHS negligence** is greater than support for capped compensation...




OUR WORK

The findings highlighted in this report are drawn from the following key sources:

- APIL commissioned opinion polling undertaken by OPINIUM in 2025.
- APIL's analysis of NHS Resolution (NHSR) data on clinical negligence claims, including NHSR data obtained through Freedom of Information (FOI) requests.
- APIL's analysis of data published by the Department of Health and Social Care.
- APIL's extensive research into no-fault and administrative compensation schemes. This includes analysis of new data, sourced by APIL, on the New Zealand no-fault scheme, a review of external research into no-fault and tort-based schemes, and analysis of Britain's existing no-fault or administrative schemes.
- Imperial College London's 2023 study into the 'Global State of Patient Safety'.
- Surveys released by the All-Party Parliamentary Group for Veterans and Survivors Against Terror.

For a full list of the research highlighted in this report, please contact APIL's research team.





APIL's research team are dedicated to advancing the interests of our members and the people they represent. Through evidence-based research, we aim to challenge misinformation and support a fairer system for victims of negligence seeking justice.



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