

**BRIEFING:  
OCCUPATIONAL HEALTH  
SIG MEETING  
30 April 2019**

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# Civil Liability Act

# Introduces:

- Rigid tariffs for whiplash
- Government definition of whiplash
- Uplift in exceptional circumstances
- Ban on pre-medical offers
- Changes to the discount rate
- Separate, but linked: small claims limit

# Update

- Call for evidence on discount rate closed in January
- Discount rate review started 19 March – concludes by 5 August
- Whiplash tariffs and small claims reform still due to be introduced April 2020

# What more can be done?

- MoJ stakeholder group
- Arguments about legal representation and impact on charities
- Arguments about fair compensation
- Briefings at committee stage

# LASPO Part 2 Review

- Indemnity principle should be abrogated
- QOCS should be extended
- ATE premiums should remain recoverable
- DBAs must be reformed

- Part 36 – should be incentive for early acceptance of claimant offer
- Costs budgeting more consistent
- More guidance needed on fundamental dishonesty
- Fixed costs should be reviewed



# Government Response

- Reforms are a success!
- Access to justice at proportionate cost
- Early settlement
- Reduction of unmeritorious cases
- No major changes to Part 36
- BUT: possibility of reform to DBAs

# APIL President Brett Dixon:

“We remain concerned about fundamental dishonesty being misused by, and not apply to, defendants.

“The Government’s assertion that the test of fundamental dishonesty is one of the things which ‘suggest there has been an overall decline in unmeritorious claims’ is incredibly short-sighted.

# Legal Aid for Inquests

# Consultative group position:

- Article 2 an unsuitable trigger for clinical cases;
- Inequality of arms in inquests involving deaths in State/private healthcare;
- Families not kept informed;

- There should be healthcare-specific coroners;
- Legal aid application procedure too long;
- Legal aid for inquests should not be means-tested.

# Government response:

- Inquests should not become adversarial;
- Means-testing to stay, but a review into thresholds for legal aid entitlement;
- Comprehensive review of legal aid eligibility;



- Options for funding for legal support where state has funded representation;
- Simplification of ECF scheme;
- Public awareness campaign;
- Backdating legal help waiver;

- Consultation on separate guidance for families;
- New edition of *Guide to Coroner Services*
- Separate guidance for families on legal aid;
- Training for coroners and coroners' officers.

# Fixed costs for clinical negligence

# CJC terms of reference:

- Improved process for claims under £25k
- New structure and costs
- Impact of changes on patient safety
- Use and funding of expert reports

REPORT BY END OF 2018

# ‘Alternative scheme’

- Claimant obtains expert scoping report, without prejudice
- Defendant investigates: short form response
- Fees for scoping reports a few hundred pounds
- Claimant letter of claim and full expert report if liability in dispute

- Letter of notification could include statement of truth but the scoping report disclosable by defendant
- Process then reflects Law Society scheme
- Sequential exchange of scoping reports, without prejudice
- ATE to be considered separately

- Further meetings held March 2019 – inconclusive, and work is ongoing.
- CJC work will be followed by public consultation.

# Section 2(4) Law Reform (Personal Injuries) Act

- Repeal possible as a way of cutting cost of clinical negligence
- APIL concerns addressed directly to health minister in private meeting last autumn



# We said:

- NHS treatment is slow
- NHS does not have access to latest treatment
- Delays affect injured person's rehab
- Lack of trust in NHS a serious issue
- Repeal would not be confined to clinical negligence: massive cost to NHS

# Campaign to extend mesothelioma scheme

- Long-standing APIL position
- Debated in Parliament in 2013 but not progress
- Diffuse Mesothelioma Payment Scheme should have been reviewed last year

- Govt says review 'in due course'
- Govt says no plans to extend it
- Campaign being developed
- Discussions with Forum of Asbestos Victim Support Groups

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