

**APIL BRIEFING:  
COSTS & FUNDING SIG  
MEETING  
30 May 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

## **Fixed Costs Consultation**

- Consultation period end March – 6 June
- Legal costs “too high and too uncertain”  
– justice secretary David Gauke
- Based on Jackson recommendations:  
fixed costs up to £100,000
- Some cases to remain out-of-scope

## **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 WAS DUE 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.

## **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

## **Immediate Past 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.

**DoHSC Consultation:  
Appropriate Clinical  
Negligence Cover**

- **WE SAID:**

- All providers of NHS services should be covered by a state-backed indemnity scheme
- Legislative change should apply for all private healthcare providers

- Those who hold private indemnity insurance should be checked annually by their regulators
- State-backed scheme should include run-off cover
- Cover should be unlimited

Government summary of responses  
awaited

## **Legal Aid for Inquests**

### **Consultative group position:**

- Article 2 an unsuitable trigger for clin neg 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.

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