

APIL's plan for tackling clinical negligence costs while preserving access to justice

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The key focus for reform related to clinical negligence must be on the need to create a safer approach to healthcare to prevent harm occurring, and better responses in the aftermath of patient safety incidents and avoidable harm. A single-minded approach focusing only on reduction in the cost of claims fails to tackle the issues at the heart of the clinical negligence system.

A more efficient, and more sustainable clinical negligence system is achievable, but in order for any reform to be meaningful, it must be grounded in evidence.

It is vital that any reforms preserve – and even strengthen - accountability and that the principle of full and fair compensation remains intact. By focusing on evidence-based reform, improving early resolution, strengthening learning from harm, and ensuring accountability remains robust, the Government can meet its objectives without compromising patient protection or reducing access to justice for those who are harmed by clinical negligence.

The Government's focus should be on the following three areas:

1) Reduction of harm

Damages – which are carefully calculated to put the injured person back, as closely as possible, to their life pre-injury- are only paid to claimants when there has been proven negligence. A priority focus for the NHS must be on preventing harm occurring in the first place. This comes from culture change within the NHS, not changes to the compensation system.

Following the Dash Review recommendations in July 2025, NHSE and the CQC are now responsible for driving improvements in patient safety, something which the Ockenden and Amos reviews flagged as not yet operating as intended.

The NHS must put in place a robust system to ensure that when harm occurs, there is an established feedback mechanism and learning to ensure that the harm is not repeated.

There must also be greater transparency as to how learning is disseminated when things go wrong.

2) Transparency when things go wrong

When things go wrong, families are often kept in the dark and feel that the only way that they can find out what happened to them is by pursuing a clinical negligence claim.

There must be consistent and effective implementation of the statutory duty of candour.

The Public Office (Accountability) Bill should be brought into force without delay, ensuring that the duty of candour is fully embedded for all those involved in NHS claims, including legal professionals.

The duty of candour should also apply to defence indemnity organisations and their lawyer representatives. Parity between defence organisations and the NHS is in the public interest.

A code of conduct for defendant lawyers – explicitly including inhouse lawyers, inquest lawyers, and those representing in regulatory proceedings - should also be introduced, to increase accountability.

3) Improved efficiency in the legal claims process

Families that do bring a claim in order to find answers are then met with delays and inefficiencies, which can make finding those answers even more difficult. If claims can be dealt with more efficiently, those who are injured would receive redress more quickly and would be able to access rehabilitation in a timelier manner.

Since 2013/14, there has been a 58 per cent increase in the time it takes NHSR to settle clinical negligence claims. Delayed claims lead to increased legal costs, and more can be done on both sides to improve the efficiency of the clinical negligence claims process.

Increased efficiency in the claims process to be achieved through:

- Full compliance from all parties with the Pre-action Protocol for Clinical Disputes, which sets out best practice for claims in this area. Existing sanctions in relation to non-compliance with the protocol should be applied on a consistent basis.
- Amendments to the pre-action protocol to bolster the letter of notification requirements, and templates to demonstrate effective correspondence within the protocol, to ensure meaningful investigations occur at the earliest possible stage of the claim.
- Greater collaboration between the parties and use of alternative dispute resolution.
- Investigating opportunities arising from technological developments, such as AI, at the earliest possible stage, with open reporting on their use.

For further information or to discuss any of the points in our plan, please contact:

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