

Nothing is striking about the doubling in the number of clinical negligence claims

19th September 2024

In his recent report, Lord Darzi deems the doubling in the number of clinical negligence claims in the past 10 years as 'striking'. However, Chair of the Society of Clinical Injury Lawyers Sharon Allison disagrees.

Earlier this week, Lord Darzi and the Department for Health and Social Care published a report on the state of the NHS in England where he outlined it was broken at almost every level, describing it as 'in serious trouble'. The report confirmed much of what the public experiences; patients rely on strained and sporadic resources and the general health of the nation has deteriorated as a result, creating further pressure on services. It therefore seems an inevitable consequence that there has been a rise in the number and cost of medical injury claims in this period.

The declining general health of society, chronic and sustained underfunding of the NHS under successive governments of all colours and increased demand for services have resulted in a rise in unsafe practices, and ultimately compromised patient safety and caused harm. This has prompted an increase in the number of claims and costs in the clinical negligence space and the report rightly concludes that something must be done to tackle this.

Putting aside debates over whether compensation for medical injury should be scrapped, capped or reformed, there is still a significant societal cost to be paid. The injured patient must cope with the aftermath of the medical injury, whether or not a legal claim is available to them. The impact a medical injury will have will still have to be met by state benefits and provisions, and the state will still have to provide financial assistance to pay for care, rehabilitation, therapies and equipment. These needs do not simply go away.

There is equally a significant burden on families. Loved ones of the injured person will still have to pick up the care burden, often preventing them from going out to work and contributing to society. The remaining parent of a deceased spouse will still need financial help to raise children and the impact on all of them is likely to be felt more than just financially. Even if the government does look to restrict claims through reforms, this isn't likely to reduce the overall financial burden.

In fact, restricting compensation is likely to raise the burden to the taxpayer.. Restricting clinical negligence claims is likely to result in specialist lawyers moving out of the industry where they currently provide a free triaging service within the claims structure. Instead, this burden will fall on the Trust directly, NHR or worse still, the courts, who face the same funding and resource challenges as the NHS.

As clinical negligence lawyers, we see that the primary motivation for victims and families in seeking justice isn't necessarily financial. Instead, many want the NHS to learn from their mistakes to ensure that other families aren't similarly affected. Without the support of specialist lawyers who help people navigate legal complexities at a time when they are most vulnerable, we will lose this important feedback loop, leading to continuing negligence issues and ultimately increasing costs to victims and their families and to the NHS.

Restricting access to justice through the clinical claims process is not the answer. Darzi's report concludes that instead "quality of care is to become the organising principle of the NHS once more". He is right that we must focus first on improving patient safety, to in turn reduce the incidence of medical injury.

This is a key focus of stakeholders such as SCIL, NHSR, APIL and AvMA who have been working together to streamline processes within clinical negligence, all while maintaining injured parties' ability to seek legal address if something goes wrong. The changes these groups have made have successfully reduced the volume of settled cases that became litigated by 13%, with the total number of claims settled falling by 2,051 between 2019 and 2023.

Work is already underway to reduce the burden on society, but there is much more we can do. Lord Darzi and the government must understand that there is a direct correlation between the state of the NHS and the rising number of clinical claims. To effectively reduce this, we must address the crux of the issue and first look to drive improved patient care, rather than limit access to justice.

NOTES TO EDITORS

1. The Department of Health and Social Care published Lord Darzi's report on the state of the National Health Service in England on 12 September 2024:
<https://assets.publishing.service.gov.uk/media/66e1b49e3b0c9e88544a0049/Lord-Darzi-Independent-Investigation-of-the-National-Health-Service-in-England.pdf>