

# CLINICAL NEGLIGENCE COSTS STRIKING A BALANCE

## WHAT IS THE ISSUE

The NHS is struggling under the increasing burden of clinical negligence costs.

Urgent legal reform is essential to ensure that NHS money is spent in the right way.

We need your support in **#StrikingABalance** now to secure the sustainability of the NHS and its workforce

## WHAT NEEDS TO HAPPEN

The rising costs of clinical negligence need to be controlled urgently.

It is important that there is reasonable compensation for patients harmed following clinical negligence, but this must be balanced against society's ability to pay. If the current trend continues, the balance will tip too far and the cost will become unsustainable for the NHS and society.

MPS is proposing a package of legal reforms to tackle this issue head-on, as part of its **#StrikingaBalance** campaign.

Our proposed legal reforms include:

- 1 A limit on future care costs, based on the realities of providing home-based care.
- 2 A limit on future earnings which recognises national average weekly earnings.
- 3 The introduction of fixed costs for small value clinical negligence claims.
- 4 A limit on the number of expert reports that can be commissioned to support a case.
- 5 The introduction of an ultimate limitation period of ten years after incident.

## THE LOWDOWN

- £65 billion will be needed for future clinical negligence costs, relating to claims arising from incidents that have already occurred<sup>1</sup>
- Since 2010/11 NHS expenditure on clinical negligence claims has almost doubled (a 98% increase) - this presents a 12% increase on average every year
- In 2016/17 £1.7 billion was spent on clinical negligence claims – this equates to the cost of training over 7,300 new doctors<sup>2</sup>
- Due to the recent change to the Personal Injury Discount Rate, one NHS trust was forced to nearly triple an injury pay-out from £3.8 million to £9.3 million<sup>3</sup>

## Results from YouGov surveys of the public<sup>4</sup> and healthcare professionals<sup>5</sup>



77% of the public agree that there must be a fair balance between how much is spent on claims for clinical negligence, and other services/cost within the NHS



73% of healthcare professionals say that if the cost of clinical negligence claims continues to increase at the same rate, it will threaten the sustainability of the NHS



86% of healthcare professionals and 86% of the public support changes to the current legal system that could reduce the cost of clinical negligence to the NHS



88% of healthcare professionals say they are increasingly fearful of being sued and are concerned about the impact that working in a more litigious environment is having on their welfare and the way they practise



79% of the public say they are concerned about how the cost of clinical negligence is impacting on the NHS

### REFERENCES

1. NHS Resolution annual report and accounts 2016/17 (July 2017)
2. Calculated using figures that it costs £230,000 to train a doctor.  $\frac{£1.7\text{billion}}{£230,000} = 7,391$  doctors according to [fullfact.org/health/cost-training-doctor](http://fullfact.org/health/cost-training-doctor)
3. The Guardian, March 2017, NHS trust triples injury payout to £9.3m under controversial new rules
4. From a YouGov public survey, conducted in February 2017 - sample size was 2034
5. From a YouGov survey of UK based MPS members, conducted in February 2017. Sample size was 4157

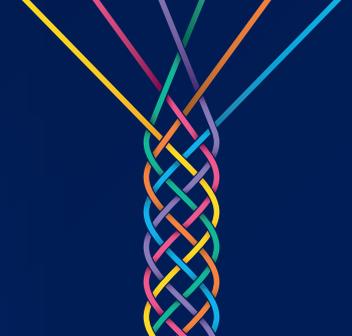
## WHAT CAN YOU DO?

Follow us on Twitter @MPS\_Medical and join the debate using the hashtag **#StrikingABalance**

Stay updated on how you can get involved via [medicalprotection.org/balance](https://www.medicalprotection.org/balance)

Get in touch with us at [info@medicalprotection.org](mailto:info@medicalprotection.org) to find out more

Find us on LinkedIn by searching **#strikingabalance**



## Further details on our proposed package of legal reforms

- 1 A limit on future care costs, based on the realities of providing home-based care**
  - This would ensure consistency and fairness, avoiding the enormous differences between costings proposed by care experts working for the claimant and the defendant
  - We suggest that a tariff for annual care costs (dependent on injuries) with an overall cap, would work well
- 2 A limit on future earnings which recognises national average weekly earnings**
  - This would ensure greater consistency in the size of awards claimants receive. Damages are currently awarded based on the claimant's weekly earnings and this means that for a similar claim, higher earners can receive more from the NHS in compensation than lower earners
  - This could be an important tool for lowering costs in the system and is ultimately fairer. Australia has introduced such limits
- 3 The introduction of fixed costs for small value clinical negligence claims**
  - This would ensure that claimant legal costs do not dwarf compensation payments, as has been highlighted in some recent cases
  - Fixed recoverable costs increase transparency and proportionality for all parties. This would help ensure more informed decision-making in regards to legal action
  - A limit of £250,000 would have the most impact
- 4 A limit on the number of expert reports that can be commissioned to support a case**
  - Currently there is no cap on the number of expert witnesses or reports, or the amount of money that can be spent on them. Therefore, the cost of expert witnesses can be extremely high, especially when after-the-event insurance means the burden of paying for them is never on the claimant
  - Looking at ways to reduce the fees paid to experts would help to ensure costs are in proportion to the damages. Introducing a cap on the number of experts instructed in the pre-action protocol stage would also generate significant savings
  - Any system of capped or fixed expert fees must strike a balance so it is reasonable and fair, but maintains an adequate pool of quality experts
- 5 The introduction of an ultimate limitation period of ten years after incident**
  - Late notification of claims contributes towards delays and higher costs due to claims inflation, which increases the level of damages
  - Late notification of a claim means that patient records may have been lost or destroyed and that medical staff may have retired, cannot be traced or have little recollection of the facts of the case
  - Judicial discretion would still apply in certain circumstances, for example where the claimant is a child who would not have reached the age of 18 before the expiry of the ultimate limitation period

## LEGAL REFORM IS JUST ONE PART OF THE PUZZLE



### FURTHER READING

MPS's new policy report provides further detail on our case for striking a balance to tackle the rising costs of clinical negligence.

[medicalprotection.org/balance](https://www.medicalprotection.org/balance)

MPS is a not-for-profit membership organisation which protects and supports 300,000 doctors and dentists across the world.