Healthcare organisations support for reforming how the discount rate is set

As organisations which represent the National Health Service and the health professionals who provide care and treatment to patients in England and Wales, we urge MPs and Peers to support the clauses within the Civil Liability Bill that reform how the discount rate is set.

The rising cost of clinical negligence is unsustainable and means that vast amounts of resource which could be used more effectively have to be diverted elsewhere. Last year the NHS in England spent £1.7bn on clinical negligence claims. That represents 1.5% of spending on front line health services. This annual cost has almost doubled since 2010/11, with an average 11.5% increase every year. The estimated total liabilities of the scheme in England were £65bn for the financial year 2016/7 and this is expected to rise again this year. This staggering sum is to pay for clinical negligence costs both this year and in future, which relate to claims arising from incidents that have already happened.

The financial impact on the NHS was greatly exacerbated by the change to the discount rate from plus 2.5% to minus 0.75% made in March 2017 by the then Lord Chancellor. This has had a significant impact on compensation payments in personal injury cases where there is an element of future care costs and earnings. In his Budget speech on 8 March 2017, the Chancellor said the Government had set aside £5.9 billion, just for the three years up to 2020, to ‘protect the NHS from the effects of the changed personal injury discount rate.’

We fully accept that there must be reasonable compensation for patients harmed through clinical negligence, but this needs to be balanced against society’s ability to pay. This is money that could be spent on frontline care. Given the wider pressures on the healthcare system, the rising cost of clinical negligence is already having an impact on what the NHS can provide.

The reforms to how the discount rate is set included within this Bill would help to make sure that the rate more accurately reflects the way in which most claimants choose to invest their compensation payments. It would help to create a fairer system for all concerned.

Reforming the discount rate in this way is an important step. It would however only moderate the impact of the recent change to the discount rate and it would not address the ongoing trend in the rising cost of clinical negligence. A wider programme of reforms is needed and we urge the Government to be bold in introducing a strategic approach that would control legal costs, ensure fair compensation payments are based more closely on the needs of claimants as well as help to reduce incidents of harm from happening in the first place.
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