

Medico legal committee: report to ARM 2022 audio transcript

It has been an honour to Chair the BMA's Medico Legal Committee in the year 2021-22. I wish to thank Dr. Jan Wise, the previous Chair, who has supported and guided me through the complex work so patiently. I also must thank my secretariat (Reena Zapata, Carrie Reidinger, and Caroline O'Regan) for their tireless work, knowledge, and expertise. Finally, I would like to credit the committee including representatives from the three MDOs and NHS Resolution who have contributed to all our decision making in the intelligent and professional discussions we have held via our list-server and meetings.

Our work has been divided into the following matters:

Whistleblowing – we are working to develop the BMA's thinking about future developments in whistleblowing legislation. We need to be aware also that whilst members may be either employees or employers – our interests will always be aligned towards safety, quality, fairness, and adherence to law and best practice.

No Fault Compensation – ARM set policy last year to develop a no-fault compensation scheme in the UK. The MLC is leading on development of this policy. There are many advantages to doctors and patients in this. There are also concerns including evidence of increased number of claims, the proportion of claims paid out, and capacity of existing public sector health and social care services. In addition to the additional resource required we also need to consider developing our learning culture further. There is a strong argument to introduce no fault compensation to obstetric/neonatal injury claims first as these account for approx. 10% of claims but over 50% of costs. We will continue to develop our thinking and work to influence and change required legislation.

Section 49 Mental Capacity Act – this allows courts to request a report about a patient from NHS Health Bodies and local authorities. Writing these reports is a time-consuming affair and places a burden on NHS resources. Guidance, that we have written and are consulting with other BMA committees on, will explain this and provide guidance on implementation.

Fixed Recoverable Costs in lower value clinical negligence claims consultation – the Department of Health and Social Care is consulting on this and the MLC has led the BMA’s response. Our response considers the value of an independent expert requiring complete information, adequate time and appropriate funding. The risk of the current proposals is in rushing a cheap defence and thus removing the balance from justice.

COVID-19 – We became aware that GPs were receiving letters from solicitors unreasonably threatening litigation on behalf of their clients who were not entitled to NHS COVID vaccine exemption certificates. We discussed this with the DHSC, who have confirmed that there is no right of appeal and that any litigation based on the scheme is for the department to defend not the GP. We have also raised the nature of the solicitor’s letter with the Solicitors Regulation Authority who have confirmed the standard expected of solicitors and are investigating this further.

Medical Expert Witnesses - It is important that doctors consider making themselves available as medico legal experts in order to afford colleagues and patients access to fair and robust justice. It is also important to ensure that the pool of available experts are diverse and inclusive – there is a high risk that the pool of experts is limited. We shall need to consider exploring this in the coming year.

Training and Conference – The committee is also responsible for an annual conference and both report writing and courtroom skills courses. This year’s conference will be held on 7 July and will explore pertinent subjects such as writing a good coroner’s report, judging credibility in a medico- legal setting, medical law in the treatment of children, Covid 19 and regulation, and more. Details are still available on the BMA website should you be interested in booking yourself a place.

Gross Negligence Manslaughter – In addition we continue to keep a watchful eye on matters relating to Gross Negligence Manslaughter. We are seeking to meet and work with the Chief Coroner of England and Wales and the Faculty of Forensic and Legal Medicine to ensure that lessons are learnt from cases such as Dr Bawa-Garba and Mr Sellu.

Dr Simon Minkoff

Medico legal committee chair