

Commentary

Negligence Claims Costs are Rising Rapidly in the UK

The House of Commons Committee of Public Accounts published a Report on 'Managing the Costs of Medical Negligence in Hospital Trusts' on 1 December 2017. The UK is experiencing a year on year rise in medical lawsuits. There has been a fourfold increase in the last 10 years, € 0.45bn (2006/7) and €1.6bn (2016/7). The number of annual claims increased from 5,300 to 10,600 per year over this period. The National Audit Office stated that the claims expenditure could be £3bn by 2020, despite no evidence that there has any increase in the error rate. The spending on negligence claims is calculated to consume 4% of all health spending by 2020. The Report points out that this large annual legal payout reduces the money available for patient care.

The increased costs are due to 3 factors, high cost claims, higher number of claims and greater legal costs. Maternity-related cases account for only 8% of claims but for 83% of all damages rewarded. On the other hand, 60% of non-obstetric claims are for amounts under £25,000. It is pointed out that small changes in calculations can have a significant impact on awards. An adjustment of the lump sum awarded to take account of the income earned from investment of the sum has added £500 million to the annual payout in 2016/7. The legal fees have risen for a number of reasons. It is in part due to the capping of fees for road traffic accidents, which has resulted in negligence firms moving into the market. Legal fees account for 40% of the negligence payouts. Forty per cent of clinical negligence claims are related to a failure or delay in the diagnosis or treatment of patients. Long waiting lists multiply this risk. Over-worked staff in cash-strapped hospitals are more vulnerable to complaints and litigation. Struggles to meet unrealistic targets generate stress for staff and increase the risk of mistakes.

The Report profiles the patients who sue. Currently only 4% of patients experiencing a harmful incident make a claim. The body of evidence suggests that many people simply want an apology. Also they expect that the issue will be addressed and that it will not happen again to someone else. If the Trust's response to a complaint is considered inadequate, the patient is likely to take legal steps. An initiative on orthopaedics found that greater transparency had led to an 8.5% reduction in orthopaedic litigation costs. People over 65 years experience more adverse events than their younger counterparts but are less likely to bring an action. This older age group experience 53% of harmful incidents but only make 23% of all claims. Younger patients are more likely to sue, particularly if they have had time from work and lost earnings. The high cost of obstetric claims was addressed in some detail in the Report. The number of maternity claims have remained steady but each one is a multi-million pound settlement. One of the challenges in trying to analyse maternity lawsuits is the time lag. The time interval between

an obstetric incident occurring in a Trust and the finalizing of the settlement is 11 years, 6 years being the interval before the incident is reported to the claims agency. The initial step being taken is to direct hospitals to report maternity incidents within 30 days. This will enable both learning and the prevention of future adverse events. The resolve is to cut the process down from 5 years from learning about it and 11 years from resolving it.

Because of the high quantum of obstetric claims the Committee agreed that it was particularly important to focus on improving maternity safety. In November 2015 a national programme was launched to reduce stillbirths by 20% by 2020. The Report is unclear on how to effectively reduce birth asphyxia which is single item driving the high payouts. Increased numbers of senior midwifery and obstetric staff will be needed. Increased research funding is required to study the pathophysiology of perinatal asphyxia. The Report has recommended a number of short-term measures to reduce costs. A working party has been set up with the Law Society and Association of Personal Injury Lawyers to agree terms to reduce legal costs in clinical negligence cases below £25,000. The time taken to resolve the more moderate cost cases needs to be reduced. Every extra day taken to resolve a claim is linked with an additional £40 cost. A further option is the application of a voluntary mediation service to circumvent the costly legal processes. It is recommended that there should be closer links and collaboration between the departments of Health and Justice.

The government is seeking a change to the current legislation (from 1948), which requires that damages levels assume private provision of health and care costs, even though the patients will receive free NHS care. The increased costs are due to 3 factors, higher damages, higher legal costs, and higher numbers of claims. The jump in damages accounted for 33% of the rise, legal fees 21%, and increased claims 45%. There is possibly not enough focus on the factors that lead to error in the first place. Although it is not an easy matter, it represents the best way of reducing costs.

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References

1. House of Commons Committee of Public Accounts. Managing the costs of clinical negligence in hospital trusts. Published 1 December 2017. <http://bit.ly/2kdPNnB>
2. Rimmer A. Negligence claims will 'spiral out of control' if government doesn't act. BMJ 2017;359:5612.