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COMMENT

Government attacks vulnerable with medical negligence plan **Suzanne Trask**

Defendants in medical negligence cases often behave badly. They unhelpfully delay disclosure, which leads to lengthy disputes, only to make an admission at the last minute. Doing so increases costs and unnecessarily prolongs the process.

Therefore, it is difficult to see how the Department of Health's recently announced proposal that claimants will only be entitled to recover fixed costs from defendants in cases with a financial value of £25,000 will work.

Claims made by the most vulnerable – those who are elderly or have suffered a stillbirth for instance – tend to be the cases that are settled for less than £25,000. However, under the government's proposals, specialist solicitors will be unable to advance that type of claim because they cannot work profitably owing to the limited costs that can be recovered.

The expertise of independent experts is heavily relied on in medical negligence law because of its complexities, and so litigants in person are rare. Experts regularly give evidence, assessing whether substandard negligent treatment occurred and how it has or will affect a claimant's health. Engaging independent medical experts incurs high costs, in addition to court fees.

Without specialist legal advice, an injured patient would not be on a level playing field with the NHS's lawyers, who have access to expertise at the click of a finger.

It would be terrible if those who have suffered as a result of negligence were prevented from seeking justice. If change needs to be made, costs should be implemented at a level where patients can still seek specialist legal advice.

Without incurring reasonable costs, legal specialists will be unable to conduct that work. It follows that the fixed costs should not apply to complex cases that settle at £25,000 or less.

What drives up the cost of claims is that it often takes two years or more to determine an outcome. Causation and breach of duty are often contested and the defendant will need to compile expert evidence.

Therefore, the approach taken by the defendant and the inconsistency of the process can affect its complexity and make the cost of running negligence claims unpredictable. Many specialist lawyers would welcome a less inconsistent process. It is unclear how these proposals will work if the unpredictable nature of the claims process is not changed.

The NHS should be looking for opportunities to learn from medical negligence when it actually occurs instead of attempting to limit liability after the event. In this way, huge human and financial costs could be saved.

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