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- By Danny Buckland



PAYOUTS: Dr Christine Tomkins says NHS is facing a crisis from legal bills. But lawyer Raquel Siganporia, right, says victims deserve the money

CLINICAL negligence claims could soon eclipse the entire NHS budget of £124billion, according to chilling predictions.

The Government has £77billion of pending and expected claims to settle and the figure is set to climb over the next five years as campaigners call for radical reform.

A Parliamentary question has exposed that the Treasury expects to pay out up to £11.7billion in 2020-21 but medics’ representatives warn that overall liability will burst through the £100billion mark and stretch even higher if recent growth rates continue.

The figure is the amount set aside to cover pending and current claims in the worst case scenario. It has trebled from £26billion in 2014 over the past four years partly because of a government tweak to compensation rules that has boosted payouts by up to 25 per cent.

The NHS paid out £1.6billion on clinical negligence claims covering hospitals in England last year but its liability is piling up as cases take years to grind through the legal system.

“The trajectory of these liabilities is alarming and unsustainable. It is paid for by the taxpayer and it is money which would otherwise be going straight to frontline patient care,” said Dr Christine Tomkins, chief executive of the Medical Defence Union (MDU) that represents doctors and dentists in the NHS and private practice.

“The amount of money actually paid out annually is just the tip of the iceberg and the size of the liability is doubling every seven years which outstrips any kind of inflation. You cannot keep a system going at that rate as it will be more than £100billion by 2020. It has to be changed.”

The MDU wants to amend 1948 legislation, which dictates that compensation has to be assessed at private healthcare rates, and to have greater flexibility for medical insurers to buy care packages from the NHS to keep bills down.

“If someone is negligently treated then they should be fairly compensated but we have a system out of control,” added Dr Tomkins.

“The size of liabilities piling up should not only cause us to gasp and ask what is going on but to also recognise that it is hurting patients and reform it.”

The Government has promised to review the complex mechanism that has caused a sharp rise in payout values next year.

Raquel Sigantoria, a partner and head of the spinal injuries team at leading lawyers Bolt Burdon Kemp, highlighted that the vast bulk of the compensation bill was for children with catastrophic injuries caused by negligence that need lifelong care.

“It is not the fault of someone who has been injured,” she said. “It is not a lottery win, it is a safety net. All it means is that their daily needs, caused by the injury, are being met and that they don’t become a burden on local authorities which are strapped for cash.

“They should have the opportunity to contribute to society. It is not always game over with a severe injury but the person may need a car and a care package to help them to continue contributing to society which many of them want to do.

“It is about protecting people who have been injured through no fault of their own.”

Danny Mortimer, deputy chief executive of the NHS Confederation, which represents health service organisations across the healthcare sector, said: “It is of course right that there should be compensation for patients who have been harmed by our mistakes and the NHS continues to take action to prevent such harm to our patients. But we have a free-at-the-point-of-use healthcare system running on a limited budget and that must also be protected.

“Reforms to the way clinical negligence claims are handled will be a key step in addressing the number of claims made to the NHS.”

NHS Resolution, the Government body that looks after the litigation budget, confirmed that its balance sheet provision had trebled over the past four years to £77billion,.

It is making progress to improve efficiencies and reduce the figure, it said.

An NHS Resolution spokesman said: “Despite a plateauing in the numbers of clinical negligence claims, the cost of claims continues to rise and is at all-time high. The total provisions for all of our indemnity schemes rose from £65billion to £77billion in 2018. It is important that we do everything we can to learn from what goes wrong in healthcare.

“Research undertaken by NHS Resolution demonstrates how important it is to be transparent with patients and their families and to involve them in investigations whilst supporting the NHS staff involved.

“That is why we are committed to sharing what we know about the causes of claims with the NHS in order to improve healthcare and prevent these tragic incidents happening in the first place and to finding ways of resolving cases, such as mediation, which keep patients and NHS staff out of court.”