

House of Lords
Medicines and Medical Devices Bill
Debate on Thursday 14 January 2021 (report day 2, column 949)

Lord Hunt of Kings Heath:

...I want to come back to the debate on clinical negligence...

We have reached a very serious position, with an exponential rise in clinical negligence costs. Twenty years ago, contingent liability was £3.9 billion; it is now £83 billion. Even allowing for inflation, I hardly think that we have become 20 times more negligent over that period. Indeed, the Minister, Nadine Dorries, told the House of Commons in a Written Answer last November:

“The continued rises in clinical negligence costs are eating into resources available for front-line care”.

It is not delivering for patients and their families, either. There are huge delays in getting cases settled and huge lawyers’ fees, in a quite remarkable situation where the NHS ends up paying damages in 80% of litigated clinical negligence claims. There is something wrong in the way we deal with these cases.

There have been endless reviews over the past 20 years, but precious little has happened. Seventeen years ago, an NHS redress scheme was unveiled by the then Chief Medical Officer, Sir Liam Donaldson. Legislation followed in 2006 but, 14 years later, it has yet to be implemented—and I doubt it ever will be. Since then, there has been much debate about the sustainability of Section 2(4) of the 1948 Law Reform (Personal Injuries) Act, which essentially promotes increased costs because it provides that

“there shall be disregarded, in determining the reasonableness of any expenses, the possibility of avoiding those expenses or part of them by taking advantage of facilities available under”

the NHS. In other words, the NHS tends to pay twice.

In 2017, the department and the Ministry of Justice commissioned the independent Civil Justice Council to draw up a new claims handling process for clinical negligence claims of up to £25,000, together with proposals for fixed recoverable costs for these cases. The report was published, with recommendations, in October 2019. Since then, there has been silence...

Can we really go on with the exponential rise in costs to the NHS—a system in which it loses 80% of cases that reach the courts, and where huge delays take place in patients getting access to an outcome? The system is completely bust. We need a new one and I hope that the Minister will, with his colleagues, consider what action needs to be taken to improve the current situation...