

## **House of Lords**

### **Oral Question**

**10 November 2021**

### **Clinical Negligence Claims**

#### **Lord Storey**

...Does the Minister agree with the former Secretary of State for Health, Jeremy Hunt, that we should look at the Swedish model in which, if a child is born severely handicapped, the money is made available straightaway and the parents do not have to wait for the courts to provide support? [col 1709]

#### **Lord Kamall**

The Government have looked at a number of different schemes from abroad. It is always very important to learn from good and bad practice, but what happens in a number of those cases is that the costs of compensation end up increasing. So we are looking at various solutions. [col 1710]

#### **Baroness Stuart of Edgbaston**

... the number of [maternity] claims has gone up from 391 in 2009 to 765 in 2019-20. Is it not about time that we put patient safety first in these considerations rather than looking at what happens to lawyers, and take some lessons from the airline industry where, if something goes wrong, we start by looking at no-fault and do not allocate blame but look at improving the system?

#### **Lord Kamall**

...in looking at the system overall, there is no evidence to suggest that the rise in overall costs is due to a decrease in NHS safety. Nevertheless, safety and learning from incidents are essential in their own terms...

#### **Lord Hunt of Kings Heath**

...can the Minister tell me why the Government do not move to repeal Section 2(4) of the Law Reform (Personal Injuries) Act 1948...? Can he also do something about the record of NHS Resolution in paying damages in 80% of litigated cases, with its lawyers being paid on a win-or-lose basis and therefore incentivised to carry on with unsustainable defences? [col 1711]

#### **Lord Kamall**

...when the NHS does a wonderful job, we all support it but, sadly, when it does not do such a good job, there is a culture of delay, defend and deny...

NHS Resolution is looking to resolve claims promptly and most claims are often settled without court proceedings or going to trial. It is a difficult balance because while we may be concerned about the fees of the injury lawyers, they are able to shine a spotlight on the NHS delay and denial...

**Baroness Walmsley**

...the element of compensation in clinical negligence cases which relates to the cost of further health treatment is based on the cost of care in the private sector. Why is this so when NHS treatment is as good or better? Should not private health costs be provided only where the patient cannot get treatment on the NHS?

**Lord Kamall**

Quite often patients choose to go on the NHS and when they are unable to do so because of various factors they will go private. I wonder whether we should be giving preference. We want to treat all patients equally.

**Baroness Eaton**

...the key to reducing the overall cost of clinical negligence is to have less of it, the real issue is the need to increase joined-up patient safety learning across the NHS.

**Lord Kamall**

...The Government remain committed to continuous safety improvement, particularly on developing learning cultures in our health system and tackling the issues of denial and delay. While we strive towards this goal, we have seen that the cost of clinical negligence claims has quadrupled in the last 15 years, and there is no guarantee that reducing harm would necessarily result in fewer claims. [col 1712]

**Baroness Wheeler**

... the annual cost of clinical negligence has risen from £1 million in 1975 to £2.2 billion last year...

**Lord Kamall**

...spending more on compensation means less money for the care of patients. That is why we are committed to looking at various ways of reducing this and are working with the Ministry of Justice.,,