

House of Lords

Written Answers

20 December 2017

NHS: Negligence

Asked by **Lord Sharkey**

To ask Her Majesty's Government what assessment they have made of recent rises in NHS Resolution's provision against claims for clinical negligence; what provision against claims for clinical negligence will be needed in each of the next three financial years; and what action they are taking to reduce the level of such provision. [HL4107]

Lord O'Shaughnessy: NHS Resolution's provision for clinical negligence claims at 31 March 2017 was £64.7 billion. Recent rises in the provision are due to a number of factors including increases in the number of claims received, the amount of damages awarded, particularly in maternity claims and legal costs. This is also influenced by two discount rates:

- The long term Public Expenditure System, set by HM Treasury, enabling a present value to be placed on future liabilities for accounting purposes but not affecting the costs of settling claims, changed from +2.2% to -0.8% from 31 March 2016, and increased the provision by £25.5 billion in 2015/16.
- The personal injury discount rate (PIDR), set by the Lord Chancellor, places current value on future losses for settlement through lump sum payments, affecting the cost of settling claims. PIDR changed from +2.5% to -0.75% from 20 March 2017 and contributed £4.7 billion to the increase in the provision in 2016/17.

The Government published draft legislation in September to reform the legal framework governing how the PIDR is set. The proposals will help ensure that claimants continue to receive full compensation but should significantly reduce overpayment by more reliably reflecting how awards are invested. Subject to its consideration of the Justice Select Committee's prelegislative scrutiny report and comments received from stakeholders on the draft legislation, the Government plans to introduce legislation to reform the law as soon as possible.

The provision is calculated annually taking into account latest developments in the claims environment to inform assumptions about claims volumes, inflation in settlements and legal costs and time to settle claims. It is, therefore, not possible to provide an accurate provision for the next three years although it will continue to increase for some years to come for inflationary and other reasons.

NHS Resolution manages the costs of claims appropriately, challenging claims without merit, excessive claims for damages and claimant legal costs. It works with trusts to help them understand their claims data to better assess where local interventions would have the greatest impact in reducing high volume or high cost claims, and shares learning and best practice from its analysis of claims. Its new strategy, *Delivering fair resolution and learning from harm: Our strategy to 2022* gives it an enhanced focus on mediation, learning and prevention, as well as litigation, and it will deliver increased insight into what drives the costs of harm and work with others to develop interventions that improve safety and save money for the NHS, as demonstrated by its recent report *Five years of cerebral palsy claims: A thematic review of NHS Resolution data*. A copy of both documents is attached.

Following recent reports by the National Audit Office and the Public Accounts Committee on clinical negligence costs, the Department is working with the Ministry of Justice, HM Treasury and NHS Resolution and others to develop a cross government strategy to reduce them. This work is supported by our pursuit of improved safety standards and a transparent, learning culture across the NHS.

The Answer includes the following attached material:

Delivering fair resolution and learning from harm [NHSResolution-Our-strategy-to-2022-1.pdf]

Five years of cerebral palsy claims [Five-years-of-cerebral-palsyclaims_A-thematic-review-of-NHS-Resolution-data.pdf]

The material can be viewed online at:

<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2017-12-12/HL4107>