

House of Lords

Written answer

19 December 2018

NHS: Negligence

Asked by Lord Storey

To ask Her Majesty's Government what proportion of clinical negligence cases result in a legal action being (1) issued, and (2) decided by the courts; and, in the cases decided by a court, in what proportion the claimant fully, or partially, succeeds. [HL12113]

Lord O'Shaughnessy: NHS Resolution handles clinical negligence claims on behalf of National Health Service organisations and independent sector providers of NHS care in England.

NHS Resolution has provided the following information which is based on information for clinical negligence cases resolved in 2017-18.

Of the 11,896 clinical negligence cases that were resolved in 2017-18:

- 3,845 (32.4%) had proceedings issued;
- 76 of the 3,845 cases went to trial (representing around 2% of those clinical negligence cases where proceedings had been issued); and
- 28 of the 76 cases that went to trial in 2017-18 resulted in the claimant being successful (i.e. the claimant was awarded damages in 37% of cases).

Notes:

- Proceedings may need to be issued in claims where there are no substantive issues in dispute but the court's approval of the settlement is required (for cases where the claimant lacks capacity – e.g. minors).

- A claim is defined as successful where the claimant is awarded damages.

NHS Resolution is unable to report on whether or not a claimant is partially successful – a claim is either successful or not. It should be noted that, in most cases, the claimant does not receive everything that was claimed for given the nature of clinical negligence litigation. The extent to which the final award is a departure from what was claimed for depends on an array of factors that impact on each party's view of the risks inherent in pursuing the issue(s) to trial.