



LETTERS TO THE EDITOR

5 May 2020

Wave of Covid-19 litigation facing the NHS

Sir, Litigation provides robust independent clinical scrutiny according to professional norms. The health service cannot objectively investigate itself. The test of legal liability is flexible to adjust for the pandemic. The prevalent privatisation of access to justice by no win, no fee (like the National Health Service) is free at the point of need. It is a virtuous circle: the NHS pays damages only on proven negligence, when claimant lawyers get paid. The vast majority of scrutinised cases are not pursued. By contrast, state funding of legal fees creates perverse incentives: the lamentably low success rate of legally aided healthcare claims in which too often the only winners were lawyers; and the inflation of NHS defendant legal fees by self-serving “deny delay defend” behaviour.

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