



PRESS RELEASE

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GOVERNMENT FACES LEGAL CHALLENGE OVER LEGAL AID FOR CLINICAL NEGLIGENCE

Ken Clarke's Ministry of Justice faces a legal challenge over its controversial plan to scrap legal aid for victims of clinical negligence. The charity Action against Medical Accidents (AvMA) has issued legal proceedings for a judicial review of the decision. AvMA argue that the Ministry of Justice's decision was both irrational and unfair on a number of fronts. No account was taken of the extra cost to the NHS of switching cases which would previously have been funded by legal aid to so-called "no-win no-fee" agreements, which even under the reformed arrangements, are far more costly than legal aid. Even the NHS Litigation Authority, which defends clinical negligence claims and seeks to save the NHS money, has publicly declared support for keeping clinical negligence in scope for legal aid. And Lord Rupert Jackson, the architect of much of the Government's legal reforms has also said that legal aid should be retained - especially for clinical negligence.

AvMA Chief Executive Peter Walsh said:

"We regret that we have to take this action, but the Ministry of Justice has failed to listen to the overwhelming arguments put to it for keeping clinical negligence in scope for legal aid. Scrapping legal aid for clinical negligence is completely irrational whatever way you look at it, as well as grossly unfair. Ken Clarke's department might save a little money, but the cost will simply be heaped on the NHS. Some of the most vulnerable people in society injured by negligent treatment at the hands of a State body will be denied access to justice. And the NHS will be deprived of the opportunity of learning from mistakes which are often only recognised because of a legal challenge.

Although there is a Bill going through Parliament, there is a danger Parliament will be misled by an inadequate and irrational consultation response and impact assessment. No consideration has been given to our argument that as the NHS is an arm of the State, it is a responsibility of the State to ensure availability to redress for victims of NHS negligence. One of the leading QC's in medical law (Martin Spencer QC) is representing us and has advised us we have a good case".

The proposal to scrap legal aid for clinical negligence is one of a range of controversial measures contained in the Legal Aid Sentencing and Punishment of Offenders Bill, currently going through Parliament. However, clinical negligence is being pointed to as the most obvious area where a change of tack is required. As well as possible overturning of the decision in the High Court, the Ministry of Justice faces a possible rebellion in Parliament. Tom Brake MP, a Liberal Democrat on the committee considering the Legal Aid Bill said that he was "sympathetic" to a proposed amendment to keep clinical negligence in scope for legal aid and hinted that the issue would receive further scrutiny in the Lords.

AvMA argue that victims of clinical negligence would be hit by a "double-whammy" if the Bill goes through unamended. In addition to taking away legal aid (which is only available to the poorest in society), changes to the way "no-win no-fee" agreements work would mean that around 50% less even of these cases would be viable to take forward. Solicitors would only be able to take on the more clear cut cases. Amendments are being sought to that part of the Bill also.

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