

Rt Hon Sajid Javid MP
Secretary of State for Health and Social Care

22nd April, 2022

Dear Secretary of State

In 2017 some of the patients' charities below wrote jointly calling on the former Secretary of State for Health to reconsider the proposals in the consultation "Fixed recoverable costs in clinical negligence". The majority of respondents to that consultation agreed with our belief that the proposals were premature; poorly informed; and posed a threat both to access to justice and patient safety. We the undersigned are of the same view as regards the proposals in the current consultation "Fixed recoverable costs in lower value clinical negligence claims."

The Government is proposing that solicitors representing successful claimants would no longer be able to recover their full legal costs from healthcare providers found to have been negligent. The result would be that some of the most vulnerable people harmed by clinical negligence would not be able to achieve justice, because they would not be able to find solicitors to help them challenge denials and win their claim. Even if they did, they would lose a significant amount of their damages in legal costs that would be left to them to pay instead of the bodies responsible for the negligent harm. In effect, the very people who the NHS has harmed would be being asked to sacrifice their access to justice in order to save the NHS money. This should have no place in a service which rightly aspires to having a 'just culture'. The NHS would also be less safe because it could not be held to account and therefore would not learn lessons. Some of the most vulnerable people in society would be adversely affected by these proposals. We appreciate these would be unintended consequences, but they are realistic.

We support the intention to save NHS money for use in service provision, but this must be done fairly and responsibly. Any decisions should be informed by consideration of the effect on access to justice for injured patients and their families and promote patient safety. This has not happened and the current consultation does not even ask questions about these issues. We urge you to reconsider these proposals. At the minimum, all fatal cases and claims by people lacking capacity should be excluded from a fixed costs regime; poor defendant behaviour must be curtailed; any cap on legal costs must be at a level to realistically allow for involvement of accredited specialist solicitors. There should also be a demonstrable system for learning patient safety lessons from cases. The proposed new system is also untried and untested. Any new system introduced should be piloted and evaluated first rather than experimenting with such fundamental issues. Please respond c/o AvMA, Freedman House, Christopher Wren Yard, 117 High St, Croydon CR0 1QG.

Yours sincerely

Peter Walsh
Chief Executive
Action against Medical Accidents



Joanne Hughes
Co-Founder
Harmed Patients Alliance



Rachel Power
Chief Executive
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Dr Kim Thomas
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Mind

