

To the Editor
Daily Telegraph

1st May 2017

Dear Sir/Madam

We are jointly calling on the Secretary of State for Health to reconsider the proposals in the current consultation "Fixed recoverable costs in clinical negligence". We believe the proposals are premature; poorly informed; and pose a threat both to access to justice and patient safety.

The Government is proposing that some solicitors representing successful claimants would no longer be able to recover their full legal costs from healthcare providers found to have been negligent. 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 represent them. Even if they did they would lose a significant amount of their damages in legal costs that would be left to them to pay. The NHS would be less safe because it could not be held to account and therefore not learn lessons. Cases like those involving Dr Ian Paterson and those at Mid Staffordshire may never come to light. Older people's cases, stillbirths, any fatal cases, and cases of people lacking mental capacity would be likely to be worst affected. 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 of the Legal Aid Sentencing and Punishment of Offenders Act; the results of the National Audit Office review of the NHS Litigation Authority and defendant behaviour. Acceptable proposals must protect access to justice and promote patient safety. 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; and there must be a demonstrable system for learning patient safety lessons from cases. Ideally, a viable alternative to litigation should be created for cases below £25,000 damages, rather than simply imposing fixed costs.

Yours sincerely

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