



Chair, Rt Hon Stephen Dorrell
Chief Executive, Niall Dickson CBE

The Rt Hon David Gauke MP
Lord Chancellor & Secretary of State for Justice
Ministry of Justice
102 Petty France
London SW1H 9AJ

29th January 2018

Dear Lord Chancellor,

Congratulations on your appointment.

We are writing to urge you to bring forward important reforms in the handling of clinical negligence claims and, in particular, how the discount rate is set. We ask this as organisations which represent the National Health Service and the health professionals who provide care and treatment to patients in England and Wales. We are also copying this letter to the Secretary of State for Health and Social Care, given his responsibilities and his close interest both in patient safety and the pressures on NHS funding.

The rising cost of clinical negligence is unsustainable and means that vast amounts of resource which could be used more effectively have to be diverted elsewhere. Last year the NHS in England spent £1.7bn on clinical negligence claims. That represents 1.5% of spending on front line health services. This annual cost has almost doubled since 2010/11, with an average 11.5% increase every year. The estimated total liabilities of the scheme in England were £65bn for the financial year 2016/7 and this is expected to rise again this year. This staggering sum is to pay for clinical negligence costs both this year and in future, which relate to claims arising from incidents that have already happened.

The financial impact on the NHS was greatly exacerbated by the change to the discount rate from plus 2.5% to minus 0.75% made in March 2017 by the then Lord Chancellor. This has had a significant impact on compensation payments in personal injury cases where there is an element of future care costs and earnings. In his Budget speech on 8 March 2017, the



Chancellor said the Government had set aside £5.9 billion, just for the three years up to 2020, to 'protect the NHS from the effects of the changed personal injury discount rate.'

We fully accept that there must be reasonable compensation for patients harmed through clinical negligence, but this needs to be balanced against society's ability to pay. This is money that could be spent on frontline care. Given the wider pressures on the healthcare system, the rising cost of clinical negligence is already having an impact on what the NHS can provide.

We welcome the decision made by the Ministry of Justice to develop and consult on proposals to reform the discount rate. These would help to make sure that the rate more accurately reflects the way in which most claimants choose to invest their compensation payments. They would help to create a fairer system for all concerned. It is vital that these changes are brought in as quickly as possible, either as part of the Civil Liability Bill or through a single purpose bill.

We would also like to work with you and your officials to consider a more fundamental set of reforms to control the rising cost of clinical negligence. As you will be aware, the National Audit Office recently recommended that the Ministry of Justice and the Department of Health and Social Care should work with others to set out a coordinated strategy to manage the growth in clinical negligence costs by September 2018.

In the light of this we would be keen to work with you and with the Department of Health and Social Care, alongside others who have an interest in this area, to help bring about this fundamental reform.

We would be happy to meet to discuss this further and look forward to hearing from you.

Yours sincerely

Niall Dickson
Chief Executive
NHS Confederation

Simon Kayll
Chief Executive, MPS
Medical Protection Society



Chris Kenny
Chief Executive
The Medical & Dental Defence Union
of Scotland

Professor Carrie MacEwen
Chair
The Academy of Medical Royal Colleges

Dr Chaand Nagpaul
Chair, British Medical Association

Dr Peter Swinyard
National Chairman, Family Doctor Association

Dr Christine Tomkins
Chief Executive, Medical Defence Union

cc: The Rt Hon Jeremy Hunt MP, Secretary of State for Health & Social Care