



Department of Health & Social Care

Dame Meg Hillier MP
Chair of Public Accounts Committee
House of Commons
London
SW1A 9NA
Sent via email to: pubaccom@parliament.uk

39 Victoria Street
London
SW1H 0EU
permanent.secretary@dhsc.gov.uk

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Dear Chair

PAC Hearing - Progress on the implementation of agreed recommendations by the Government to the Committee of Public Accounts: Session 2017-19

Fifth Report of Session 2017-19 Department of Health and Social Care / Ministry of Justice HM Treasury - Managing the costs of clinical negligence in hospital trusts

I am writing to provide the Committee with an update from the Department of Health and Social Care on progress against the outstanding recommendation in the above-named report.

Recommendation 2: The Department, the Ministry of Justice, and NHS Resolution must take urgent and coordinated action to address the rising costs of clinical negligence. This includes reviewing whether current legislation remains adequate, and reporting back to the Committee by April 2018; continuing to focus on actions to reduce patient harm, in particular, harm to maternity patients; and appraising further measures to reduce the legal costs of claims, for example whether mediation should be mandated for certain types of claims.

The Department is working with the Ministry of Justice, HM Treasury, Cabinet Office, and NHS Resolution to understand cost drivers and explore possible solutions to address the issue of rising costs. This is an important issue and Ministers are currently considering next steps. The original implementation date for the recommendation was September 2018. Due to the complexity of this work, I am writing to confirm that we need to push this date back to spring 2023.

I would like to take this opportunity to update you on the progress the Department has made on this issue. We continue to take action around fixed recoverable costs and patient safety. In January this year we published a consultation on fixed recoverable costs. The consultation proposed a new scheme to enable claimants and defendants to achieve faster resolution of 'lower value' clinical negligence claims (claims valued up to and including £25,000) at a lower, more proportionate cost than under the current



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system. The consultation ended in April 2022, and we are currently considering responses.

Patient safety remains a priority, with a number of measures put in place by the Department these include the first NHS Patient Safety Strategy in 2019 with substantial programmes now underway to create a safe and learning culture. Legislation for a statutory Duty of Candour for all providers regulated by the CQC, this requires providers to tell patients if their safety has been compromised and apologise; appointing the first Patient Safety Commissioner in July this year to champion the safety of patients in relation to medicines and medical devices; reform around death certification reform and medical examiners who ensure that all non-coronial deaths are independently scrutinised and families can raise questions and we have legislated to establish the Health Services Safety Investigations Body as an Arms-Length Body from April 2023, to investigate serious patient safety incidents in the NHS.

There has also been an increased focus around safety in maternity. In addition to the Government's £95m investment in 2021 to support maternity recruitment, training and safety improvement, the Government announced a further £127m investment in 2022 which will go towards the maternity NHS workforce and improving neonatal care. The Government has also announced plans to establish a Special Health Authority to continue the Maternity Investigation Programme currently being delivered by The Healthcare Safety Investigation Branch. The programme conducts high quality investigations into adverse maternity outcomes to improve maternity safety, identify common themes and influence systemic change.

In April 2022, NHS Resolution published a new three-year strategy [Advise, resolve, and learn \(2022-25\)](#), which builds on its work undertaken since 2017 to focus on prevention, learning and early intervention following incidents of harm. NHS Resolution is committed to the use of dispute resolution, including the use of mediation. Consequently, the percentage of cases settling before formal court proceedings are required has continued to increase. In 2021/22, 77% of the 16,484 claims settled, both clinical and non-clinical were resolved without formal court proceedings being commenced.

I will write to you again in Spring 2023 with an update on the position around this recommendation.

Yours sincerely,

SIR CHRIS WORMALD
PERMANENT SECRETARY