



Meg Hillier MP
Chair of the Committee of Public Accounts
House of Commons
14 Tothill Street
London
SW1H 9NB :

12 October 2018

Dear Chair

Managing the costs of clinical negligence in hospital trusts, Session 2017-2019 (HC 397)

In the Government response to the PAC report on '*Managing the costs of clinical negligence in hospital trusts*' (published December 2017), we committed to write to the Committee in September 2018 to update you on two of the recommendations. I have discussed and agreed this reply with Richard Heaton, Permanent Secretary at the Ministry of Justice.

The first was the recommendation for the Department of Health and Social Care (DHSC), the Ministry of Justice (MoJ), and NHS Resolution (NHSR) to take urgent and coordinated action to address the rising costs of clinical negligence (recommendation 2). We are committed to tackling the costs of clinical negligence given that NHS funds spent on clinical negligence are resources not available for front-line care. This is a complex issue and there are no easy answers. However, we have been leading intensive work across government to address this recommendation, looking in detail at all the drivers of cost. While we are not in a position to announce conclusions yet, we wanted to let you know that we still intend to set out more detail on the way forward in due course.

The second recommendation was for the DHSC, MoJ and NHSR to clarify why it is taking longer to resolve claims and report back on what actions we are taking to address this issue (recommendation 6).

The DHSC and MoJ have been working with NHSR and Her Majesty's Courts and Tribunals Service (HMCTS) to respond to this recommendation. The picture is complex and influenced by a range of factors including a number of reforms, and reactions to them, and changes in claims volumes. The number of new claims reported to NHSR peaked (at 11,945) in 2013/14 and there has been a steady – and welcome – decline since then (to 10,673 in 2017/18). Our analysis shows that while the average time to resolution has increased over the last 10 years that picture is not consistent across all claim types. For example, litigated claims show a greater



increase in time to resolution than non-litigated claims. Within litigated claims, the settlement time for cases where damages were paid has stayed broadly the same, whereas there has been a noticeable increase for cases where no damages payment was made, particularly since 2014-15.

NHSR have increased recruitment and delivered efficiencies in claims handling to reduce the case-load of its handlers and enable more pro-active case management. It is also increasing its use of mediation and other forms of alternative dispute resolution to improve the experience of patients and keep cases out of litigation where possible. The implementation of its five year strategy will also deliver a restructured claims function and review of its IT platform to achieve further operational efficiency.

HMCTS has been working to increase judicial resource, and recent recruitment campaigns have led to an estimated additional capacity of 3,803 civil days for this financial year. These additional days will help improve performance in the multi-track (the claim management process to which most clinical negligence claims are allocated), and are part of a five-year judicial recruitment plan.

A working group established by the Civil Justice Council (CJC) is currently considering improvements to the process for clinical negligence claims valued at up to £25,000 damages and devising a grid of fixed recoverable costs. Delivering a new streamlined process with fixed costs will help to ensure these claims are resolved as efficiently as possible. The CJC is aiming to report in March 2019.

Cyber-attack on the NHS, Session 2017-2019 (HC 787)

As you may have seen, the Department yesterday published a Written Ministerial Statement 'Securing cyber resilience in health and care: Progress update September 2018', which is available here: <https://www.gov.uk/government/publications/securing-cyber-resilience-in-health-and-care-october-2018-update>. This document includes updates on the issues raised by the Committee at the previous hearing on this subject.

Yours sincerely,

**SIR CHRIS WORMALD
PERMANENT SECRETARY**