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Fixed costs proposals for clinical negligence split opinion

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Lawyers respond to Department of Health's consultation on FRC for clinical negligence

Lawyers have given a mixed reaction to proposals to introduce fixed recoverable costs (FRC) for clinical negligence claims valued up to £25,000.

Health Secretary Jeremy Hunt this week published a 12-week consultation, *Introducing Fixed Recoverable Costs in Lower Value Clinical Negligence Claims*, setting out the proposals. The Department of Health previously consulted on the principle of FRC, in 2015.

The scheme would be set out in Civil Procedure Rules. The consultation notes that, in claims between £1,000 and £25,000, recoverable claimant costs accounted for more than 220% of damages awarded. It points out that the cost of clinical negligence rose £0.3bn to £1.5bn in the 12 months up to 2015/2016, and that legal costs accounted for more than one third of this figure.

The consultation asks for views on whether FRC should be mandatory, how rates should be calculated and the treatment of expert witnesses. Acknowledging concerns that FRC might curb access to justice for low value claims, the consultation states: "Our proposals aim to ensure that patients maintain access to justice by streamlining the system and incentivising earlier resolution of such claims, setting FRC rates at the right level and considering appropriate exemptions to the proposed FRC scheme."

Agata Usewicz, head of clinical negligence at Hodge, Jones & Allen, said: "Many practitioners will be relieved that fixed recoverable costs will be capped at £25,000, rather than the £250,000 which had been mooted prior to the consultation being released."

"However, there remains a very real risk that vulnerable and already disadvantaged groups of people will simply not be able to access justice." Usewicz said fatal claims, still-births, claimants lacking mental or legal capacity, and claims where the client has a short life expectancy must be exempted to preserve access to justice.

Neil Sugarman, president of the Association of Personal Injury Lawyers (Apir), said the fact the government had "toned down" its original plans would come as a relief to injured patients.

"A fixed fee regime for more straightforward cases could be workable but the priority has to be the development of a quick and efficient system," he said.

Mike McKenna, a member of the Forum of Insurance Lawyers (FOIL) clinical negligence sector focus team, said FOIL welcomed the consultation into fixing costs in clinical negligence claims, where possible: "Whilst the debate will rightly cover all sides of the arguments, any measures which can streamline the process, support timely resolution of claims whilst achieving savings for the NHS and contribute to lesson learning is to be welcomed; it also correctly reflects a need to streamline the litigation process, in line with other personal injury claims, where possible."

The consultation ends on 1 May.

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