

NAO Podcast on the cost of clinical negligence to NHS trusts

Hello and welcome to the NAO Podcast

Clinical negligence claims against NHS hospitals cost a significant and rising amount each year. In 2016-17, the Department of Health's clinical negligence provision totaled £60 billion, and its expenditure in this area was over £1.6 billion. NHS Resolution manages clinical negligence claims for all trusts in England. Its main scheme is the 'clinical negligence scheme for trusts', whereby trusts pay into a risk pool and receive indemnity cover. NHS Resolution received 10,600 new clinical negligence claims in 2016-17.

The NAO have just published its publication into managing the costs of clinical negligence in NHS trusts, and I'm joined today by Jenny George, the Director who led on this report. Thank you for joining us Jenny.

Q1. What is clinical negligence?

Clinical negligence is when a doctor, nurse or other medical professional, breaches their duty of care to a patient, and in doing so, causes harm to that patient.

When something like that happens in an NHS hospital as a result of clinical negligence, the affected patient or their family may make a claim to the NHS for compensation, or damages. It is the costs of such clinical negligence claims against trusts that we looked at in our report

Q2. Why are the costs rising?

Our report showed that the cost of clinical negligence has been rising every year. We analysed the claims data for the last ten years, and found that just under half of the rise in cost is due to a higher volume of claims. In fact, the number of clinical negligence claims received has doubled in the last ten years.

But the cost increase isn't just due to the number of claims – we also found that about a third of the increase in cost is due to increases in the average amount of damages awarded, and 20 per cent of the increase is due to increasing legal costs. Actually, it is legal costs that have risen the fastest – these have risen by over 500% over the last 10 years.

Q3. Isn't the answer to just be less negligent?

Logically it must be right, of course, that if there were no negligent events, there would be no successful claims against the NHS. But clinicians are only human – and sadly, mistakes do happen, and when they do, obviously patients must receive appropriate compensation. There is significant work underway in the NHS looking at improving patient safety, and this goes beyond the scope of this report. This report focuses on how the government has been working to tackle the increasing costs of claims effectively, which is important, because the more money spent on compensating patients for negligence, the less money is left available for the NHS to deliver healthcare to its patients.

Q5. Are there plans to manage these costs?

Yes. Our report sets out a number of ways in which Department of Health and NHS Resolution have tried to reduce costs. They have also proposed two major schemes which they hope will contribute to reducing clinical negligence costs. These are setting fixed recoverable legal costs for low value cases of under £25,000, and starting a voluntary alternative compensation scheme for birth injury cases. But the problem is that the Department estimated that its current proposals could save about £90 million per year by 2020-21, but annual spending on clinical negligence is predicted to go up by £1.6 billion in the same period. The difference between these two figures lies behind our conclusion that more fundamental change will be needed if the government is to be able to tackle the rising cost of clinical negligence.

Q4. What else did you discover in this report?

We found that the relationship between patient care, patient attitudes and clinical negligence claims is not yet very well understood. Understanding better why people choose to make a claim is important, because currently only a small proportion of people who experience harm will make a claim. If that proportion were to increase, this could have a big impact on the number of claims.

Q6. Did the NAO make any recommendations?

Yes – our key recommendation is for government to set out a co-ordinated strategy to manage the growth in the cost of clinical negligence. This strategy should involve setting out clearly what it considers to be a proportionate response to patient harm, including the balance it wants to strike between compensating patients for negligence, and ensuring funds are available for routine patient care today. The strategy should

also look at all of the factors within the government's control that contribute to the rise in costs, including the number of claims, the legal costs and the damages awarded.

We also made other recommendations aimed at encouraging NHS Resolution and others to improve the data available on incidents, complaints and clinical negligence claims, including on what motivates people to claim. Doing this would allow greater insights on the causes of clinical negligence claims, and so help health bodies to manage those risks more effectively.

Thank you for your time Jenny.

If you would like to find out more about this report, the full report and an executive summary are available on our website, www.nao.org.uk. Or you can follow us on twitter [@NAOorguk](https://twitter.com/NAOorguk) or on Facebook www.facebook.com/NAOorguk/