Synopsis of House of Commons Select Committee Health & Social Services Committee Consultation on ways to reduce costs of medical litigation.

The remit of the Committee was to address how to reduce the costs of medical litigation.

The Committee met three times, 21st November 2021, 11th January 2022 and 1st February 2022.

Written Submissions

There were 66 written submissions to the Committee prior to the first meeting:
Thirty-three of them were from firms of solicitors.
Other submissions:
RCO&G
MDDUS
DAUK
IMNR
Nick Ross CBE The best submission (in my view).

Witnesses called

These are listed as Appendix 1. There was a total of 18 for the three meetings.

In my opinion they were unrepresentative:
Four Bereaved Parents.
One, whose daughter had had a severe injury at birth in 1983 and was a constituent of one member of the Select Committee, Lucy Allan.
One had been represented by Director Association of Personal Injury Lawyers, who was also called to give evidence.

The testimony of the four bereaved parent witnesses did not contributed to the discussion about how to reduce costs.

There was no witness who held a UK medical qualification.
There was no witness from the BMA or DAUK.
There was no witness from any Royal Medical or Nursing College
There was no witness from any private medical indemnity company.

Fixed recoverable costs for lower value claims

This was the only issue that addressed the remit of the Committee - to reduce costs of medical litigation. The topic was addressed by solicitors who had made written submissions and by A*v*MA, both in their written submission and when Peter Walsh, CEO of A*v*MA appeared as a witness. All thought that the introduction of FRCs would disadvantage patients.

Both solicitors and A*v*MA said that they turn away 80% of those who seek their advice. No evidence was produced for these statements nor of the qualifications of those who offered such advice.

There was no discussion on why Claimants' legal costs were three times those of Defendants.

There was no mention of the added costs triggered by agencies (e.g. Premex), who bankroll many of the solicitors who litigate on behalf of patients.

Passing mention of influence of PIDR changes as triggering more costs.

Ms Maria Caulfield, Parliamentary Undersecretary of State (Minister for Patient Safety in Primary Care) said that she estimated that £450 million could be saved over a period of 10 years by addressing legal costs. She gave no details of how this might be achieved other than through introducing FRCs.

The costs of medical litigation were quoted by Maria Caulfield (and others) as being 1.5% of total (NHS) budget. This is not true, as it takes into account only the new costs in the last 12 months. The annual cost is £10 billion. The annual budget of the NHS is £150 billion. The costs of medical litigation are 6.7% of the total NHS budget.

Context

There was no mention of:

the number of GP consultations that occur daily (1.2 million),
the number of ambulance call outs each month (1,000,000)
the number of FCEs per year (17 .1 million in 2018.)

Blame Culture

There was denial by lawyers of the possibility that the current medical litigation system provokes a blame culture.

In the written submission to the Committee the RCOG and RCM included a quote from the 2020 'Each Baby Counts report'

> 'the approach to clinical negligence has cultivated a culture of defensiveness and blame, and despite the fact that the legal defendant is always the trust and not an individual clinician, this did not prevent it from contributing to a 'culture of blame'. **A revised approach to clinical negligence should be geared towards creating a culture of learning at every level of the system, and not perpetuating 'blame' cultures that can be damaging to maternity safety.**

Missed opportunities

1. No mention of single joint experts.
2. No mention of agencies and their add on costs.

3. Passing reference only that the basis on which compensation is calculated should be changed from the 1948 criteria - that the amount should reflect the cost of care in the private sector
4. Early Notification Scheme (ENE). This was mentioned at the third meeting, but not directly in relation to costs more in relation to number of cases.
5. There was no mention of PALS in any meeting.
6. There was no discussion of how mediation at the outset of a claim could reduce legal and medical expert costs.
7. There was no opportunity to present the initiative of RCS "First Responder".
8. There was no witness called who might have addressed how to reduce costs by identifying the main source of those costs - medical mistakes.
9. There was no mention of educating medical students and all doctors about how to avoid the mistakes that trigger medical litigation.

My Conclusions

1. Medical litigation in the United Kingdom is currently big business for lawyers and for medical experts. See link to article in which Jeremy Hunt says this. *

2. The medical profession in the United Kingdom has been side-lined on the issue of medical litigation in general and on how to reduce costs of medical litigation in particular.

3. The initiative by NHS Litigation Authority, when they rebranded as NHS Resolution in 2018, was to promote mediation. This has not resulted in more than a small percentage of claims being handled in this way. This would reduce legal and experts' costs ,but is resisted by lawyers. Currently, mediation is not being introduced at the beginning of the patient journey, but at the end, by which time entrenched positions have been adopted by claimants and defendants.

4. There was denial that the fear of medical litigation gives rise to a blame culture.

Outcome

The findings of the Committee are currently being drafted into a report that will be delivered to Parliament. The expected date for release of the report is not known. The Clerk to the Committee has told me that it is likely to be before Easter.

Hugh N Whitfield MA MChir FRCS

* https://www.lawgazette.co.uk/news/self-interest-of-lawyers-is-blocking-clin-neg-reform-mps-hear/5111104.article

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Appendix 1 Witnesses

16 November 2021

Part I:

1. Sue Beeby, Parent
2. Scott Morrish, Parent
3. Joanne Hughes, Parent;
4. Sir Robert Francis QC, Chair, Healthwatch England
5. Sir Ian Kennedy QC, Emeritus Professor, Health Law, Ethics and Policy, University College London;
6. Dr Sonia Macleod, Researcher, Civil Justice Systems, Centre for Socio-Legal Studies, University of Oxford.

11th January 2022

Part I:

1. Michael Mercier, Principal Solicitor, New Zealand Accident Compensation Corporation
2. Dr Pelle Gustafson, Chief Medical Officer, Löf (Swedish Patient Insurer).
3. George Deebo, Executive Officer, Virginia (USA) Birth-Related Neurological Injury Compensation Program
4. Professor Shin Ushiro, Professor and Director, Division of Patient Safety, Kyushu University Hospital, Executive Board Member Japan Council for Quality Health Care.

Part II:

1. Peter Walsh, Chief Executive, Action against Medical Accidents.
2. Guy Forster, Director and Executive Committee member, Association of Personal Injury Lawyers.
3. Lauren McGuirl, Director of Commercial Services, Centre for Effective Dispute Resolution
4. Simon Hammond, Director of Claims Management, NHS Resolution.

1st February 2022.

Part I:

1. Jill Edwards, mother whose daughter suffered a severe injury at birth

Part II:

1. Maria Caulfield MP, Parliamentary Under-Secretary of State (Minister for Patient Safety and Primary Care)
2. Helen Vernon, Chief Executive, NHS Resolution
3. Matthew Style, Director General for NHS Policy and Performance, Department of Health and Social Care