**New system for low value clinical negligence claims is proposed**

The Department of Health and Social Care has published a consultation which closes on 24th of April 2022 in relation to fix recoverable costs in lower value clinical negligence claims.

They are proposing a new streamlined process for claims and limits the amount of legal costs that can be recovered for cases up to £25,000.

The reason they are doing this is that the cost of clinical negligence claims has risen and reached £2.2 billion in 2020 to 2021. Legal costs make up 27% of the total cost of clinical negligence despite the number of claims remaining relatively stable. The amounts paid out for legal costs were twice the average amount paid out in damages to claimants for lower value clinical negligence claims last year.

The proposals includes a new process designed to enable the rapid exchange of evidence so that agreement can be reached more quickly on liability and compensation to be awarded. They also propose two resolution stages within the process to include a stock take meeting between the parties and the neutral evaluation by a barrister.

Previously NHSR established a mediation scheme for clinical negligence claims with a panel of mediators. Now early neutral evaluation is proposed for low value claims and a streamlined Pre action process.

Under the proposals, clinical negligence claims will be divided into a light track and a standard track. The objective is to streamline the process to achieve an early resolution of claims. Where liability is not in dispute the claim is to be assigned to the light track. There will be two processes with defined timescales for the tracks including arrangements for sequential exchange of evidence and then two separate stages involving stock take or mandatory neutral evaluation to encourage settlement before proceedings are even issued.

These steps would be mandatory. At the stock take meeting parties would examine the strength of their positions and work towards settlement at or shortly following the meeting. This does sound very much like a joint settlement meeting. If the claim is not settled through the stock take procedure, then the claim will be referred to a barrister for neutral evaluation on the papers.

The idea is that light track cases would take no longer than 20 weeks and if further evidence is required then no longer than 34 weeks. Fixed costs would apply to both tracks allowing £6000 plus 20% of damages for the standard track and £2000 plus 10% of damages for light track cases.

Sanctions would apply if the parties failed to adhere to the time limits and the suggestion is that there will be a 50% cost reduction if the claimant delayed and a 50% uplift to damages if the defendant delays.

There would also be penalties if the claimant did not accept the evaluation recommended on quantum and proceeded with the case, rather like part 36, to incentivise parties to settle.

It is interesting that this proposal is not put forward by the MOJ but rather the Department of Health, emphasising that these proposals are about saving money and redirecting it to the NHS.

It is also interesting that early neutral evaluation will be mandatory if this process is adopted. This is in line with the proposals to make ADR compulsory put forward by the Civil Justice Council. It shows that it is not just mediation but other forms of ADR being put forward. At Whitestone Chambers we have experience in the field of clinical negligence and are likely to be putting ourselves forward to conduct these neutral evaluations as some of our barristers have arbitration experience.

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