



# Linea Insights

## Cutting the Cost of Clinical Negligence

## The cost of NHS negligence claims likely to double from £1.5bn to £3.0bn by 2023.

### Background

NHS England currently pays c.£1.5bn a year in clinical negligence claims.

The level of clinical negligence expenditure in 2016 (c.£1.5bn) has literally tripled since 2008 when expenditure was c£0.5bn.

The annual cost of clinical negligence is set to continue to rise exponentially, forecast to top £3.0bn by 2023. Expenditure of this magnitude is unsustainable and diverts essential funding away from frontline patient care.

Furthermore the NHS Resolution (Formerly NHS Litigation Authority) estimates the total liability for medical negligence cases it is already handling could be as much as £56.1bn.

### Why the exponential increase in expenditure?

The NHS Resolution, which handles claims on behalf of Trusts, suggests this is a result of big rises in claims and legal costs from claimants. It highlighted that claimant legal costs have risen by c.43%, in recent years.

In contrast the Association of Personal Injury Lawyers (APIL) highlights that the costs would not exist if the NHS had not been negligent. They blame rising costs on the NHS accepting failures when they happen and reducing costly delays in processing and settling claims.

### What is being done to reduce expenditure?

A range of legal reforms are being proposed by MP's, they include:

- Limiting care costs based on a tariff agreed by experts.
- Using national average weekly earning rather than individual patient earning to calculate damages.
- Introducing a 10 year limit on claims.
- Imposing a fixed recoverable costs scheme for claims up to £250k to 'stop lawyers charging disproportionate legal fees.'



## Are We Missing The Point?

Clearly there is a significant increase in clinical negligence expenditure, part of which is a result of the 'no win no fee' legal culture, which has enabled claims to be more readily progressed, but often with excessive legal costs.

One example involving a delayed diagnosis was settled for £4k, with corresponding legal costs of £35k

Clearly action needs to be taken to minimise spurious claims and high legal costs. However it remains the case that all costs incurred by the NHS are a direct result of clinical negligence.

According to health secretary Jeremy Hunt, half a million people are harmed unnecessarily every year in the NHS. A key problem which generates a cost in human suffering to patients and their families and an unsustainable financial burden to the NHS.

41% of the value of compensation claims for clinical negligence are a result of cerebral palsy and brain damage sustained at birth, a figure which has barely changed since 2006/7.

Prevention and mitigation is fundamental to curtailing the current expenditure. Reducing the number of incidents, thereby improving patient experience and cutting claim expenditure, enabling additional investment in front line services, further supporting the cycle of continuous improvement.

The NHS is awash with clinical governance and quality improvement metrics, resource and methodologies, many of which have continued to improve patient experience and clinical safety. However, at an operational level many NHS organisations suffer from the same fundamental problems on a regular and ongoing basis.

The reality remains that many NHS organisations still haven't embedded a Continuous Improvement Culture, truly adopting simple tools and techniques to improve quality and efficiency of service.

For example, Root-Cause Analysis (RCA) has been widely adopted and hugely successful at improving quality and efficiency across various sectors. Although RCA is utilised in the NHS, it doesn't seem to be driven with the same relentless rigour, focus and determination which has been fundamental to the improvements achieved in other sectors.

## Successful RCA Implementation

8 points essential for successful RCA implementation

- Create an open and transparent learning culture, in which staff acknowledge their mistakes and work to resolve them, with the board and senior management team providing strong leadership and support for staff.
- Undertake regular process and procedure risk assessment reviews to assess and mitigate risks before they occur
- Undertake pre and post procedure briefings / debriefings with operational teams
- Promote problem reporting and roster problem solving time. Encourage multidisciplinary team communication and resolution.
- Ensure timely processing of RCA. Analysis should commence as soon as an issue occurs with initial preventative action implemented within 24 hours and fully resolution (were possible) within 2 weeks.
- Adopt a simple RCA process which is standard across the organisation, understood and used by all. '5 Whys?' is a simple interrogative technique used to explore cause and effect relationships.
- Communicate findings and preventative action, thoroughly, internally at all levels and share best practice externally with other NHS organisations.
- Apologise to patients and relatives (verbally and formally) when problems occur and ensure efficient, effective and decisive action.



## About the Author



### Ian Chambers

A Business Improvement specialist with over 20 years' experience devising and leading complex Operational and Financial Turnaround, Transformation and Continuous Improvement Programmes.

With a background in Change Management, Lean Transformation, Financial & Commercial Management, Supply Chain / Procurement Optimisation and Programme Delivery gained within leading UK and International Public and Private sector organisations.

Ian possess an extensive track record of devising, managing and implementing comprehensive, multi-million pound, cross organisational transformation and continuous improvement programmes for NHS, Public and Private organisations and is an expert in delivering sustainable operational improvement and financial balance in challenging situations.

He received national recognition for collaborative programme delivery in the Government Efficiency Awards, was shortlisted as finalist in two further National Awards for NHS Transformation and achieved runner-up in the IFT Public Sector Turnaround Programme of the Year.

Ian holds an Honours degree in Business Management, is a Fellow at the Institute for Consulting, Fellow at the Institute for Operations Management, Fellow at the Chartered Management Institute, Fellow at the Institute of Logistics and Transport, Member of the Asia Transformation & Turnaround Association. Member of the Institute for Turnaround and committee member for the IFT North of England.

He has held numerous board and senior advisory positions, is a certified Lean Practitioner, Master Coach and a member of government and corporate turnaround panels.

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