FROM THE MINISTER OF
HEALTH

Department of

Health

An Roinn Sláinte

Männystrie O bustie

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Mr Mervyn storey MLA
Chairman of the Committee for Justice
Northern Ireland Assembly

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Your Ref:
Our Ref: COFR/2662/2021
Date: August 2021

Dear Mervyn

Thank you for your correspondence of 30th July 2021 in relation to the Committee for Justice's consideration of the Damages (Return for Investment) Bill.

Your letter raises a number of specific queries and I have responded to each in turn in the attached appendix.

As I highlighted in my earlier correspondence, I continue to have concerns about the potential impact of a sharp reduction to the Personal Injury Discount Rate (PIDR) in relation to health and social care provision in Northern Ireland.

I believe that a sharply reduced PIDR, such as that currently in place on a temporary basis, will likely have substantial implications in terms of costs of settlement, subscription costs for healthcare professionals and a potential knock-on effect on the stability of the health and social care workforcé which has already faced an extremely challenging year due to the impact of Covid-19.

At this stage, however, I understand that the introduction of this Bill is likely to lead to an increase in the discount rate compared to the temporary rate currently in place. Whilst this will not enable our financial position to return to where it was prior to the introduction of the cUrrent rate, at this stage any increase will be a positive development for my Department in that it will likely bring the cost of settling claims to a more appropriate level and will reduce some of our other risks.

I trust that you will keep the issues facing our health and social care system at the forefront of the Committee's thinking during its consideration of the Bill.

Yours sincerely

Robin Swann MLA
Minister of Health

Working for a Healthier People

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APPENDIX 1

DAMAGES (RETURN ON INVESTMENT) BILL - QUESTIONS FROM THE COMMITTEE FOR JUSTICE

Question 1:
What impact the legislation is going to have on the Department of Health and the wider health service including secondary and primary care and GPs?

Response:
As we outlined in our response to the Department of Justice's consultation on how the Personal Injury Discount Rate (PIDR) should we set, we are concerned that a significant reduction in the PIDR — such as the temporary •1.75% rate — has the potential to have a negative impact on our health and social care system and wider NI economy.

Whilst exact figures are not available at this time, the impact of this temporary amendment is to increase the value of settlements by approximately 50%, with an expected additional cost in 2021/22 of £15m-£20m.

The introduction of the Damages (Return on Investment) Bill is expected to increase the discount rate and hence at this time is expected to partially reverse the impact that the minus 1 .75% rate is currently having on the cost of settlements. The extent of this will depend on the eventual rate determined as a result of the bill.

We also anticipated that a reduction in the PIDR will result in an increase in other areas including additional costs associated with third party insurance premium cost increase for contracts. e.g. increased employers, public liability and vehicle insurance.

My Department and the Health and Social Care (HSC) sector have limited scope in mitigating the risks in this area.

In terms of the impact on GPs, we anticipate that a significant long-term reduction in the PIDR from the previous long term +2.5% rate, would likely result in a significant rise in the cost of indemnity for GPs. Whilst the immediate response from the Medical Defence Organisations to the temporary -1.75% rate has not been a unilateral increase in subscription costs, we understand that this reflects the temporary nature of the rate reduction rather than a long term strategy. In the event that the PIDR were to be calculated significantly lower than the previous long term rate of +2.5% on an ongoing basis, we believe this would potentially give rise to a number of very negative and directly related outcomes:

- In Northern Ireland, approximately 25% of the GP workforce is aged 55 and over and would be expected to retire within the next 5 years. We anticipate that any significant increase to indemnity costs may lead GPs within this cohort to decide to retire earlier rather than continue for another few years and pay higher indemnity subscriptions. This will increase the strain on an already pressurised GP workforce.

- Increased indemnity costs are likely also to increase the difficulties the HSC faces in attracting and retaining GPs into the workforce. The difficulties are particularly acute in certain geographical areas.
- If costs increase beyond what the market can bear, it would lead to the collapse of the private clinical indemnity market in Northern Ireland and the inability of GPs and dentists to continue to access indemnity services. This would give rise to the need for a scheme funded by the Executive with costs to be met from the Block, at the expense of other services. However it may also effectively bring to an end the private healthcare market if private practitioners are unable to access private medical indemnity services.
Secondary care presentations through Emergency Departments and Out of Hours Services would encounter significant additional footfall with consequential service quality and cost impacts.

Question 2:

Do you have any plans to offer some kind of indemnity support to GPs — the reduction in the personal injury discount rate in England and Wales triggered the introduction of a state backed indemnity scheme to mitigate the impact on indemnity costs?

Response:

My Department already provides support to general practice in meeting indemnity costs through our continued investment in generat practice. For example, the 2018/19 GMS contract made provision of £1 m to meet the additional costs of indemnity that GPs were facing whilst the 2019/20 GMS contract provided for up to £2.5m to address demography pressures and indemnity costs.

The issue of future GP indemnity arrangements in Northern Ireland is under consideration by my Department and future options for GP indemnity provision are under active review. As this is policy under development it is not possible, unfortunately, to provide further details at this time.

However, it is important to note that, irrespective of the mechanism by which indemnity provision is secured for GPs, the impact of a rise in the cost of settling clinical negligence cases arising from a significant change to the PIDR would place a significant additional financial burden on our health and social care system which is already facing a myriad of challenges exacerbated by the impact of Covid-19.

Question 3:

If a state backed indemnity scheme is introduced would funding be available from the Treasury to cover the costs? Did Northern Ireland get any sort of Barnett consequential funding when the state backed indemnity scheme was introduced in England and Wales and if so, what was the money used for in Northern Ireland?

Response:

Unfortunately I am unable to advise on this matter. It would be for the Department of Finance to liaise with HM Treasury around any funding that might be received in relation to this issue. Similarly, the Department of Finance would also be best placed to answer the question around the receipt of Barnett consequentials in the past.