

Christine Darragh

The Committee Clerk
Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast, BT4 3XX

29 April 2021

Damages (Return on Investment) Bill call for evidence

Dear Committee,

The British Medical Association (BMA) is an apolitical independent trade union and professional association representing doctors and medical students from all branches of medicine across the UK. Our mission is we look after doctors so they can look after you.

BMA Northern Ireland welcomes the opportunity to respond to this call for evidence on the Damages (Return on Investment) Bill. Our response comes from the Northern Ireland General Practitioners Committee (NIGPC) and is informed by their discussions. Our comments will be limited to the discount rate, its impact on the sustainability of general practice and the wider health and social care system (HSC) in Northern Ireland and the importance of progressing the legislation to mitigate the impact of the interim rate.

You will note throughout our response we have a number of concerns relating to the changes to the discount rate as a result of this bill and with the interim rate that the department will strike at the end of May. Whilst our focus is on the impact on doctors and the wider HSC, we also acknowledge the need to ensure claimants are appropriately rewarded for claims.

Despite this, this issue cannot be considered in a vacuum. The impact of changing the rate must be considered and necessary mitigations put in place to avoid any unintended consequences on the ability of GP practices to continue to function.

Impact on general practice

General practitioners in Northern Ireland are now the only doctors within the UK NHS or HSC who are responsible for providing their own indemnity. This is a substantial outlay for doctors on an annual basis, amounting to between £8,000 and 12,000 for a full time equivalent. A long term reduction in the

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discount rate is likely to increase these costs over the next number of years. This could result in indemnity insurance becoming an unaffordable personal expense. In turn, this would make general practice untenable as the cost of indemnity could make it unaffordable for GPs to purchase and without indemnity GPs cannot practice.

We have met with medical defence organisations who have been expecting a change to the discount rate in Northern Ireland and some say they have factored that into current pricing for this year to ensure indemnity cost rises are not initially huge. However, no guarantees can be given on the long-term impact particularly if the -1.75% rate stays in place for longer than is expected and intended.

The reduction in the discount rate in England triggered the introduction of a state backed indemnity scheme. In England the change in the rate was from 2.5% to -0.25%. The estimated impact on GP indemnity was that it would increase from around £13,000 per GP per annum to over £30,000 per GP per annum. Our conversations with insurers indicate that, should this bill pass in its current form, it is anticipated that the discount rate would be set at between -0.5% and -1%. This would have a detrimental impact on GP indemnity costs. Should the interim rate remain in place for longer than is intended this impact would be much higher.

Importantly it would also likely result in an increase in claims and a stagnation within the system, with claims slow to settle and also an increase in speculative claims which would result in significant time and stress pressures within the system.

Whilst we agree claimants should receive 100% compensation, consideration must be given to the wider impacts of this decision and how they can be mitigated by cross departmental work that is co-ordinated and focused. An indemnity scheme which reimburses costs must be introduced as a result of the temporary change to the discount rate, and as a result of this bill, to mitigate the impact on GPs and enable them to continue practicing.

Impact on recruitment

Any increase in the costs associated with being a GP will inevitably be a chill factor for the recruitment of junior and future doctors into general practice. This impact will be replicated on the ability to recruit GPs to Northern Ireland from the rest of the UK, Ireland or further afield.

This is particularly worrying when we consider the age profile of GPs and the number who are expected to retire in the next five years.

Medical defence organisations calling in debt

Another significant concern is that, due to the change in the discount rate, medical defence organisations may feel that they have no alternative but to call in debt to cover future liabilities.

This would result in individual GPs facing huge bills and having financial demands of repayment they are unable to meet. This could result in bankruptcy and the closure of practices. The consequence of this would be that not all communities would have access to local GP services, and this would have a knockon effect on the wider HSC system.

Necessity for legislation to progress

Whilst we have concerns about the potential impact of this legislation on general practice, the HSC and the public purse in Northern Ireland, we believe legislation is necessary to avoid having the interim rate in place for a protracted period of time. Introducing an interim rate using an outdated method is particularly unhelpful. The interim rate being set in May 2021 uses a methodology that the department wishes to change and so it is imperative that this rate is in place for as short a time as possible.

We have additional concerns at the tightness of the legislative timescale as we move towards the end of this Assembly mandate. Should we reach purdah with the legislation not completing its passage through the Assembly, the interim rate of -1.75% could be in place for a long time, awaiting the establishment of an executive and have progress dependent on the priorities of the new justice minister.

As such, we would encourage the committee and department to progress this legislation as soon as is practicable in order to mitigate as far as possible the negative impacts of the interim rate. We would also encourage the committee to engage with their colleagues on the committee for health to fully consider the impact of the discount rate changes on general practice and the HSC and to establish a fair solution to the already high and detrimental indemnity costs.

Once again we would like to thank the committee for the opportunity to respond to the call for evidence enabling us to highlight the potential problems for general practice as a result of the Damages (Return on Investment) Bill and the interim rate.

Should you have any questions in relation to this response please contact Jenna Maghie, senior policy executive, in the first instance.

Yours sincerely

Dr Alan Stout
Chair, NIGPC