

25 Years at the Leading Edge of Legal Expenses Insurance

Watch our timeline video

25 YEARS
1999-2024

Welcome to the latest edition of our 'Clinical Thinking'. This issue includes a special report that could give clues to the NHS reforms planned by the new government following Lord Darzi's review of the NHS and its potential impact on clinical negligence. Elsewhere there is a new ATE insurance case study that could establish a new duty of care for police. Enjoy reading our views; if you'd like to share yours, please get in touch with our team - contact details are on page 8.

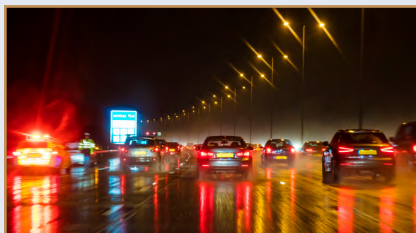
SPECIAL REPORT



NHS Reform and Clinical Negligence:

What Lord Darzi's review means for claimant solicitors and stakeholders. The big question remains - is the NHS learning from its mistakes? We have lots of detailed insight and predictions

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ATE INSURANCE IN ACTION:

The consequences of a fatal road accident that could establish a new duty of care for the police

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NHS Reform and Clinical Negligence: What Lord Darzi's Review Means for Claimant Solicitors and Stakeholders

By Matthew Best, Director - ATE Partnerships, Head of Personal Injury & Clinical Negligence

In the interests of full disclosure - this article includes some AI-generated research content. This enabled us to widen the scope slightly in what we've commented on below. We then reviewed the content, checking for accuracy and consistency with our previous views.

You may have recently seen this article in The Law Gazette [clinical negligence going in wrong direction - NHS review finds](#), which was published following a government-commissioned review led by Lord Darzi. At first glance, it seems like a balanced report but dig deeper and you'll notice it paints a worrying picture for stakeholders in the UK clinical negligence sector, including claimant solicitors, ATE insurance providers, and defendant bodies such as NHS Resolution.

Although the report highlights that NHS clinical negligence claims are now the largest liability on the government's balance sheet, second only to pensions and nuclear decommissioning, it also underlines that the £2.9 billion spent annually on such claims constitutes only 1.7% of the total NHS budget.

This is a substantial figure, but perhaps not as alarming when placed in the context of the broader NHS financial challenges. Interestingly, the report does not point to lawyers or legal costs as a primary concern. Instead, it emphasises repeated mistakes in the health service—failures that, if avoided, would reduce the number of claims to begin with.

NHS Learning from its Mistakes: A Missed Opportunity?
The issue of whether the NHS learns from its mistakes is not new. As early as January 2022, under the previous Conservative government, the Health and Social Care Committee began discussing this very issue. It seems this discussion has now reached the front of the queue with the new Labour government. Despite this, the focus remains on quick, cost-saving measures like fixed recoverable costs (FRC) for lower-value claims, rather than addressing the

root cause of the claims: clinical errors and negligence within the system.

Starmer's recent declaration of "no extra funding for the NHS without reform" further signals that the introduction of FRC for clinical negligence claims valued under £25,000 could be fast-tracked. Many claimant solicitors fear that this will create a significant barrier for patients seeking justice for lower-value claims, where costs could make such claims financially unviable for legal practices to pursue. The overarching concern is that the focus on cost reduction may eclipse the need for systemic learning within the NHS itself.

Health and Social Care Committee: Its Role and Outlook
The Health and Social Care Committee, although independent of the government, has a crucial role in scrutinising NHS operations and policies implemented by the Department of Health and Social Care. With the Labour government now in power, the committee is expected to work on an accelerated timeline. Labour's health manifesto promises structural reform but also highlights efficiency, implying potential regulatory changes in legal processes around NHS negligence.

However, claimant solicitors and stakeholders in the clinical negligence sector are apprehensive. Will these changes target the efficiency of claims management, or will they focus on preventive measures within the NHS to reduce clinical errors? Lord Darzi's review appears to sidestep this question, focusing instead on overall NHS inefficiencies and waiting times, without offering specific guidelines on how the NHS can better learn from its mistakes.

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Fixed Recoverable Costs: A Looming Challenge

The potential introduction of FRCs, a key proposal from the Conservative government, appears likely to continue under Labour, particularly as Starmer is emphasising financial prudence and efficiency. Claimant solicitors and ATE insurance providers have long voiced concerns that such a measure would disproportionately affect access to justice for patients with lower-value claims, particularly those that are more complex and costly to investigate, even if the compensation sought is modest. These stakeholders argue that fixed costs could lead to a two-tier system where only the highest-value cases receive adequate attention, leaving many patients without recourse to justice.

Conversely, defendant bodies like NHS Resolution have been supportive of fixed recoverable costs, seeing them as an essential tool for controlling litigation costs, which they argue are spiralling out of control. NHS Resolution, already grappling with the growing cost of negligence claims, advocates that FRC will prevent legal fees from overwhelming the system. Yet, critics point out that this view fails to address the underlying issues causing negligence claims in the first place—mistakes and errors that could be prevented through better NHS practices.

Labour's Reform Agenda: What Can We Expect?

Keir Starmer's statement about NHS reform being a prerequisite for additional funding hints at an era of deep structural changes. His emphasis on long-term reform includes a 10-year plan aimed at revamping how the NHS functions at its core. For clinical negligence stakeholders, this could mean tighter regulation, streamlined processes for claims, and an ongoing push for cost-cutting measures like FRC.

But reform does not happen in isolation. Labour's health policies also emphasize improving access to general practitioners, increased community care, and better regulation of NHS managers. These changes could, in theory, reduce the number of claims, but only if they successfully address the NHS's failings. For claimant solicitors and ATE insurers, the concern is that these systemic reforms may take too long to impact the flow of negligence claims, while immediate cost-cutting measures like FRC could undermine access to justice for claimants.



Conclusion: The Path Forward

Lord Darzi's report has certainly stirred debate, but it leaves many questions unanswered for stakeholders in the clinical negligence sector. While the report highlights the financial burden of clinical negligence on the NHS, it doesn't fully grapple with the need for the NHS to learn from its mistakes—a point previously raised and seemingly shelved until now. As Labour's government pushes forward with reforms and cost-saving measures, the introduction of FRC seems inevitable, raising concerns for claimant solicitors and ATE providers who see it as a barrier to justice.

The real challenge lies in ensuring that these reforms are balanced with measures that not only reduce costs but also foster an NHS that learns from its failures, ultimately reducing the very need for litigation. Whether Labour's reforms will manage to strike that balance remains to be seen.

In the meantime, stakeholders must prepare for significant changes to the claims landscape and advocate for reforms that protect access to justice, while working towards a more efficient and error-free NHS. With that in mind, it will be important to stay informed, adaptable and prepared for the challenges these changes will bring.

Here at Temple we are committed as ever to keeping you informed on these developments. Please call Matthew Best on 01483 514804 or email matthew.best@temple-legal.co.uk with your observations on this topic or to discuss your ATE insurance requirements.

You may also want to read my previous article on "[Fixed costs - a fix that doesn't fix what needs fixing](#)"

'Don't just take our word for it'

In a video interview about her experience of working with Temple for over 20 years, Gillian Gadsby, Managing Partner at Gadsby Wicks Solicitors, shared her experience during that time with Matthew Best, Temple's Director - ATE Partnerships and Head of Personal Injury & Clinical Negligence. The interview can be seen [here](#).





ATE insurance in action: a fatal road accident that could establish a new duty of care for the police

By Oliver White, Underwriter

Tindall and another (Appellants) v Chief Constable of Thames Valley Police (Respondent)

On 4th March 2024, Mr. Kendall's car skidded on black ice, causing it to roll into a ditch. He was concerned about the state of the road so, after he had made an emergency call, he stood by the road signalling cars to slow down.

Approximately 20 minutes later, police officers attended. They started clearing debris and put up a "Police Slow" sign. Mr. Kendall warned the police about the state of the road and then left to visit hospital for his injuries. It is alleged, that but for the arrival of the police, Mr. Kendall would have continued to attempt to warn road users of the danger.

Having cleared the debris, the police removed the sign and left the scene, with the road in the same condition. About an hour after the first accident Mr. Tindall was very unfortunately killed in a second accident when his car was hit by an oncoming vehicle which had skidded on the ice.

Allegation that the Chief Constable is vicariously liable
The appellant, widow and administratrix of the estate of Mr. Tindall, brought a claim against the Chief Constable of Thames Valley Police, the Respondent. She alleges that the police's conduct was negligent, and the Chief Constable is vicariously liable.

The Chief Constable applied to strike out the claim. The application failed at first instance but succeeded at the Court of Appeal. This is now appealed to the Supreme Court with the question of "in the circumstances, did the Court of Appeal err in finding that the police did not owe road users a duty of care to protect them from harm, either on the basis that their presence at the scene made the situation

worse or that they assumed a responsibility to protect road users?"

The hearing took place on the 26th and 27th of June and we now await judgment.

The Temple Perspective

This is an interesting case that could establish a new duty of care for the police, opening up a new type of claim made against the police in situations where they acted negligently and did not adequately protect road users.

Disbursement Funding FAQs'



One video answering your questions on how easy it is to set up Temple disbursement funding, consumer credit agreements, drawdowns, charges (only two) and regulation (Temple is, not all funders are though). 4 minutes of time well spent.

[Click here](#) to see more of our videos.



Temple Legal Protection's 25th Anniversary On the scavenge...

By Laurence Pipkin, Managing Director

I was delighted to host a team family day this Summer to celebrate Temple's 25th Anniversary. The day started with a scavenger hunt in Guildford, where our head office has been based during the last 25 years. The hunt involved finding clues associated with the history of Guildford and our company before ending with food and drink at a local pub garden.

The town has a close association with Lewis Carroll, which meant that there were frequent references to Alice in Wonderland as part of the hunt. This made it a fun-packed adventure for our intrepid teams, leading us to some really hidden and charming locations around the town.

We were very lucky with the weather which helped contribute to a fantastic occasion and opportunity to meet with the wider families of our team.

[Click here](#) to read about 'Temple Legal Protection - 25 Years at the Leading Edge of Legal Expenses Insurance' and watch a special timeline video.

'Optimum'

Our new, truly bespoke
clinical negligence
ATE insurance

Find out more





Interest rate

Disbursement funding without an accruing interest rate for clinical negligence cases

Clear and transparent disbursement funding at 0% with just a fixed facility fee only payable upon the successful conclusion of your client's legal action.

Affordable, easy to use and fully integrated with our clinical negligence cover.

Use the link below to find out more.
www.bit.ly/0percentinterest

To discuss your ATE and funding requirements please call John Durbin on 07917 146290 or email john.durbin@temple-legal.co.uk

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Scan the below QR
code to find out
more about our
disbursement funding





Really quite interesting? What's caught our eye

By David Stoker, Underwriter

1) 'NHS clinical negligence agreement "encourages apologies"'

See <https://www.legalfutures.co.uk/latest-news/nhs-clinical-negligence-agreement-encourages-apologies>

2) 'Thousands of women are being failed every year thanks to these symptoms being misdiagnosed'

See <https://uk.news.yahoo.com/thousands-women-being-failed-every-162429382.html>

This article focusses on research revealing that the misdiagnosis of symptoms thousands of women are experiencing is exacerbating debilitating conditions and leaving them untreated. This is said to be a systemic problem in the NHS where women are experiencing prolonged and severe pain; having been diagnosed with anxiety, depression or other period-related complaints and then failing to diagnose serious conditions such as endometriosis.

3) 'Group B strep awareness is essential to prevent medical negligence'

See <https://www.stewartslaw.com/news/group-b-strep-awareness-is-essential-to-prevent-medical-negligence/>

An interesting article by Stewarts repeating the need to promote awareness of Group B Streptococcal (GBS) infection in babies. Most babies develop this in the first week of life and will present with symptoms including floppiness, grunting, not feeding well and having a high or low temperature. If detected the condition is treatable, if not then this can leave the child with a number of permanent neurological impairments such as epilepsy, learning difficulties, hearing loss and behavioural problems - for the want of a simple swab test.

4) 'Healthtech and its impact on medical malpractice claims in England, France, Ireland and Spain'

See <https://kennedyslaw.com/en/thought-leadership/article/2024/healthtech-and-its-impact-on-medical-malpractice-claims-in-england-france-ireland-and-spain/>

An article by Kennedys discussing the increasing use of healthtech equipment in the delivery of healthcare and its potential implications. In essence this means telemedicine, remote care and wearables. Wearable devices mean there will be a reduction in the need for face-to-face consultations. A potential implication is the possibility that claimants could be held contributorily negligent for improper use of such equipment - a very rare concept in clinical negligence cases.

5) Lord Chancellor kicks off discount rate review

See <https://www.lawgazette.co.uk/news/lord-chancellor-kicks-off-discount-rate-review/5120336.article>

An article outlining that the new Labour Lord Chancellor, Shabana Mahmood MP, has started a review into whether the discount rate should be changed. This is currently set at -0.25%. Liz Truss (Lord Chancellor in 2017) adjusted this from -0.75%. Prior to that the rate was set at 2.5% and had been so since 2001. Mahmood will report on any changes prior to 11.1.2025.

CLINICAL THINKING

Solicitor updates and insights on clinical negligence and personal injury topics

temple
legal protection

Out and about: will we see you at the APIL Annual Clinical Negligence conference?



On 25th September, Temple will again be at the Celtic Manor resort for APIL's Annual Clinical Negligence conference. The event stretches across three days and has always proven to be a popular and well attended conference.

Temple will have its stand in the main exhibition hall, where you'll find John Durbin and Lisa Fricker on hand to discuss your ATE insurance and disbursement funding needs. You'll also have the chance to enter a prize draw to win a luxury champagne and chocolate hamper.

Heading into October, Temple will be attending the Child Brain Injury Trust's 'Oktoberfest' in London on the 1st Oct. Later that same week, on Thursday 3rd October, we will be hosting our own drinks reception at King Street Townhouse, Manchester for a cause close to our hearts, the [Cauda Equina Champions Charity](#).

We are looking forward to both events and to catching up with many of our clients, contacts and friends old and new. To see some other recent event-related activity, please visit <https://www.temple-legal.co.uk/about-us/events/>

Contacts:

Matthew Best | Director of ATE Partnerships

Matt joined Temple in July 2011 and was swiftly promoted to Senior Underwriting Manager, taking on overall responsibility for Temple's personal injury and clinical negligence underwriting department. Over the years Matt has become well known in the industry, cultivated fantastic relationships with our business partners and, in 2022, he joined Temple's board of directors as Director of ATE Partnerships.

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John Durbin | Senior Business Development Manager

John joined Temple in June 2022 and brought with him over 19 years' experience in the legal expenses industry, with 17 of these specifically relating to ATE insurance. His primary focus is developing Temple's clinical negligence and personal injury ATE offerings and disbursement funding. John is well known in the industry for making business partners feel at ease when they meet.

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Lisa Fricker | Head of Solicitor Services & Quality Assurance

Lisa has over 15 year's experience in the legal insurance industry, and is used to working closely with solicitors to develop and maintain good working relationships. In her role Lisa manages our internal and external review process and is focused on ensuring that the quality of service provided by Temple remains at the highest standard.

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David Stoker | Senior Underwriter

David's experience allows him to undertake a key role within Temple's ATE insurance personal injury and clinical negligence teams. He also participates in the assessments of delegated schemes that Temple provide to help our customers make the most of the products and services we offer.

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Morag Lewis | Senior Underwriter

Morag's experience allows her to undertake an important role in Temple's ATE insurance personal injury and clinical negligence teams. She has started studying for the CILEX qualification and will then move on to take her insurance exams to develop herself further into the company, in order to provide Temple's customers with the excellent service they expect.

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Oliver White | Underwriter

Oliver works across both the Clinical Negligence & Personal Injury and Commercial teams, reviewing referred cases and determining coverage. He also manages delegated authority schemes, acting as the primary point of contact for these firms and ensuring that Temple continues to meet their ATE insurance needs.

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