CLINICAL THINKING

Solicitor updates and insights on clinical negligence and personal injury topics

temple legal protection

Welcome to the latest edition of our ‘Clinical Thinking’. In this issue we start with a look at the government’s proposals for NHS league tables, then move swiftly onto the proposed NHS reforms in the light of increasing cases of patient harm being reported. We take a closer look at the issue of medical report fees costs breakdown, share our perspective on AI and ATE underwriting, and also get under the skin of the rise in clinical negligence claim settlement delays. Enjoy reading our views; if you’d like to share yours, please get in touch with our team – contact details are on page 14.

NHS League Tables and Clinical Negligence Claims

A significant shift in the drive to improve transparency and accountability?

- Page 2

Clinical Negligence and NHS Reform:

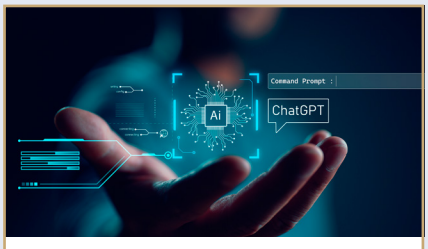
An unsettling trend of more and more cases of patient harm are coming to light.

- Page 3

Medical Report Fee Breakdown

JXX v Archibald [2025] EWHC 69 (SCCO): What are the likely implications arising from this case?

- Page 5



Artificial Intelligence and the Real Thing - AI and ATE Underwriting

Exploring the ways in which AI can support the work we do.

- Page 8

Latest News

A closer look at some articles in the legal press on topical matters that have caught our eye recently.

- Page 10

Clinical Negligence Claim Settlement Delays Reach Record High:

Claimant legal costs are not the sole burden on the NHS.

- Page 11

NHS League Tables and Clinical Negligence Claims

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

The introduction of NHS hospital league tables represents a significant shift in the drive to improve transparency and accountability in the UK's healthcare system. While this reform aims to address systemic issues and enhance patient outcomes, its potential impact on clinical negligence claims and the broader NHS culture warrants careful consideration.

Public rankings aim to incentivise underperforming hospitals to address deficiencies, ultimately reducing medical errors and the volume of negligence claims. This is a critical concern, as NHS clinical negligence payouts reached a staggering £2.7 billion in 2022-23, with maternity-related claims being a significant driver. By addressing these deficiencies, will patient outcomes and hospital standards improve, leading to a corresponding decrease in legal claims?

Increased Awareness Leading to Claims

Greater transparency might result in increased claims as patients and legal advisors gain easier access to hospital performance data. Lower-ranked hospitals, in particular, could face heightened scrutiny and potential legal challenges. This unintended consequence may place additional pressure on institutions already struggling with systemic issues.

Cultural Shifts Within the NHS
Learning Culture or Blame Culture?

League tables could foster a culture of continuous improvement, with hospitals learning from their errors and sharing best practices. However, concerns persist that public rankings might exacerbate a blame culture within the NHS. The Royal College of Emergency Medicine has cautioned that focusing on metrics could lead to short-term target-chasing, distracting from systemic reform efforts.

Staff Morale and Retention

The publication of rankings may impact staff morale, particularly in underperforming hospitals. Striking a balance between accountability and support for healthcare professionals will be key to maintaining a motivated workforce capable of delivering consistently high-quality care.

Financial and Systemic Implications

Pressure to Reduce Compensation

Amid financial constraints, there is speculation that reforms may include efforts to cap compensation payouts. However, addressing the root causes of negligence, rather than limiting payouts, is essential to achieving long-term savings and maintaining public trust.

Investment in Risk Management

The reforms could also drive investment in patient safety initiatives and risk management. By proactively addressing risks, the NHS could reduce incidents leading to negligence claims, ultimately easing financial pressures while improving patient care.

What's the latest on this?

Since the announcement, several developments have added to the discussion:

1. **Implementation Plans**: Health Secretary Wes Streeting has outlined measures linking hospital rankings to management accountability. High-performing hospitals will receive greater financial autonomy, while managers in underperforming hospitals may face removal.

2. **Maternity Care Spotlight**: Maternity services remain a focal point, with half of the units rated as failing and contributing disproportionately to negligence payouts. Reforming these services could significantly reduce high-value claims.

3. **Stakeholder Concerns**: Healthcare professionals and unions have raised concerns about unintended consequences, including potential damage to staff morale and a skewed focus on short-term metrics over systemic change.

Conclusion

The introduction of NHS hospital league tables represents both a challenge and an opportunity for the healthcare system. While the initiative aims to improve patient outcomes and operational efficiency, its success will depend on careful implementation, balancing transparency with support for healthcare professionals. Addressing systemic issues, rather than focusing solely on metrics, will be crucial in reducing clinical negligence claims and fostering a culture of improvement.

Here at Temple we are committed as ever to keeping you informed about topical news relating to clinical negligence. 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.

Clinical Negligence and NHS Reform:

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

The recent news surrounding the investigation into deaths and injuries at NHS hospitals, including the Royal Sussex County Hospital in Brighton, has highlighted some of the deepest concerns within the UK healthcare system. According to reports from the BBC and The Independent, the cases under investigation have now doubled in number, drawing attention to potential systemic failings and increasing the spotlight on clinical negligence claims in NHS settings. These investigations, now drawing the scrutiny of both Sussex Police and regulatory bodies, point to deeper challenges within the NHS that could have long-term implications for clinical negligence litigation, NHS funding and hospital management. This article explores the potential ramifications of these events in the context of the UK clinical negligence sector.

Reports that investigations into deaths and injuries at NHS trusts are expanding point to an unsettling trend: more and more cases of patient harm are coming to light, with increased scrutiny around hospital management and the care provided. The investigation into the Royal Sussex County Hospital serves as just one example of a broader crisis. Not only are the cases reportedly doubling in scale, but they also raise alarm about the quality of care in an overstretched NHS.

In some respects, the impact of clinical negligence claims and their associated costs on the NHS is both a symptom of a greater problem and a magnifying glass on that problem. These events shine a stark light on hospital management practices and the resource pressures affecting clinical safety. For claimant solicitors, such revelations underscore the urgency of addressing systemic issues within the NHS that are leading to preventable harm.

The Darzi Review: A Framework for Reform?

The Labour government's focus on reforming the NHS, exemplified by Lord Darzi's review, has provided a significant moment of reflection for stakeholders across the healthcare sector. Lord Darzi's review, published in 2024, outlined critical recommendations for NHS reform, including enhancing patient safety, improving governance and addressing financial sustainability. However, as these recent investigations into patient harm at NHS trusts unfold, the real question becomes 'Can the existing framework for clinical negligence litigation and NHS funding can address the scale of these problems?'

The Darzi review proposed an ambitious vision for the NHS that focused on prevention, improved patient outcomes, and more transparent systems of governance. It acknowledged that, while NHS trusts are under immense pressure, a long-term approach to reform—balancing patient safety, funding and the quality of care—was crucial. Still, with investigations into care failures growing, the need for more immediate and decisive action seems increasingly urgent.

For claimant solicitors, this context is complex: on the one hand, reforms based on the Darzi review could have significant implications for improving patient safety, potentially reducing the number of negligence claims in the future. On the other hand, these claims are symptomatic of much larger systemic issues within NHS hospitals that may not be fully addressed by the review alone.

Continued on page 4 >>

>> Continued from page 3

A Tipping Point for Reform?

The unfolding investigations into clinical negligence cases at NHS trusts may well act as a tipping point for reform, but the question remains whether the government's current response to the NHS's systemic failures will go far enough. The increasing number of investigations into NHS deaths and injuries and the corresponding rise in clinical negligence claims is adding considerable weight to an already strained system.

The potential consequences of these revelations are not only about immediate public outcry and media scrutiny; they may be the catalyst for deeper reform in the way NHS funding is allocated and the way hospital management structures are reviewed. If there is a recognition that systemic issues—such as understaffing, a lack of resources and poor governance—are contributing to these failures, this could force significant changes to the NHS's operational model and its approach to clinical negligence claims.

The financial impact of clinical negligence claims on NHS budgets has been well-documented. Last year, the NHS allocated over £1.5 billion to address compensation payouts for clinical negligence claims, a figure that is expected to grow. With the increasing costs associated with these claims and the rising number of investigations into alleged malpractice, the need for a more balanced approach to both funding and risk management in the NHS has never been more apparent.

The Temple Perspective

As a leading provider of After the Event insurance for clinical negligence claims, Temple plays a vital role in supporting claimant solicitors and their clients. However, the ongoing crisis in NHS hospitals and the surge in cases may prompt broader questions and whether more needs to be done to address the root causes of these claims in the first place.

There is a delicate balance to be struck as to how claimant solicitors engage with this issue. The focus

should not only be on calling for reform but also on highlighting the critical need for patient safety improvements, hospital governance reviews and a sustainable NHS funding model.

By aligning with the broader goals of systemic change, Temple and the claimant solicitor community can play an important role in helping to making sure that future generations are better protected from preventable harm in the NHS.

Summary

While it is not for Temple to try and dictate policy, the current situation is a harsh reminder of the need for comprehensive reform to the NHS's funding and management structure. The ongoing investigations into clinical negligence claims may indeed be a tipping point, driving change in both the operational model of the NHS and the way that claimant solicitors navigate the claims process. The future may be challenging, but with careful planning the legal profession can continue to support those affected by clinical negligence while also calling for meaningful and lasting reform.

We here at Temple are committed as ever to keeping you informed about developments in topical news stories such as this. 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.

'Don't just take our word for it'

"I have relied exclusively on Temple for ATE insurance for the past 8 years. They were willing to provide cover to a firm newly commencing asbestos disease work. They recognised my previous experience with other firms and expertise in this area of practice. The product itself is excellent, providing all the cover required at reasonable premium levels. The delegated nature of the scheme allows for seamless arrangement of policies through the excellent online portal. On the few occasions a claim has been necessary under a policy, Temple have been understanding, helpful and efficient in reimbursing the cost of disbursements and court fees. I have felt throughout my involvement with Temple that it is an arrangement based on mutual trust. They have demonstrated repeatedly that they rely on the skill and knowledge of those they insure, and I have been reassured that I can rely on them if claims are not successful. Without the support of Temple I would not have been able to operate my asbestos litigation practice in the way I have."

David Cass - Asbestos Claims Lawyers

Medical Report Fee Breakdown

By Bipin Regmi, Senior Underwriter

Over the years changes have been made by way of fixed recoverable costs. This is mainly the case in low value personal injury claims with the introduction of Pre-Action Protocols for Low Value RTA and EL/PL claims since 31 July 2013. Further extension has been made to most litigation claims up to a value of £100,000 due to the implementation of the new regime under CPR 45 and PD 45 which came into effect on 1 October 2023.

One has to consider that law firms are businesses. Due to the changes and recovery of costs being more and more difficult in litigation, it is of upmost important for law firms to recover as much profit costs as possible in all cases.

Often law firms are instructed under a Conditional Fee Agreement which means they are not paid unless there is a successful resolution of the claim, which can often be years of work; and it is also not unusual for firms to fund the medical report fee with assistance from a third party such as a medical agency.

Why do law firms use medical agencies?

The simple answer is for fee deferral. It is crucial for law firms to have a profitable business and to have a good cash flow. In personal injury and clinical negligence claims, it is not unusual for law firms to front the cost of medical report fees; in high value and complex cases these fees can be six figures, due to involvement of various experts. The fee deferral by a few years or until the conclusion of a claim help firms to fund the report fees and assist with the cash flow in the business. This also assists the claimant, who is not able to pay the cost of such disbursements.

Use of medical agencies also assists firms by vetting the experts, suggesting suitable experts, contacting the experts, arranging medical appointments, vetting the medical report for compliance under the CPR, organising the file of papers for experts and co-ordination of instructions with the experts.

Medical expert reports are essential in any personal injury and clinical negligence litigation. Depending on the discipline of the expert and complexity of a claim, expert's fees can be eye watering. It is therefore important to also consider what is reasonable and proportionate in cases as it is likely that the defendant will no doubt argue the cost of such reports.

The medical report fee can itself be expensive.

The service from medical agencies comes with a cost and often they charge an uplift which is added to the expert's fee, and a fee note is provided to the solicitors, without a breakdown of the expert's fees, and their charges, but with one total invoice for the medical expert fees.

Medical agencies fees have also increased over the years. Such agencies have been reluctant to provide a breakdown and there has been little guidance from the court to enforce such a requirement. This has been a matter of dispute between the parties, and the defendant requesting the breakdown, arguing that the cost of the report fees are unreasonable and disproportionate.

Continued on page 6 >>

>> Continued from page 5

HHJ Cook in Stringer v Copley (2002) (unreported) described the activities of medical agencies as follows:

"In routine personal injury cases, where a medical report is required, it has become a common practice to instruct a medical agency to arrange a medical examination of the Claimant, to undertake the collation and obtaining of relevant medical reports, to arrange the appointment with the medical expert and the Claimant, deal with any cancellations or rearrangements, and to deliver the resultant medical report to the solicitors. Because of the specialisation, experience and expertise of the medical agency they are able to do this administrative work, at least as efficiently, expeditiously and economically as most firms of solicitors using their own fee earners."

In Copley the court ruled that the medical agency fees were recoverable, provided the charges did not exceed the reasonable costs of the work if it had been done by the solicitors.

In Northampton General Hospital NHS Trust v Hoskin [2023], HHJ Bird in the High Court decided that a breakdown of a medical agency note should be provided, and in default, the disbursement would be assessed at nil.

JXX v Archibald [2025] EWHC 69 (SCCO) provides the first binding guidance in respect of breakdown of medical agency fees.

In brief, the claimant in JXX v Archibald was involved in an RTA, sustained serious injuries and was a protected party. The claim was settled in a joint settlement meeting and was subsequently approved by the court. Detailed assessment proceedings were commenced, and the bill of costs were served. The fees that were disputed in the application amounted to £120,946.00 including VAT from a total figure for experts' fees of £253,859.96 including VAT. The disputed fees concerned expert evidence obtained from a medical agency.

The defendant requested breakdown of fees rendered by the medical expert and the medical agency. The medical agency refused to provide a breakdown and adopted the position that it is not their practice to provide breakdown of its fees, nor they are obliged to do so.

The sums in issue were significant and the issue was one which potentially affects many cases. Costs Judge Rowley concluded that the better course of action is for the claimant to choose one the following two options as to how the fees are to be assessed -

1.On the basis of the expert's evidence and the medical agency work in obtaining that evidence if the information sought by the defendant (breakdown of fees rendered by the medical expert and the medical agency) is provided.

or

2.On the hypothetical basis that there had been no medical agency involvement, and the fees claimed are solely for the expert's evidence, if no such breakdown of fees is provided.

It is likely that an uplift charged by medical agencies will be recoverable, but it is yet to be seen to what extent it will be recoverable and what would be reasonable. It is also unknown whether adverse inference will be drawn if the breakdown is not provided.

The Temple Perspective

This will be concerning for claimant solicitors, especially if they are using a medical agency unwilling to provide a breakdown of fees rendered by the medical expert and the medical agency. Depending on the agreement between the solicitors and the medical agency, the solicitors may ultimately be responsible for any unrecoverable expert fees which may ultimately result in deduction from their profit costs. Any judgment in the future in respect of recovery of medical agency fees and breakdown of fees may have an impact on a lot of cases.

It may be sensible for law firms to consider alternative disbursement funding solutions to negate any such difficulties in the future.

Good causes - Temple charity update 2025 - By Lisa Fricker

Fire and Ice Walk for Child Brain Injury Trust

Temple are delighted to be co-sponsoring a 'Fire and Ice' walk with CL Medilaw in aid of The Child Brain Injury Trust (CBIT). The event will take place in London's prestigious Olympic Park on Thursday 6th March 2025. If you would like to participate in this event you can book tickets via the following link; https://childbraininjurytrust.org.uk/events/fire-and-ice-challenge/

We will be at CBIT's 'Be You Ball - celebrating extraordinary families', at the end of March and the CBIT Games in July.

Temple 25th Anniversary Challenge - Fundraiser for Headway East London

As part of celebrations to mark our 25th Anniversary, staff embarked on a fun-filled challenge around the number 25 in aid of Headway East London - a UK-wide charity dedicated to transforming the lives of those affected by brain injury, at the end of last year.

Headway East London is a beacon of hope, providing essential support to brain injury survivors and their families. From practical assistance to emotional care, their services help individuals lead healthy, social and fulfilling lives.

Especially during these challenging times and, previously, when COVID-19 heightened vulnerability and social isolation, their commitment to delivering therapies, welfare advice and community support is more vital than ever.

Temple staff embarked on a number of challenges, including a 2.5-mile swim, 25 deliciously baked sausage rolls and even a 25 duathlon! This helped raise nearly £500 for the charity.

Learn more about their amazing work here: https://headwayeastlondon.org

'The Magic of Chaos' - a short film about Headway East London,

Temple staff were also invited to Headway East London's film premiere of The Magic of Chaos, which took place on 7th November at the Rich Mix in Shoreditch. The film highlights the impact of Acquired Brain Injuries and the work this charity does to help sufferers.

Directed by award-winning director Kit Vincent in collaboration with community of members and staff, this poignant documentary invites viewers into the magical world of Headway's Hackney Centre, a sanctuary for over 200 individuals living with Acquired Brain Injury (ABI).

Through their stories, the film focuses on the often-hidden nature of acquired brain injury; the cataclysmic effect it has on loved ones and relationships, invisible disability and creating a new 'sense of self'.

It also shows the transformative power of art, music, food and, above all, how community can bring some light to people's lives that have been changed forever by brain injury.

Whilst the film shows what a joyful place Headway East London is, it also does not shy away from the realities of living with a brain injury. Because of this, there may be scenes that some people might find distressing. If you would like to watch this film, you can do so via the following link: https://headwayeastlondon.org/magicofchaos/

To find out more about the charitable work that Temple undertakes or get involved with fundraising for these great causes, please contact Lisa Fricker on 01483 514872 or send an email to lisa.fricker@temple-legal.co.uk

Artificial Intelligence and the Real Thing - AI and ATE Underwriting

By Matthew Pascall, Legal Director

Temple, along with many other businesses, is starting to explore ways in which AI can support the work we do. I have already started to receive marketing emails promising me software that can predict the outcome of a case. Am I soon going to be out of job? Is Temple going to start saying "Computer says No!"

No.

I am no IT expert, and I am not going to pretend I understand anything about AI. It follows that there may be many things in this article which an expert would challenge. If so, please do. An open and well-informed debate about the genuine and exciting opportunities AI can offer all of us that includes a careful reflection on its potential pitfalls is to be welcomed.

For a while now access to data from the Courts Service has enabled relatively sophisticated reporting that will show patterns in the way particular cases or types of cases are handled by particular judges at trial. This merely reflects the fact that some judges can be more conservative in their approach to some cases than other judges and, as a result, they can be seen as more claimant or defendant friendly. It is also becoming possible to see that, in overall terms, some types of case seem to be more successful at trial than others.

But that merely reflects the fact that, by their very nature, some cases are more difficult to prove than others. However, a judge seen as "conservative" or "defendant friendly" will often happily find in favour of a claimant. If a fair and reasonable application of the law to the facts leads to a judgment in favour of party "A," party A wins, whether or not A is a claimant or defendant. The moral of the tale is, be careful when looking at trends and patterns.

If software was able to identify certain key features in particular cases and then look to see how other reported cases with broadly similar features were generally resolved at trial, that software might be able to give you a relatively reliable indication of the probability of success. If I have understood AI properly, it has the potential to carry out this analysis rapidly and with some degree of sophistication.

But why use artificial intelligence when you can have the real thing?

Trials involve the telling and interpretation of complicated stories. Evidence is often ambiguous. To finally resolve the matters in issue at a trial a judge must apply a set of relatively broadly based rules and often have to exercise a discretion. It is an intensely human process.

Humans are not always predictable and the judgments they make can be erratic.

- Underwriters who have studied the law and, in some cases, practiced it for many years will bring to the underwriting assessment of a case all that they have learned and, more importantly, experienced. That learning process and the acquisition of experience doesn't stop when they take-up underwriting but becomes more intensive and richer given the wide variety of cases they underwrite on a daily basis.
- Underwriters are often well-placed to see trends emerge in the approach taken by the courts to certain types of case or particular judges. Statistical analysis may well help to act as a check or reference against which to measure impressions gleaned over a period of time, but the computer assisted analysis on its own is never good enough.

Continued on page 9 >>

Continued from page 8 >>

Nonetheless, we are not going to ignore AI or the contribution it may well make in the years ahead to support (but not replace) a well-informed and experienced critical human analysis of the merits of a particular case.

AI document summarisation

This is a tool we are already assessing, and it is impressive. In very simple terms, several hundred pages of pleadings can be up-loaded onto the relevant platform and within 5 to 10 minutes a detailed summary is produced.

There is the potential for Temple to invite those who currently complete proposal forms to simply up-load the relevant correspondence and pleadings to some new Temple software, confirm that the AI generated summary is correct and then complete a much shorter proposal form. The alternative is for us to carry out the AI summary process ourselves with the documents submitted to us as they currently are by solicitors and brokers. An accurate and concise summary is very useful for underwriters. The challenge is to ensure that we do have a complete and accurate summary.

Testing, testing…

In recent testing, we uploaded the pleadings in a professional negligence "lender claim" brought against a valuer by a bank alleging that a property had been carelessly overvalued.

Most of the particulars of negligence were included within the summary but it omitted a key and highly contentious allegation (common in these claims) that the valuer had wrongly advised that the relevant property was good security for the proposed loan. Having omitted that particular allegation, the valuer's pleaded response was also committed. The pleaded allegation and response only took up a couple of lines in the Particulars of Claim and the Defence, but the omission was significant. Our concern was that the summarising software was not intelligent enough to know what could usefully and safely be omitted from a summary.

In Scottish procedure the pleadings close (as we would say in England, Wales and Northern Ireland) when the pursuer lodges and serves the closed record. The closed record is

a summary of the pleadings in a single document which concisely but accurately matches against each factual allegation by the pursuer the defender's response.

It is a hugely valuable document from an underwriter's perspective because it encapsulates the respective cases of the parties. Once AI is able to produce for the cases we see from across the whole of the UK something akin to a closed record, it will have become an extremely useful tool.

AI also has the potential to enhance the quality and speed of actuarial analysis to provide good performance and loss ratio data. That in turn can feed into better and potentially more competitive premium pricing, particularly for delegated authority schemes.

The Temple Perspective

For the foreseeable future, those submitting cases to Temple will know that whilst we may well use AI to support and enhance what we do, it will not replace the critical analysis of the relevant risk by a well-qualified and experienced human.

If we decline to provide cover, that is, if it's a no, it won't because the computer says so!

'Don't just take our word for it'

"My firm and I have worked with Temple for 20 years now. At the time we began our journey with Temple, we were a new firm and Temple were also fairly new to the market. Over that 20 years we have built an excellent relationship of trust and support. It is thanks to Temple and their collaborative, trusting and open approach to the work we do - and their willingness to take calculated risks with us - that we have managed to achieve the very best for our clients in some very tricky and challenging cases. Temple have always been ahead of the curve, they are true leaders in their field and, in our view, simply the best."

Mehmooda Duke MBE - Moosa-Duke Solicitors

'Really Quite Interesting?

What's caught our eye recently in the legal press

By Oliver White, Underwriter

NHS Trusts faces over £4m in payouts for infection claims

https://claimsmag.co.uk/2024/12/nhs-trusts-faces-over-4m-in-payouts-for-infection-claims/

This article from Claims Media discusses the results of an Investigation made by Medical Negligence Assist. This found that NHS Trusts have paid over £4.2 million in damages for healthcare-associated infection claims since 2021. In this time period, 85 claims were lodged against 76 NHS Trusts, of which 66 were successful. Approximately 300,000 people are affected by HCAIs annually, which have significant financial and human impact.

Emergency caesarean sections, birth injuries and the urgent need to improve UK maternity care

https://www.bindmans.com/news-insights/blogs/emergency-caesarean-sections-birth-injuries-and-the-urgent-need-to-improve-uk-maternity-care/

An interesting article from Bindmans discusses a report published by the Care Quality Commission in November 2024. This report suggests that there are "entrenched" problems with communication and postnatal care, which requires improvement. It emphasises the disparity in how different groups experience maternity care, with those who had an emergency caesarean birth being one example, having a poorer than average experience across nearly all the questions asked.

Emergency caesarean births increased by 2 percentage points from 21% in 2023 to 23% in 2024. This is disappointing considering the risks that such births involve. Postnatal care is also found to be lacking. Over the last five years women have reported difficulties in getting a member of staff to help them when needed, being given information or explanations when needed, and being treated with kindness or and compassion.

Birth injury cases and the resultant litigation have cost the NHS £4.1 billion over the last 11 years – nearly £373 million a year. This emphasises the need for care in this area to be improved. Recommendations and funding have been put in place by the government recently, but the report shows that more needs to be done.

Medico-legal market consolidating and growing "more strongly"

https://www.legalfutures.co.uk/latest-news/medico-legal-market-consolidating-and-growing-more-strongly

An article on a slightly different topic here, discussing trends the medico-legal market over 2024. The value of the market grew by 4% over 2024, double the growth rate of the previous year, according to estimates. The sector is also showing signs of consolidation, having traditionally been populated by many smaller companies, larger groups are increasing their share, often by acquisition. There has been an increase in PI and medical negligence claims registered in the 2023/24 year which should further drive demand upwards.

Mind the (justice) gap: Why are RTAs going up but claims still down?

https://www.legalfutures.co.uk/blog/mind-the-justice-gap-why-are-rtas-going-up-but-claims-still-down

This article from Legal Futures discusses the increasing gap between the number of RTA injuries and the number of motor injury claims. Between 2020 and 2023, RTA injuries increased by 15% but claims fell by 29%. The article argues that the most likely reason that injured parties who could claim end up not claiming is because either they don't know that they can, or they don't believe it will be worth their while. This shows a worrying trend in access to justice, and the author hopes that the government will soon address these issues.

Whiplash boost fails to impress

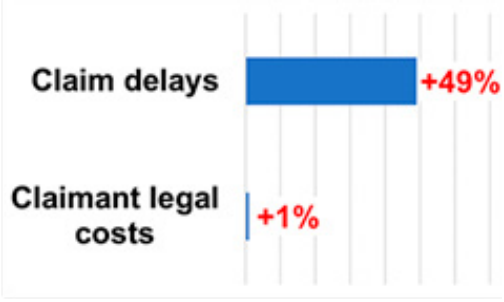
https://www.newlawjournal.co.uk/content/whiplash-boost-fails-to-impress

This article from New Law Journal explores how the 15% increase in the tariff for soft tissue injuries is too low. APIL's response to the increase is that the increase is not enough. They state that if the tariff increased in line with inflation based on the CPI the increase would be 22%, however it was based on predictions about future inflation. Kim Harrison, APIL president stated that 'The facts are that since the tariff came into effect, the number of claims has plummeted, the cost of injury claims to insurers has nosedived, and yet motor premiums have continued to rise'.

Clinical Negligence Claim Settlement Delays Reach Record High:

Delays to clinical negligence claim settlements reached a record high last year, new data obtained by APIL shows. This article was originally published in Insight, a quarterly research update for APIL members. To explore APIL membership options visit apil.org.uk/join-apil

The figures provided by NHS Resolution (NHSR shows that the average time between claim notification and settlement now stands at over two years. As a result, a typical clinical negligence claimant has to wait almost nine months longer for their claim to settle when compared to ten years ago. This is an increase of 51%.



Delays have affected claims of all values. For example, claims valued at £1,501 - £25,000 are now taking on average, almost six months longer to settle when compared to ten years ago. Claims valued at £1million - £2 million are taking over twelve months longer to settle.

These huge delays are likely to have driven increases to claimant legal costs. Indeed, NHSR themselves acknowledge that **'the longer cases run for, the higher the costs'.**

Delays have, however, far outstripped increases in costs. In clinical negligence claims valued at £1,501 - £25,000, for example, claim delays have increased by 49% over the past ten years. During the same period, average claimant legal costs for these claims were up by just 1% once inflation is taken into account.

Until NHSR finally begins to control delays, costs will remain at unnecessarily high levels and victims will have to wait longer to receive justice and support.

Temple Comment

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

'The data obtained by APIL certainly makes an interesting read. It is particularly interesting to see that such a rise in claim delays has only increased claimant legal costs by one percentage point; and that looks to be down, in part, to inflation.

How much more evidence do we need to produce to show that claimant legal costs are not the sole burden to the NHS budgets? The evidence here is stark. I am not for one minute trying to imply that legal costs are not high. They are higher than they should be, but let's not forget, those defending legal actions get paid regardless of the outcome, this surely has to be considered?

Taking those legal actions that would be affected by fixed recoverable costs, should they be introduced, they are being delayed by, on average, an extra six months.

If a claimant lawyer is capped on the fees they earn in these cases, then surely the costs applicable need to incorporate the delays we are all seeing?

The increased delays also likely mean that claimant law firms are having to shoulder outlays for longer. That would almost certainly give rise to potential cash flow issues, in turn access to justice gets delayed.'

Of 'no interest' at all

Temple can help with this situation; we have disbursement funding options operating at a 0% interest rate. The process is very simple and funds can be paid pretty instantly, meaning experts can get paid quicker and as the claimant lawyer, you know you have progressed your client's case in a timely and efficient way. If you want to know more about our disbursement funding options, please call me on 01483 514804 or drop me an email to matthew.best@temple-legal.co.uk.

ATE insurance in action: An unintended 'lock-in', bilateral compartment syndrome and emergency fasciotomies

By Morag Lewis, Senior Underwriter

The claimant had been drinking alcohol while out socialising with friends at a work function. She had begun drinking at approximately 5.30pm and continued to drink up until around 9.00pm. It was clear that the court would find that the claimant was intoxicated.

At approximately 9.30pm the claimant decided she was going to go home. Home was a 15-minute walk away and, before leaving, she went to the toilet. The toilets at the claimant's place of work were large and including a dressing area along with cubicles. There was not a clear view of the cubicle from the main door when entering the toilets.

While using the toilet the clamant 'must have passed out' as she woke at 02.30am with very little feeling in her legs, in fact they felt numb she was unable to move or call anyone due to her phone battery being empty. She was found by the cleaners at 05.30am when they began their shift.

She was immediately taken to hospital and diagnosed with bilateral compartment syndrome in both legs with required emergency fasciotomies which ultimately involved skin grafts.

A letter of claim was served alleging the defendants were in breach of their statutory duty owned pursuant of OLA 1957 the Management of Health and Safety at Work Regulations 1999 and also in breach of the common law duty of care. The allegation is that they ought to have inspected the toilets to ensure that they were empty before locking the premises.

Liability was denied

The defendant alleged that it was not their duty to check every cubicle, they would simply open the toilet door and shout to see if there is anyone still in there.

As the cubicle door was not locked, it was stated the claimant could have quite easily exited the premises via a fire door and it was only the front doors that were locked.

As risk assessment was disclosed - this assessment however didn't consider that there may have been a risk that and person may not have been able to leave the toilet.

The defendants applied to strike out the claim as per. CPR Part 4.4(2)(a) on the grounds that they disclose no reasonable grounds for bringing the claim. They were successful and the court awarded payment for the defendant's costs.

The Temple Perspective

This is an interesting and unusual case and there are many arguments as to why, knowing that there may be intoxicated people on the premises, that maybe a more detailed check should be undertaken before locking the premises.

To read more of Temple's personal injury case studies, visit https://www.temple-legal.co.uk/solicitors/personal-injury-ate/case-studies/. Find out more about ATE Insurance for personal injury claims here. To discuss your requirements please email morag.lewis@temple-legal.co.uk or call 01483 514881

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

temple
legal protection

Your trusted insurance partner

Contact us now on
01483 577877

www.temple-legal.co.uk

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

CLINICAL THINKING

Solicitor updates and insights on clinical negligence and personal injury topics

temple legal protection

Out and about: Where we're at in 2025

By John Durbin, Senior Business Development Manager

Temple started 2025 by attending a new event, the Brain Injury Group's Child Brain Injury Conference in Birmingham on 16th January. It was a great way to start the year, giving opportunity to catch up with many Temple coverholders and industry people.

As we look ahead into 2025, the next event you'll find Temple at will be the 35th AvMA Annual Clinical Negligence Conference in Bournemouth being held in March. This is a staple in our events calendar and is always a fantastic occasion. Temple will also be exhibiting at the APIL Spinal Injury Conference in May, the SCIL annual conference in June and APIL's annual clinical negligence conference in October.

As well as attending and exhibiting at these conferences, Temple will be looking to attend more industry events; we are also planning our own hospitality events across the country, where we will look to engage with as many of our clients as possible.

If you're not going to be at these conferences but would like to find out more about ATE insurance and disbursement funding for your firm and clinical negligence clients, or If you have an idea for an event or a subject and speaker you think we should hear about, please email john.durbin@temple-legal.co.uk

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.

01483 514804 | matthew.best@temple-legal.co.uk

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.

07917146290 | john.durbin@temple-legal.co.uk

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.

01483 514872 | lisa.fricker@temple-legal.co.uk

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.

01483 514808 | david.stoker@temple-legal.co.uk

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.

01483 514881 | morag.lewis@temple-legal.co.uk

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.

01483 514870 | oliver.white@temple-legal.co.uk