



The MDU agenda

Priorities for the new government

There is a full in-tray facing Steve Barclay, the new Health and Social Care Secretary. Anyone involved in the delivery of healthcare knows, there are no quick fixes to the multitude of difficulties faced – not least because of the lasting effects of the pandemic on the NHS. From concerns over NHS pay and pensions, to long term workforce planning and a sustainable plan for social care - there are no shortage of issues that healthcare professionals and patients expect to see at the top of the new Secretary of State's 'to-do list'.

However, in this paper, the MDU focuses on three key medico-legal issues for the government to address, which could help them demonstrate commitment to healthcare professionals. They are:

1. Support an exhausted workforce
2. Deliver modern healthcare professional regulation
3. Get to grips with runaway clinical negligence costs

1. Support for an exhausted workforce

All of us will be a patient at some point, and we want to be treated by a doctor who is alert and well rested. Yet sadly, an assumption remains that feeling constantly tired is the price you pay for pursuing a medical career. Recent studies show the workforce is truly running on empty.

A survey conducted by the MDU of over 530 doctors, found over a third of doctors felt sleep deprived on at least a weekly basis and over a quarter had been in a position where tiredness has impacted their ability to treat patients.¹

The GMC's latest national training survey reported that three in five trainees said they 'always' or 'often' feel worn out at the end of the working day.² And 44% feel their work is emotionally exhausting to a high/very high degree.³

The government and NHS employers need to do more to ensure there are adequate resources in place to allow fatigued doctors to take regular breaks. Small things can make a big difference. This can include having a dedicated rest space, ensuring 24-hour access to substantial food and drink facilities, and establishing robust rotas. Those holding the profession to account - regulators like the GMC, the courts and indeed employers - must also properly take the current context into account.

2. Deliver modern healthcare professional regulation

MDU members tell us that undergoing a GMC or GDC investigation is one of the most difficult experiences of their professional lives. The stress of being under scrutiny during a lengthy and potentially career-ending fitness to practise process can have a devastating impact, particularly for those who have dedicated their lives to care for others.

Part of the problem is that the GMC and GDC fitness to practise procedures are rigid and still governed largely by outdated legislation. While limited progress has been possible, such as the introduction of provisional enquires at the GMC, only a complete reset of the regulators' governing legislation can bring about a system that is truly modern, proportionate, timely and, above all, fair.

Legislation to deliver reform was promised and seemingly in grasp earlier this year. We know the Department has been working on this for some time. However, the changes that are so badly needed have now been pushed to 2024 at the earliest. This is a huge setback

The government and NHS employers need to do more to ensure there are adequate resources in place to allow fatigued doctors to take regular breaks. Small things can make a big difference.

References

¹ MDU Press release. 17 January 2022. Accessed at <https://www.themdu.com/press-centre/press-releases/sleep-deprived-doctors-concerned-about-patient-safety>

² General Medical Council (GMC). National Training Survey 2021. P.7

³ Ibid

and can only negatively affect morale at a time when the profession needs to attract and retain as many doctors as possible.

If the government is looking for a policy that can quickly demonstrate their support of the medical and dental professions, GMC and GDC reform should be delivered in this session of Parliament.

3. Get to grips with runaway clinical negligence cost

The cost of meeting future claims liabilities now stands at a staggering £128 billion for the NHS in England.⁴ Payments for settled claims during the year to April 2022 also increased to £2.5 billion.⁵ Meanwhile, the NHS is facing serious workforce issues and needs extra funds to recruit and train more healthcare staff.

It is sobering to realise that the cost of future claims liabilities are not far off the total budget for NHS England spending in 2022/23 - which is expected to be about £152.55 billion.⁶

The MDU has long championed a package of ambitious but deliverable legal reforms, which we believe could have a positive impact on costs, leaving more money in the system to benefit patients.

The reforms we are calling for, include:

- Repeal section 2(4) of the Law Reform (Personal Injuries) Act 1948. It requires the courts to disregard the existence of NHS care when determining compensation awards.
- An independent body should define the NHS health and social care packages to provide an appropriate standard of care for all patients. Compensating bodies such as the MDU and the NHS itself should be required to fund these care packages to provide the standard of care defined. This would keep more funds in the NHS.
- Tackle disproportionate legal costs. MDU figures show the average sum paid in claimants' legal costs on lower value claims continue to exceed the amount paid to claimants by two or three times. The Government needs to deliver on its promise to introduce fixed, proportionate, legal costs for cases valued up to £25,000 as soon as possible. That also should not be the end of it. We are urging the government to go further and increase the range of the fixed costs scheme to £250,000.
- Damages for loss of earnings should be limited to three times the national average salary per year.

Swift legislative action, such as this, would be a welcome step forward in addressing the unsustainable cost of clinical negligence to the taxpayer.

Healthcare is one of the most challenging policy areas in government. It is a challenge, largely because the health of the nation must surely be one of the first duties of any government.

We urge the new government to pay serious heed to the issues we have raised in this paper. Healthcare professionals care for us, and we need to ensure they are cared for in return.

If the government is looking for a policy that can quickly demonstrate their support of medical and dental professions, GMC and GDC reform should be delivered in this session of Parliament.

It is sobering to realise that the cost of future claims liabilities are not far off the total budget for the NHS.

References

⁴ NHS Resolution Annual Report and Accounts. 2021/22. P.11

⁵ Ibid. P.58

⁶ NHS confederation press release. 21 July 2022. Accessed at: <https://www.nhsconfed.org/news/nhs-leaders-facing-real-terms-cut-funding-and-impossible-choices-over-which-areas-patient-care>

