surrey and sussex lmcs

To All GP Practices in Surrey and Sussex LMCs

16 May 2017

Dear Colleagues

Personal Injury Discount Rate

Many colleagues will have read about the change to the Personal Injury Discount Rate and the implications this will have both for compensation claims following personal injury, and specifically for the on-going cost of indemnity insurance for General Practitioners. I hope this letter will provide further helpful background for colleagues.

The Personal Injury Discount Rate is used by the courts in personal injury cases when awarding compensation for future financial loses in the form of a lump sum. The discount rate was last changed in 2001, when it was set at 2.5%; as would be intuitively anticipated, but also in fact set out in the current legal guidance, claimants must be treated as risk averse investors, reflecting the fact that they may be financially dependent on this lump sum for long periods of time or indeed possibly the duration of their life.

In 2001 the Discount Rate was based on the three year average of yields of Index Linked Gilts; there have been enormous financial upheavals since then, but, after a period of consultation, the Lord Chancellor again decided the same principle should apply, that is, the Discount Rate should be based on a previous three year average of Index Linked Gilts, and as announced on 27th February 2017, the rate was to be set at minus 0.75%.

This announcement had considerable implications for many sectors of the insurance industry, but the Lord Chancellor's statement specifically mentioned the impact this change would have on the NHS Litigation Authority and on the cost increases that might be experienced by General Practitioners. NHS England had already accepted, via the GP Forward View, that the cost of indemnity insurance, borne individually by General Practitioners, was causing significant difficulties in retaining General Practitioners to work within both out-of-hours and in-hours services. As a temporary measure, NHS England has agreed to an interim two-year support scheme under which the average previous year's inflationary increase in Indemnity costs for General Practitioners will be paid, and for 2016/7 all practices received in March/April 2017 a payment of 52p per unweighted patient, costing an estimated £30 million across England.

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The Ministry of Justice also announced a consultation, now completed, to review the way in which the Discount Rate is set; this includes whether more frequent reviews of the rate would be appropriate and whether the link with Index Linked Gilts is still suitable. Although the election has now intervened it is likely this matter will be reconsidered in 2018.

The Discount Rate informs what are known as the Ogden tables; these are more formally

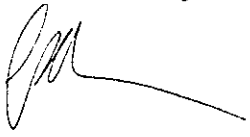
known as 'Actuarial Tables with explanatory notes for use in Personal Injury and Fatal Accident cases.' These allow a prediction of future loss based on life expectancy, loss of earnings up to various retirement ages, loss of pension and other variables. The implication of a reduced Discount Rate is that, as the anticipated return on an invested lump sum will fall, the initial compensatory payment will need to increase. Estimates vary, but for the NHS this may increase compensation costs by approximately £1 billion annually; the first case settled under the new rules saw East Lancashire Hospitals NHS Trust increase a planned award of £3.8 million to a ten year of girl with cerebral palsy rise to one of £9.3 million.

The GPC is actively discussing with the Department of Health, and NHS England, the continuing issue of GP indemnity costs and the change in the Discount Rate simply gives increased urgency to this concern: there are currently no plans to replicate the 'Clinical Negligence Scheme for Trusts' (CNST) which provides clinicians working for NHS Trusts with employment based indemnity, and, although most such doctors also belong to an Indemnity Organisation, their personal indemnity costs relating to their NHS cover are comparatively small. Equally, however, surveys of GPs and, for example, OOHs services, have demonstrated that the costs of indemnity insurance is now a real barrier to retaining the GP workforce, and are restricting the availability of GPs both in-hours and out-of-hours, including developing services such as locality hubs and 8-8 working. In the context of the overall workforce challenge, these costs are identified as a potentially avoidable obstacle; however, any solution does ultimately create a liability for the Treasury, which funds NHS litigation, and the 'free-market' element of competing leading Indemnity Organisations is seen as a policy benefit, or at least was by the out-going Administration.

Clearly any potential solutions are likely to be widely publicised before being implemented, and the LMC will update colleagues as further information is available.

With best wishes.

Yours sincerely



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