

**No-Fault Compensation for injury resulting from medical treatment:
Consultation Questions**

Question 1: What, if any, steps do you feel are necessary or appropriate to ensure that when an error has occurred, patients receive a meaningful apology?

A culture that supports recognition of error without an expectation of blame. Not an easy thing to achieve. The SPSO guidelines on apology are good, simple and clear. Perhaps their status should be enhanced.

Question 2. Do you agree that the principles and criteria set out above are essential in a compensation system?

Yes

No

2.1 Are there any to which you would attach particular priority or importance? Are there any others you would add?

Ease of access and use, affordability, proportionality, timeousness are the top priorities in my opinion.

Question 3: Do you agree that these criteria are desirable in a compensation system?

Yes

No

1. Are there any others you think are desirable and should be included?

The professions ought to trust the scheme to deliver a fair outcome also.

Question 4: Do you have views or ideas on how a compensation scheme could more effectively contribute to the wider issues identified above?

These issues are important but do not form part of a compensation scheme. The report of the investigation into the compensation claim could be made available to clinical governance committees for considering learning points. And if a potential serious concern about practice was identified, this should be passed to the relevant professional management in the organisation for consideration of formal investigative processes. The point of the no fault compensation scheme though is to compensate for harm done irrespective of individual responsibility for clinical action/inaction.

Question 5: Based on the background information on the system in operation in Sweden given in Annex A would you support the approach suggested in Recommendation 1?

Yes No

If not, why not and what alternative system would you suggest?

Question 6: Would you support the approach in Recommendation 2? This would mean for example that where treatment carries a known risk and the patient has given consent to that treatment it would not be eligible.

Possibly, Yes No

If not, why not?

This recommendation is not clearly worded, but the example given suggests it may be a reasonable approach.

If yes, what other injuries would you consider should not be eligible?

Question 7: Do you support the view that, if introduced, a no-fault scheme should cover all clinical treatment injuries (e.g. private healthcare and independent contractors) and all registered healthcare professionals and not just those directly employed by NHSScotland?

Yes

No

If not, why not?

7.1 What, if any, difficulties do you foresee in including independent contractors (such as GPs, dentist etc) and private practice?

Contractors would need to be required, contractually or statutorily, to contribute to the fund. The proposed scheme's relationship to current NHS indemnity and professionals' own indemnity arrangements is unclear.

7.2 What are your views on how a scheme could be designed to address these issues?

Not sure.

Question 8: The intention is that if introduced the no-fault system will not be retrospective. However, consideration will need to be given to when and how we could transfer to a new system and how outstanding claims could be handled if/when a no-fault system was introduced. What are your views on how outstanding claims might be handled?

Outstanding claims should continue in the current system. New claims after the new scheme begins should fall under the new scheme.

Question 9: Do you support the approach in Recommendation 5?

Yes

~~No~~

If not, why not?

9.1 What are your views on the assumption that the level of payments will be similar to those settled under the current system?

Is this how the Swedish and New Zealand systems work?

Question 10: Do you support recommendations 6 – 9 as proposed by the Review Group?

~~Yes~~

No

**Recommendations 6,8 & 9 - yes.
Recommendation 7 - no.**

If no, why not?

If a claimant opts for litigation, they should forego the right to access the no fault system, as a disincentive to seek greater recompense in the knowledge of a backup plan of the no fault system.

10.1 Do you have any concerns that the Review Group's recommendations may not be fully compatible with the European Convention of Human Rights?

~~Yes~~

No

If yes, what are your concerns?

Question 11: Do you agree with the Review Group's suggestions for improvements to the existing system?

Probably Yes

No

11.1 Do you have any comments on the proposed action in relation to these suggestions?

Question 12: Would you support the establishment of a scheme specific to neurologically impaired infants if a general no-fault scheme is not introduced?

Yes

No

I do not know.

12.1 What are your views on the Review Group's suggestion that the future care component of any compensation in such cases could be provided in the form of a guarantee of delivery of services (both medical and social care) to meet the needs of the child, instead of by way of a monetary sum?

General Comments

We would welcome any further general comments you may wish to offer here.

We are grateful for your response. Thank you.