

Medical Malpractice Predictions 2026

Increasing use of ADR set to continue in clinical negligence claims

More established forms of alternative dispute resolution (ADR), such as settlement meetings and mediation, have become increasingly common in clinical negligence claims, a trend which is set to continue given the potential costs savings involved. As ADR becomes generally more widespread, so too is it diversifying. In the clinical negligence space, we have recently seen major ADR providers start to offer early neutral evaluation and this could provide an effective and relatively low cost early intervention to resolve claims. In time, we may see further diversification, for instance with arbitration being used to provide confidential resolution of substantial claims.

Healthcare finance and other non-standard areas of law may provide fertile new ground for clinical negligence claims

The relationship between private healthcare providers and their patients can be legally complex, involving not only clinical negligence and broader healthcare law but also consumer protection and finance. An example of this was *Bailey v (1) Bijlani (2) MBNA Ltd*, where a negligence claim brought against a dentist also saw the patient making a successful recovery against her credit card provider. We can expect to see more diversity and more creativity in the types of claims that arise from healthcare negligence.

Reform expected in clinical negligence claims

The recently unveiled NHS 10 Year Health Plan is likely to see significant changes in the healthcare landscape over the coming years. As part of this, a leading barrister (David Lock KC) has been commissioned by the Department for Health and Social Care to advise on the rising cost of clinical negligence claims. Just as the government is considering clinical negligence reform, so too is the Reform party. Arron Banks recently announced their desire to bring about sweeping changes to the legal sector, including the possibility of introducing a no-fault clinical negligence scheme. What might change look like? It is possible we will see a renewed interest in fixed recoverable costs. It is also possible we will see more ambitious legislative change, particularly if the political will is there.

Fixed costs regime may be put back on the political agenda, again

In the last three years we have seen consultations by the Department of Health and Social Care to introduce a bespoke fixed recoverable costs regime for lower value clinical negligence claims up to £25,000 that was to introduce wholly different ways of conducting claims (with a 'light track' and 'standard track'). That had been expected to be introduced in October 2024, and then April 2025, but nothing more has been seen. We have since had the introduction of fixed recoverable costs to civil litigation by the Ministry of Justice, which clinical negligence claims can benefit from where admissions of liability are made and where damages do not exceed £100,000. With the costs of clinical negligence rising, and with growing political interest, we may see a renewed (and possibly new) attempt at fixed recoverable costs for lower value clinical negligence claims.

AI transcription brings risks as well as efficiencies

As anticipated, the use of AI in clinical practice continues to become more prevalent, with an increasing trend in both primary and secondary care being the use of AI-assisted medical transcription tools for transcribing patient appointments. While there are benefits to the use of this technology - active listening, better quality consultations and reduced administration time, particularly for a reducing GP workforce - its greater use does lead to the increased risk of transcription errors and associated claims for compensation from any patients coming to harm, as well as an increased risk of claims based on alleged breaches of data protection laws. Healthcare providers and insurers dealing with any such claims will need to be alive to the ongoing uncertainty as to who has responsibility, or where the accountability lies, when something goes wrong with AI products generally. Given this uncertainty, it is entirely possible that certain jurisdictions will seriously consider the merits of a strict liability regime to deal with claims arising from AI errors. Indeed, this is already happening; in the European Union, for example, the new Product Liability Directive that came into force in December 2024 is a strict liability regime enabling consumers to pursue a claim where a defect in a product has caused personal injury or property damage. The scope of this directive is now wider in scope than previously and specifically includes software and AI.



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