

## 25 Years at the Leading Edge of Legal Expenses Insurance

Watch our timeline video



Welcome to the latest edition of our 'Clinical Thinking'. In this issue we consider the practicalities of a clinical negligence 'No Fault Compensation Scheme', then there is an update on the unsurprising news of more FRC delays and share a few thoughts on how the new government's may address the clinical negligence claims sector. There also a report from our 25th Anniversary Party in the City of London - and lots more. Enjoy reading our views; if you'd like to share yours, please get in touch with our team - contact details are on page 10.



### A CLINICAL NEGLIGENCE NO FAULT COMPENSATION SCHEME

Attractive at first glance, but how might this be implemented - if at all? We take a closer look - [Page 2](#)



### N. IRELAND UPDATE - AN OVERWHELMINGLY POSITIVE RECEPTION

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### EXPECT THE EXPECTED: MORE FRC DELAYS

What are the implications? We look at the current situation and likely further delays to come - [Page 4](#)



### THE NEW GOVERNMENT AND CLINICAL NEGLIGENCE CLAIMS

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### QUEEN ELIZABETH'S FOUNDATION FOR DISABLED PEOPLE

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### A 25TH ANNIVERSARY PARTY IN THE HEART OF THE CITY

At the end of June, we celebrated our past achievements and look forward to a bright future - [Page 8](#)



## No Fault Compensation Schemes - more questions than answers?

By Konrad Honour-Matulewicz, Technical Underwriting Manager

*A recurring theme for politicians is the introduction of a no-fault compensation scheme for clinical negligence cases. Its appeal often relies on the experience of other jurisdictions that have introduced such systems, such as Sweden and New Zealand. Whilst it may be attractive at first glance, the devil lies in details as to how this might be implemented here.*

In April 2024, Jeremy Hunt MP again called for the adoption of “a no-blame compensation scheme for medical errors”. The reality of what this means is that there should be a no-fault liability system in which the claimant must show the medical error was a causative factor in the resultant injury, irrespective of who is to blame i.e. proof of causation rather than proof of fault<sup>(1)</sup>.

A no-fault compensation scheme (NFCS) seeks to prevent costly litigation by limiting the number of cases reaching the courts and making the claim process more straightforward. A laudable aim, but an NFCS’s requirement of proof of causation will always be the most complicated part of any case.

### That raises the first set of questions -

Who will be appointing the experts instructed for preparing causation reports - the government, the insurance companies...? Will the claimant have the right to appoint their own experts? Who will be paying for their costs? Will the injured claimant have to bear the costs of their own expert’s evidence?

In many cases the breach of duty is relatively straightforward to prove by a lawyer. However it is causation that requires opinion from a medical expert. As each individual expert has their own view on causation this will, in turn, require the judge’s determination.

### The next set of questions then, coming right up -

if the claim is successful at this stage, who will be making a final determination in the light of conflicting medical evidence from the appointed panel barristers/solicitors - other panel medical experts in the same speciality as the negligence alleged? Will the findings be determined in public or in private - and only on the basis of the papers presented?

Then there is a further set of questions with regards to the right to appeal. Would the permission to appeal be needed first without a right to appeal by default? Who will then determine the appeal outcome - a court judge or other panel members?

### Reduced transparency, greater stress

Again, causation would still need to be proven by the claimant. There is a risk that the process will be much less transparent where a decision is made “behind closed doors”; one without the opportunity to argue the case on behalf of the claimant.

It is doubtful that a NFCS will lower the stress levels of an injured claimant looking to proceed with their claim. In fact, less transparency might only increase the levels of anxiety.

### The experience of other jurisdictions:

In Sweden<sup>(2)</sup>, the Patient Insurance Association deals with the claims of uninsured providers of legal services. Their other role is to run the Patient Claims Panel, which gives an opinion (advisory only) regarding compensation.

The panel consists of members appointed by the government (“...specialist in personal injury adjustment”) and experts appointed by the Patient Insurance Association. As the panel’s opinion is only advisory, there is no obligation for an insurer to accept it and the court route remains simultaneously available for claimants.

Therefore, it is a myth that Sweden has a fully no-fault compensation system for clinical negligence cases. This is because there is a parallel court system available with a wider scope of cases falling within its remit under their general tort rules - as opposed to cases falling into the Patient Claims Panel jurisdiction under the country’s Patient Injury Act.

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In New Zealand<sup>(3)</sup> causation still needs to be proven but their process seems to be relatively quick. Claims being submitted by any doctor on behalf of an injured patient are subject to a neutral expert's determination on satisfying eligibility criteria.

There is provision on external expert's opinion for complicated cases and a claimant's right to appeal to the court. It is of note that the compensation awarded there is, on average, 5% of the average value of a clinical negligence claim in the United States.

In conclusion, although both systems have benefits for patients, it has been accepted in both countries that patients should have the right to legal recourse at court.

### The Temple Perspective

Temple welcomes the aim of seeking to improve the ADR process for injured clinical negligence claimants with quicker and accurate levels of settlement and without the redress to the Court.

But in practice we believe that a clinical negligence NFCS would not work and fully share the concerns if such a system were implemented. This is because there would be no benefit for the already injured patient as the onus is still on them to prove causation, probably with limited/if any, medico-legal advice support.

### References

- (1) "No-fault compensation systems", William J Gaine, BMJ. 2003 May 10; 326(7397):pages 997-998.
- (2) "Liability for medical injuries in Sweden", Sabina Hellborg, Dans Journal du Droit de la Santé et de l'Assurance - Maladie (JDSAM) 2019/2, (N° 23), pages 72-76
- (3) "Lessons from New Zealand: The "no-fault" alternative to medical malpractice, J. Robin, Annals of Health Law, 2012

### How we can help?

Here at Temple, we are always keen to hear your views and share experiences to help our coverholders and partners with their clinical negligence enquiries. Please call Konrad Honour-Matulewicz on [01483 514815](tel:01483514815) or email [konrad.honour@temple-legal.co.uk](mailto:konrad.honour@temple-legal.co.uk) with your observations on this topic or to discuss your ATE insurance requirements.



## Northern Ireland update: an overwhelmingly positive reception.

By Fraser Barnstaple, Senior Underwriter

*In May, we returned to Northern Ireland to share our new ATE and disbursement funding offering and were delighted it received such a positive reception. Read on to see what happened.*

We were proud to have the opportunity sponsoring the Belfast Solicitors Association's Litigation CPD Seminar, during which we enjoyed insightful talks from David Sharpe KC and His Honour Judge Philip Gilpin.

It was fascinating to hear David's observations on the recent Supreme Court decision in Paul v Wolverhampton, one of four Supreme Court cases Temple has insured in the last 12 months. After this, our very own Matthew Pascall gave an ATE Insurance introduction to attendees, outlining how our ATE insurance is designed to operate in Northern Ireland.

No trip to Northern Ireland would be complete without catching up with our valued business partners across the Province over coffee and the occasional Guinness. Building relationships with new firms continues at a pace as we expand our presence there.

Following a previous visit at the end of last year, we have spent time reviewing and refining our ATE cover for the Northern Ireland market. This included discussions with local solicitors familiar with our ATE products and who have already insured clients with us.

For more information on our Northern Ireland ATE insurance and disbursement funding, please contact our new Northern Ireland co-ordinating underwriter, Oliver White by calling [01483 514870](tel:01483514870) or emailing [oliver.white@temple-legal.co.uk](mailto:oliver.white@temple-legal.co.uk).



## Expect the expected: more Fixed Recoverable Costs delays

By Fraser Barnstaple, Senior Underwriter

*It would hardly come as a surprise to most that the introduction of fixed recoverable costs to low value clinical negligence claims is likely to be delayed further. However, that is where we find ourselves. Below we look at the current situation and consider likely further delays to come.*

### Where are we now?

Most in the industry will know by now that the introduction of fixed recoverable costs (FRCs) for clinical negligence claims valued at less than £25,000 has been planned for some time. It was initially scheduled to be implemented in April 2024, with this being pushed back a further six months to October 2024 after announcements in May that more time was needed to prepare and scrutinise the proposals.

### What can we expect?

It now transpires that the proposals are likely to be delayed even further, beyond October 2024. Lord Justice Birss noted in a meeting of The Civil Procedure Rules Committee that there were fundamental issues in relation to the proposals as they currently exist, which require more than minor adjustments to remedy.

Whilst simultaneously noting that progress had been made in relation to the drafting, Lord Justice Birss made a point of alerting the committee that, should the summer practice direction update be missed, the changes would not be able to be implemented until April 2025. The issues which appear to remain make the latter a more likely eventuality.

To add further uncertainty to an already foggy situation, political changes may also have a part to play. With a new government having been elected very recently, the profession can only hold its breath to see whether the changes happen or whether they are heading for the legislative long grass.

### Wishful thinking?

To hope the proposals are scrapped in their entirety would be wishful thinking on the part of a FRC opponent. The general feeling amongst the wider profession is that the election could simply see the proposals be delayed further. When considering the comments of Lord Justice Birss, this would seem very likely.

Although further delay will be frustrating for many, a cautious approach would be preferable, rather than trying to rush through a FRC regime that is not quite ready, leading to potential retrospective revisions, which we have seen previously for other FRC regime changes.

It would be inaccurate to say the proposals have been free from substantial criticism and scrutiny, with some prominent industry organisations such as SCIL advocating the proposals are 'fundamentally flawed'. Whilst steering clear of the debate exploring the merits and flaws of those proposals, it comes as no surprise that the proposals are likely to be further delayed.

### Moving forward together

At Temple, we are always happy to share our long experience to help our coverholders and partners with their costs queries, including those to do with FRCs. Furthermore, we host webinars for our coverholders and partners in relation to the FRC regime changes. Recordings of these can be found on our [website](#).

Please contact Fraser Barnstaple via email at [fraser.barnstaple@temple-legal.co.uk](mailto:fraser.barnstaple@temple-legal.co.uk) with your observations on this topic or to discuss your ATE insurance requirements.

## The New UK Labour Government: Implications for Clinical Negligence Claims

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

*In the spirit of a new government and in the interests of full disclosure - this article includes some AI-generated research content. Specifically we asked Chat GPT to 'Prepare an article for a newsletter aimed at UK clinical negligence solicitors on the impact of the new UK Labour government on legislation and regulation of clinical negligence claims in relation to costs of litigation, mediation, no fault compensation and other topical issues.' We then reviewed the content, obviously checking it for accuracy and consistency with our previous views, but were able to widen the scope slightly in what we've commented on below.*

With the recent Labour General Election victory, clinical negligence solicitors may need to be ready for a changing landscape of legislation and regulation. Could the new government's policies significantly impact clinical negligence claims, particularly concerning litigation costs, mediation, no-fault compensation and other topical issues?

The observations below are not ones we here at Temple necessarily agree with - more sharing a few thoughts and questions as to what may happen under the new administration and encouraging debate on some new topics that may impact the claimant clinical negligence community.

### Costs of Litigation

- One of the most anticipated shifts under the Labour government is the approach to litigation costs. Historically, Labour has advocated for greater access to justice, which includes addressing the financial barriers that impede individuals from pursuing legitimate claims.
- Can we expect further reforms aimed at reducing the costs of litigation, measures that could 'level the playing field', allowing more claimants to seek redress without the fear of prohibitive expenses?
- What might happen with fixed recoverable costs? That subject is covered in more detail in the 'Expect the expected: more Fixed Recoverable Costs delays' article on page 4.
- Could this also mean more stringent cost control measures and greater scrutiny of solicitors' fees, impacting how firms manage their billing and case financing?



### Mediation and Alternative Dispute Resolution (ADR)

- Labour's inclination towards more amicable and cost-effective dispute resolutions will likely bolster the role of mediation and ADR in clinical negligence cases. Could the new government be expected to further encourage the resolution process to also help reduce the burden on courts?
- Solicitors should prepare for a regulatory environment that further prioritises mediation before allowing cases to proceed to court. This shift would necessitate that firms invest in training for mediation and negotiation skills to remain competitive and effective advocates for their clients.
- Temple has been a long-time advocate of mediation for clinical negligence claims.

### No-Fault Compensation Schemes

- A significant area of interest under the Labour administration is the potential introduction of a no-fault compensation scheme for medical injuries. This system, already in place in countries like Sweden and New Zealand, compensates patients for medical mishaps without requiring proof of negligence. You can read more about this topic in the article 'No Fault Compensation Schemes - more questions than answers?' on page 2.
- While this approach could simplify the claims process and ensure quicker compensation for victims, it also raises concerns about the adequacy of compensation and the accountability of healthcare providers. For solicitors, could this change see a drastic reduction in traditional negligence claims, compelling a shift towards advisory roles or advocacy within the framework of the new scheme?

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## Regulatory Changes and Professional Conduct

- Labour's broader regulatory stance suggests a likely increase in oversight and regulation across various sectors, including legal services. Might clinical negligence solicitors see tighter regulations regarding professional conduct and increased transparency requirements?
- The Solicitors Regulation Authority (SRA) may introduce new guidelines to ensure higher standards of practice, which could include mandatory reporting of certain types of claims or more rigorous auditing processes.

## Focus on Patient Safety and Prevention

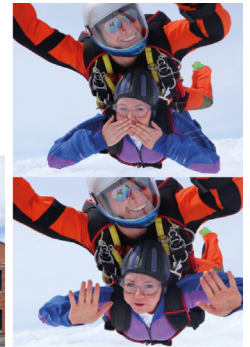
- It might not be a surprise if the new government is expected to emphasise preventive measures in healthcare to reduce the incidence of medical errors. This approach might lead to collaborative initiatives between legal professionals and healthcare providers aimed at improving patient safety standards.

## The Temple Perspective

In due course, the new government's policies could well see a transformative period for clinical negligence solicitors. The anticipated legislative and regulatory changes could significantly impact some already well-known topics - costs, the use of mediation and the potential implementation of no-fault compensation schemes being just three.

### But what might any others actually be?

With that in mind, it will be important to stay informed, adaptable and prepared for the challenges these changes will bring. Here at Temple we are committed as ever to keeping you informed on these developments. Please call Matthew Best on 01483 514804 or email [matthew.best@temple-legal.co.uk](mailto:matthew.best@temple-legal.co.uk) with your observations on this topic or to discuss your ATE insurance requirements.



## Queen Elizabeth's Foundation for Disabled People: New Legal Information Service

By Chris Crooker from the Queen Elizabeth's Foundation

*Our long-term charity partner, QEF provides a range of expert services that enable disabled children and adults to achieve their potential and live their lives as independently as possible.*

Some of their services include expert neuro rehabilitation and nursing care to help regain core skills following an acquired neurological disability or complex neurological illness. This includes driving assessments, mobility advice and driving lessons to support disabled people and those with age-related impairments. There is also disability awareness training for organisations plus practical support and advice for disabled people considering flight.

This year QEF, in conjunction with a handful of selected legal service providers, has developed a Legal Information Service which will enable all QEF clients, as well as their family and friends, access to specialist advice, information and guidance.

QEF wants to enable information access to all. This could include clients pursuing a claim for welfare benefits or compensation, to those seeking an understanding employment rights or post brain injury clients needing help navigating complex legal, financial and welfare issues.

### QEF are looking for specialist solicitors to join their directory to facilitate with this.

In addition, QEF would like to speak to potential referrers, case managers and specialists in personal injury and medical negligence so that we can discuss our work further with you.

For more information about our expert neuro rehabilitation: <https://www.qef.org.uk/service/crc/>

For more information about our mobility services: <https://www.qef.org.uk/service/mobility/>

If you would like more information on any of the above, please contact Partnerships Manager, Chris Crooker on [chris.crooker@qef.org.uk](mailto:chris.crooker@qef.org.uk) or call her on 01372 841 171.



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## A Celebration in the Heart of the City: Temple Legal Protection's 25th Anniversary Party

By Laurence Pipkin, Managing Director

*We were thrilled recently to celebrate a momentous occasion in our company's history. To commemorate our 25th anniversary, a splendid garden party was held at Middle Temple, bringing together friends and colleagues from across the legal services community. It was a privilege to host the event in such beautiful surroundings, right in the heart of the City of London.*

**The celebration was more than just an anniversary; it was a return to our roots.**

Back in 1999, our founder, Chris Wait, found inspiration for the company's name during a visit to Temple Tube Station. Although our base has been in Guildford, Surrey, for the past 25 years, and we have expanded our operations to Bristol and Dublin, it felt fitting to celebrate where it all began.

Reaching a quarter of a century in business is a milestone we are immensely proud of. The legal and insurance marketplaces have seen significant changes over the years, and these have presented daily challenges that require agility, creativity, and a constant commitment to our clients.

Listening to our customers and striving for excellence has always been at the core of our operations.

Chris Wait, who founded Temple Legal Protection 25 years ago, understood these principles well. He, along with his wife Joanne, grew the company with an entrepreneurial spirit and steadfast leadership. Chris, who passed away in late 2022, continues to inspire us with his vision and dedication. Many of you remember Chris for his dynamic presence and unwavering commitment to our clients.

**We celebrated our past achievements and look forward to a bright future.**

A particular source of inspiration for us is a picture in our boardroom. It depicts Muhammad Ali, then known as Cassius Clay, fighting Sonny Liston in a legendary title fight. The caption reads "Callery v Gray," referencing a landmark case involving the recovery of ATE insurance premiums that Temple supported to the Court of Appeal. This image symbolises the underdog spirit and the surprising victories that hard work and innovation can achieve.

At Temple Legal Protection, we have always focused on the long term, aiming to earn and maintain our customer's trust as their legal expenses insurance partner.

As Muhammad Ali said, "A person who views the world the same at fifty as they did at twenty has wasted thirty years of their life." We are committed to continuing our journey of learning, innovating, and delivering exceptional service to you for many years to come.

Thank you for being a part of our journey.

[Click here](#) to read about 'Temple Legal Protection - 25 Years at the Leading Edge of Legal Expenses Insurance' and watch a special timeline video.



## 'Don't just take our word for it'



As part of our 25th anniversary celebrations we've been in touch with some of our longstanding coverholders to find out what we do that keeps them with Temple.

In a video interview about her experience of working with Temple for over 20 years, Gillian Gadsby, Managing Partner at Gadsby Wicks Solicitors, shared her experience during that time with Matthew Best, Temple's Director - ATE Partnerships and Head of Personal Injury & Clinical Negligence. The interview can be seen [here](#). Below is an extract from the video.

*"I've been working with Temple for more than 20 years and have to say the experience has been an entirely positive one. When CFAs were introduced, we saw that as an opportunity to really give access to justice to all of our clients.*

*I think the products that Temple worked with us to produce enabled us to do exactly that because we couldn't have provided what we do for our clients without the support of the ATE insurance. What's unique about Temple is their willingness to consider various options of things that work best for firms who are specialist and who know what they are doing."*

In addition we also heard recently from Kevin Liddy, Managing Director and owner of Liddy's solicitors, who got in touch to share his views as well.

*"I am writing to express my gratitude for Temple agreeing to cover this claim which was brought out of time. We had already advised you that limitation had expired 20 years previously and most insurance companies would have refused to cover this claim. We are grateful for your constructive engagement with our applications for insurance cover, and as a result will continue for the foreseeable future to insure all of our cases through your company."*

With particular thanks to Gillian for taking the time to share her views and to Kevin for his kind words. Read more about what our clients think [here](#).



## Really quite interesting? What's caught our eye

By Sukhbir Kaur, Underwriter

### 1) Safety at work responsibilities

<https://www.vvw.co.uk/news-and-events/blog/personal-injury-law/unsafe-methods-of-work>

This interesting article discusses safety at work and how it's not just the employer's responsibility but extends to others overseeing tasks in the workplace.

### 2) Fundamental dishonesty

<https://ropewalk.co.uk/blog/substantial-injustice-in-claims-involving-fundamental-dishonesty-and-the-decision-in-williams-henry-v-associated-british-ports-holdings-ltd/>

This article provides a reminder of key law concerning fundamental dishonesty, stemming from the High Court handing down its decision in Williams-Henry v Associated British Ports Holdings Ltd [2024] EWHC 806 (KB).

### 3) Disability in serious injury litigation

<https://www.exchangechambers.co.uk/defining-disability-in-serious-injury-litigation/>

The definition of disability in serious injury litigation is considered here in relation to the Ogden calculations. The recent example of Barry v. Ministry of Defence is discussed in this article.

### 4) Beauty-based injury claim

<https://www.legalfutures.co.uk/features/the-rise-of-beauty-based-injury-claims>

This article explores the factors that contributed to the rise of beauty-based injury claim in the highly popular but unregulated industry.

# CLINICAL THINKING

Solicitor updates and insights on clinical negligence and personal injury topics

temple  
legal protection

## Which types of clinical negligence do Temple Legal Protection cover?



We can provide ATE cover for all types of clinical negligence claims, including surgical negligence, pregnancy and birth injury claims, prescription and medication errors, cosmetic surgery negligence, dental negligence and opticians' negligence.

Click on the links below for in-depth ATE insurance information for clinical negligence litigators.

- Pregnancy and birth injury cases.  
[Read more](#)
- Cauda Equina Syndrome (CES) cases.  
[Read more](#)
- Delayed diagnosis / misdiagnosis cases.  
[Read more](#)
- Surgical negligence cases.  
[Read more](#)
- Prescription and medication.  
[Read more](#)
- Optician's negligence claims.  
[Read more](#)
- Dental negligence cases.  
[Read more](#)
- Cosmetic surgery claims.  
[Read more](#)
- Nursing care and care home claims.  
[Read more](#)
- Wrongful birth cases.  
[Read more](#)

## 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.



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### 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.



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### 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.



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### 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.



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### Konrad Honour-Matulewicz | Technical Underwriting Manager

Konrad has a degree in Law from the University of Gdansk. He is a qualified advocate and qualified solicitor for England and Wales who has worked for numerous law firms and insurers in the UK for over a decade. Konrad's insurance background and proven track record as a litigator allows him to provide Temple's customers with the highest level of service and support.



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### Morag Lewis | 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.



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