

National Health Service Legal Authority

ANNUAL REPORT 2015-16 (excerpt)

Chair

A number of new initiatives are already well advanced, such as our plans to make more use of claims mediation following a successful pilot last year.

Chief Exec

We were pleased to be able to work collaboratively with a number of claimant firms together with trusts throughout the year to deliver a mediation initiative and encourage and promote mediation as a way of resolving disputes without going to court. The participation of clinicians and patients alike in this process received positive feedback from all involved and we are looking forward to increasing mediation in the health sector in the coming year.

In the past year we also piloted a new mediation service. Focusing specifically on fatal and elderly care claims, the pilot sought to determine how we can increase the take up of mediation by claimants and their legal advisers in all claims. The pilot was evaluated positively and in the coming year will extend and expand the service as a result. We hope that this will increase the number of disputes resolved without going to court. In a sample of 47 cases where mediation was completed, 81% were settled without the need for a potentially costly and upsetting court case.

Mediation

Mediation is an excellent forum for dispute resolution, for providing injured patients and their families with face to face explanations and apologies, and for curtailing legal costs. The NHS LA supports and encourages mediation on all suitable cases. We have undertaken a significant number of mediations throughout our 20 year history, often in high profile cases and group actions to good effect.

On 31 July 2014 we launched a mediation service as a pilot and the last mediation in the scheme was completed in March 2016. The pilot supplemented the NHS LA's ongoing drive across all claims to encourage mediation and so the figures below do not represent the full extent of mediation undertaken during the year. The pilot targeted all suitable cases notified to our Members involving a fatality or elderly care.

The service provided access to an independent and accredited mediator, selected from a panel drawn from a wide range of backgrounds.

Offers of mediation were made in 91 cases: 49 cases were accepted into the pilot; 1 case was settled before mediation; 1 case was withdrawn; and 47 mediations were undertaken.

The objective of the pilot was to test the usefulness of the mediation process and how it could be employed to greater effect for claims resolution. Throughout the pilot feedback was obtained from the participants and the comments were very positive. Of the completed mediations 81% were settled, with 61% of the settlements achieved on the day of the mediation and a further 20% a short time thereafter, which we consider a success.

It is our experience of the cases we have mediated both under the pilot and throughout our history that mediation is a powerful forum, giving the injured person the opportunity and the 'voice' to articulate the basis of their case and other related concerns which is not possible at a meeting with just lawyers. It is also a good setting to explain why a legal liability has not been established to justify a financial payment.

Our experience of mediation has shown its invaluable benefits and we are now undertaking work to establish a permanent NHS LA mediation service. This will involve a formal procurement exercise inviting tenders from organisations and individuals to join a panel.

Participants' comments on the mediation pilot

"[The mediator] was easily contactable by email before the mediation. On the day [the mediator] was very approachable and worked with both parties to achieve a settlement."

"Difficult and sensitive case. Mediation allowed expression of feelings and issues to be dealt with in a way not as easy in a round table meeting."

"It was a very useful process and achieved settlement before a three day trial."

"A settlement was achieved at the mediation and we believe that the process assisted in achieving the desired outcome."

"The private consultations were useful and it also proved to be a useful strategy to confidentially let the mediator know the limit of our authority so that he could provide a neutral perspective as to whether a settlement was likely."

"We found the mediator to be very helpful. [The mediator] explained the process of mediation very clearly, and worked with the parties to attempt to narrow the issues. [The mediator] facilitated discussion as a third party and enabled us to quickly resolve the outstanding points and achieve an agreement which, although not concluded on the day, was finalised shortly thereafter."