

# 50 Predictions: Medical Malpractice

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## Expect causation disputes and greater interplay with multiple co-defendants

2016 has already seen a raft of significant cases on causation. This is always an important area for disputes in medical malpractice and will continue to feature heavily as parties grapple with the various inferences drawn by the judiciary when assessing causation, often on a fact-sensitive basis. The advent of Qualified One-way Cost Shifting will continue the trend of claimants including multiple healthcare defendants in litigation, which will make causation more complicated. The trend of multiple defendants highlights the need for early evaluations of causation, apportionment and vicarious liability, so that insureds unnecessarily included in proceedings give themselves the best opportunity of being extricated on good terms.

## Fixed costs in medical malpractice will be introduced

The government shows no sign of abandoning plans to implement fixed costs for clinical negligence claims. A public consultation is still to be carried out, but it is expected that a scheme limited to damages up to a specified value will be introduced in the next 12 months. If implemented, insurers should welcome the certainty of predictable and fixed costs. However, if claimant solicitors use the introduction of fixed costs to abandon their triage of meritorious claims, we may expect an increase in notifications and claims overall (including those without merit), and/or an increase in claims brought by litigants in person.

## Increased claims in the wake of greater co-operation between coroners and regulators

The Care Quality Commission (CQC) and the Coroners' Society have introduced a Memorandum of Understanding which points to the potential for greater co-ordination between regulators and coroners. There will be a greater exchange of information and an onus on coroners to notify the CQC as early as possible when they have concerns about a patient's care or treatment. In effect, there will be an earlier possible trigger point for either inspection of or regulatory action against insured healthcare providers, and an increased potential for regulators to become involved in inquests. Insurers should therefore consider the scope of defence costs for regulatory proceedings and inquests in their wordings, and brace themselves for a potential increase in notifications (and at an earlier stage) while this process beds in.

## Key developments in 2015/16

- [Insurance Act 2015](#)
- [Knauer v Ministry of Justice](#)
- [Williams v The Bermuda Hospitals Board/Sido John v Central Manchester & Manchester Children's University Hospitals NHS Foundation Trust](#)
- [Procedure](#)

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