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*TRANSCRIPT OF "FILE ON 4" – "NO WIN NO FEE"*

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*PRODUCER: Paul Grant*

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THE ATTACHED TRANSCRIPT WAS TYPED FROM A RECORDING AND NOT COPIED FROM AN ORIGINAL SCRIPT. BECAUSE OF THE RISK OF MISHEARING AND THE DIFFICULTY IN SOME CASES OF IDENTIFYING INDIVIDUAL SPEAKERS, THE BBC CANNOT VOUCH FOR ITS COMPLETE ACCURACY.

“FILE ON 4”

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#### EXTRACT FROM ADVERTISEMENT

PRESENTER: Call for instant free claims advice and our compensation experts will tell you within minutes if you could make a claim.

O’REILLY: No win no fee law is a big and growing industry.

PRESENTER: It’s no win no fee and you keep 100% as we recover all costs from the other side.

O’REILLY: For many people it’s probably their only way of getting access to justice, and more and more patients are bringing claims against the NHS in this way. But the soaring cost of settling claims and even the bills from the lawyers is taking away money which would otherwise be spent on patient care.

How do you feel when you see a bill for £720 because a train was delayed?

SAYERS: It makes me very cross and I imagine that anyone in the NHS seeing that would also be extremely cross when you hear about nurses going to cupboards and not having bandages.

O'REILLY: But lawyers say its wrong to blame them for a system the Government imposed.

LEVY: The whole kind of notion that medical negligence lawyers are in it to milk the NHS dry is absolutely ludicrous.

O'REILLY: Tonight we examine the cost of no win no fee legal claims against the NHS. Why are some lawyers able to earn £800 an hour – in many cases getting more in costs than patients receive in compensation. And we reveal details of one of the biggest bills the NHS has faced.

## SIGNATURE TUNE

## ACTUALITY WITH PHOTOGRAPHS

LAWRENCE: I'm looking at a picture of my husband and myself on our wedding day. Just a really happy, contented, average couple. You only had to meet him the once and you were like, yes, he's a nice bloke, I really liked him. Everybody loved him. There wasn't anything not to like.

O'REILLY: Audrey Lawrence pores over pictures of what she describes as the happiest day of her life, when she married Mark, her partner of eight years. But in a matter of months Mark was taken ill.

LAWRENCE: He developed a small blood clot which broke off from wherever it was and went into his lung and he spent about three weeks in hospital.

O'REILLY: Mark was treated at the Mayday Hospital in Croydon, where he was put on the blood-thinning drug, Warfarin. It appeared to work and his condition gradually improved, so doctors decided to wean him off the drug. But it wasn't long before another clot appeared, this time in his calf muscle, and he went back to the hospital.

LAWRENCE: For about two weeks in a row he went back. They saw the clot in his leg, said it's there, we see it, we'll check it again next week, but nobody took the

LAWRENCE cont:                    initiative of thinking, we've taken this chap off this particular drug and the minute we take him off the blood-thinning drug he's got another clot, we really should put him back on it, which would be the kind of practical thing to do.

O'REILLY:                            Audrey believed her husband was getting the best possible care, she was expecting him to make a full recovery. But then early one morning he collapsed in their bedroom and was rushed to hospital.

LAWRENCE:                         We got to the hospital, there were nurses and everybody waiting, and I was just sort of screaming just to help him, them to help him and they just disappeared in a room with him. And just as Mark's brother and cousin arrived at the hospital, the doctor sort of said to me, 'We're really sorry, he died.' And we were just all devastated and we have never recovered and I don't think we fully ever will.

O'REILLY:                            How long had you been married at that point?

LAWRENCE:                         At that point we'd been married for a little under eleven months. I spent my first wedding anniversary sitting in a cemetery.

O'REILLY:                            The clot in Mark's calf muscle had broken away and caused him to have a heart attack. Audrey began to question what went wrong.

LAWRENCE:                         We started making various enquiries. People kept on saying, this isn't right, why was he not kept on the Warfarin, why was he not at least given aspirin, why did this not happen?

O'REILLY:                            At what point did you decide to see a solicitor?

LAWRENCE:                         About a year later that I decided that no, there was too many questions to be answered. The health authority came back and said, we believe there is no case to answer here, no offers of settlement, no apology, nothing. They just said, no, we deny it all.

O'REILLY: Audrey decided to sue on a no win no fee basis. The system of no win no fee, also known as Conditional Fee Arrangements, was introduced ten years ago, when the Government tightened the restrictions on funding clinical negligence cases through Legal Aid, which now means only children and the very poor are eligible to claim it. Audrey, who's a commercial lawyer, does have money, but not enough to shoulder the huge expense of losing a case. No win no fee solicitors take on all of the risk of a bringing a claim, so win, lose or draw, their clients don't have to pay a penny. Would you have been able to proceed without a conditional fee arrangement or no win no fee?

LAWRENCE: Certainly not, and the irony is that being a litigator myself, I know how much litigation costs can be and how much obviously legal costs can be incurred and how much time can be spent, and to be honest, no. I am aware that clinical negligence can go on for years and certainly my pockets weren't that deep.

O'REILLY: After a two year fight, the Mayday Healthcare Trust admitted liability. They have publicly apologised to Audrey for any shortcomings in the care of her husband, but they say they are unable to comment further on the case as it is still a legal matter. Although, according to NHS figures, 850,000 patients suffer what experts call 'adverse events' every year, only 6,000 of those bring clinical negligence claims. Half of those will involve no win no fee solicitors. This year, in England alone, the NHS has put aside a record £787 million to cover costs and compensation, and Steve Walker, Chief Executive of the NHS Litigation Authority, is becoming increasingly alarmed at the bills he's facing.

WALKER: Costs have begun to increase at an accelerating rate because of a gradual shift towards what are called conditional fee arrangements. It's becoming more profitable for claimant lawyers to bring successful claims against the NHS. The present system allows claimant solicitors to run up significant bills. There is too great a drain on public resources. There's only one source of money for the National Health Service, and the money that's paid by way of contributions so that we can pay claims is money which would otherwise have been spent on patient care.

O'REILLY: But if you talk to the lawyers, they'll say it's all about justice – not about money.

#### ACTUALITY IN MEETING

LEVY: All right, everybody, I want to go on in a bit to talk about the circumstances in which we might want to go and take statements from treating doctors or staff of offenders, but before we do that, can we just have an update on ....

O'REILLY: Russell Levy of the London law firm, Leigh Day, is one of the most successful medical litigators in the country. He fights cases on a no win no fee basis. In the last financial year his firm earned just under £5 million by taking on the NHS.

LEVY: We have incredibly tragic stories told to us every day of the week, and we help them try and work out what went wrong and if it was avoidable, help them to get what the law says they are entitled to.

O'REILLY: Winning a case does bring rich rewards, but Russell Levy stresses not all of the money belongs to him.

LEVY: The NHS may pay £300,000 costs to my firm. Of that, we have to pay for medical records, court fees, then we have to pay the medical experts. You're probably looking at £30,000 to £50,000 of that going to the medical experts. Another £50,000 of that will go as the barrister's fees. So for every, say, £300,000 that the NHS may be paying out as costs, the reality is that in my firm's pocket, that may be somewhere between £80,000 and £200,000, it depends on the case. It's really not as if people are coining it, making money hand over fist.

O'REILLY: When bringing a claim under no win no fee, Mr Levy charges £400 an hour for his services. If he wins - and he claims not to have lost a court case in sixteen years – under the current legal system he's allowed to bill the NHS for double his hourly rate - so pocketing £800 an hour instead of four.

LEVY: Lawyers who do this type of work and other similar work nowadays are expected to do cases on a no win no fee basis, and that means literally no fees. So, for an awful lot of work that we do, we get paid literally nothing. We didn't ask for this system. The Government brought it in as a means of cutting the legal aid budget. Part of the system is that in order to make up for the fact that we don't get paid in many cases, we get paid higher rates on cases that succeed. That's the whole way it works, otherwise nobody would ever do it and nobody would ever be able to get a lawyer to take on a case for them.

O'REILLY: Are you working for nothing at the moment?

LEVY: Every day of the week. The whole kind of notion that specialist clinical negligence, medical negligence lawyers are in it to milk the NHS dry to be honest is absolutely ludicrous.

O'REILLY: Last year solicitors suing the NHS in England received over £91 million in costs – nearly three times as much as those acting for the health service in the same cases. Janet Sayers is a clinical negligence specialist with the law firm Kennedy's, and a nominated partner for the NHS Litigation Authority. When she's defending a case for the NHS, her fees are tightly capped and often she finds herself fighting opposite less experienced lawyers who are on a higher rate..

SAYERS: I would consider myself an experienced clinical negligence specialist. I've been doing this work for over twenty years. My NHS LA rate is £205 an hour. I've seen some examples of trainee solicitors – and some of them may be newly appointed in those roles, so they will have come from university with a degree but not qualified – their hourly rate is more than mine.

O'REILLY: Are you a bit jealous?

SAYERS: Cross. Cross usually. Particularly in those cases where you see a paralegal charging more than your own partner rate. I find that extraordinary.

O'REILLY: But it's not just the hourly rates which concern Janet Sayers. File on 4 has obtained documents detailing some of the other items no win no fee solicitors claim for and they include a £26 charge for 'considering the arrival of a letter' and £40 for a ten minute wait – but it doesn't specify what the wait was for. We showed Janet Sayers some of the claims and even she was surprised. There's a claimant's fee here and the train was delayed for four hours and they charged the NHS £720.

SAYERS: I find that extraordinary, galling. We are not allowed to charge and don't charge for our travel time. We certainly wouldn't be charging because the train was delayed. It makes me very cross, and I imagine that anyone in the NHS seeing that would also be extremely cross when you hear about nurses going to cupboards and not having bandages or whatever, and you think, well £720 is a lot of money by anyone's standards.

O'REILLY: What about this particular bill here, £26 to consider the arrival of a letter. As a lawyer, explain to me what that is.

SAYERS: It's basically been put on your desk with your post that morning and you've read it.

O'REILLY: But is that worth £26?

SAYERS: Well it could actually be worth twice that amount, because if the claimant's solicitor is acting under a no win no fee agreement, then they will be entitled to a success fee of 100% often, and the £26 that they've charged for reading the letter is now paid out at £52 when we come to paying their bill at the end of the day.

O'REILLY: But if solicitors acting for the NHS lose a case they still get paid – Russell Levy doesn't. He argues that his costs reflect the fact that he and other no win no fee lawyers regularly have to drop cases they've spent time and money on. The 'uplift' or success fee is there to compensate them for that.

LEVY: We investigate and advise clients a claim which ultimately shouldn't be brought in one in two of the cases that we take on.

O'REILLY: As many as one in two?

LEVY: One in two of the cases that we take on.

O'REILLY: So then you must lose quite a lot of money over a year?

LEVY: And that's why, yes, we depend on success fees and proper hourly rates. The success fee is meant to pay for the cases that you don't win. And I can tell you that in our clinical negligence practice, the success fees that we recover don't come anywhere near to compensating us for all the work we end up doing for nothing.

O'REILLY: When did you last drop a case and so didn't earn any money?

LEVY: Every day of the week.

O'REILLY: But while Russell Levy says he does take risks, Steve Walker, Chief Executive of the NHS Litigation Authority, believes some other no win no fee solicitors don't - and that's why the NHS is seeing an increasing number of successful clinical negligence claims.

WALKER: The theory is that they should be compensated within the uplift on successful cases for those cases where they are not successful, and even for those cases which they work on and don't proceed with. However, because they've begun to cherry pick the cases, they are not losing their cases, they are only bringing cases which have a very high prospect of success, and as for cases which they work up and then don't proceed with, we have no way of knowing what the numbers are because there's no transparency. They may work up dozens of cases, they may work up none, we just don't know.

O'REILLY: What evidence do you have that they are cherry picking, as you call it?

WALKER: The better success rate they're enjoying. We also hear anecdotally from claimants who are acting as litigants in person – ie, without any legal representation – that they've been turned away by solicitors or they've been asked to put significant contributions on the table before the solicitor will take the case on.

O'REILLY: That's what happened to Michael Allbut from Worcestershire when his wife Ann died suddenly.

ALLBUT: We went to bed that night about ten o'clock. When I woke up in the morning she was dead beside me. The only way I can sleep now is I sleep on her side of the bed, so that if I wake up in the night I'm not looking at her pillow, because if I do look, you know, I can just picture in my mind exactly what I saw. I was devastated.

O'REILLY: Even though she'd been in poor health for some time, Mr Allbutt felt the medical care and attention his wife received in the last hours of her life had been inadequate, and that she might have lived longer if she'd had better care, so he contacted a number of no win no fee solicitors to try and interest them in the case. They all refused to take him on.

ALLBUT: Most of them said, 'Oh no, you've got no chance with that,' and wouldn't take me on. Obviously if you were somebody who was run over by a bus, stood by a bus stop, then they would say, 'Oooh, yes, we'll take that case on,' purely and simply because they know that they are going to win it every time, whereas if it's a bit more complicated and they think there might be a problem of trying to prove a case, they don't want to know.

O'REILLY: How long did they spend listening to you on the telephone?

ALLBUT: Probably about five minutes, ten minutes perhaps, so you can give them a rough outline of what you were doing.

O'REILLY: Five or ten minutes and that was it?

ALLBUT: That was it [laugh].

O'REILLY: What did you think of that?

ALLBUT: Well, I thought that they are there just to do one thing – to pick up the easy pickings and just to go along and take money off people by virtue of the fact of winning the cases.

O'REILLY: In the end, Mr Allbut had to borrow £20,000 to pay a solicitor to investigate his wife's case, and he then worked for a year gathering evidence to support his belief. It was only then that his solicitor agreed to continue with the case on a no win no fee basis. After four years, the NHS settled out of court - but without admitting liability.

ALLBUT: The total amount that was paid back to us was £95,000. Obviously most of that went to the solicitor, the barrister, the costs for the courts and things like this. I actually received a total of £30,000 out of which I'd already paid £20,000 myself.

O'REILLY: So £10,000 left?

ALLBUT: Yes.

O'REILLY: But your solicitor had got the majority share of that.

ALLBUT: Yes they did. In total their charges were £65,000. It was roughly twice what I got. I feel that they did a very good job for me, they really helped me a lot through the case. Initially what I wanted to do was to try and help change the system, not to gain any money. I couldn't have cared if I never got a penny.

O'REILLY: It's probably unusual that Michael Allbut did know how much his lawyer got – most people don't ask. But within the NHS there is concern at the disproportion involved in no win no fee claims. Over £240 million was paid out in damages last year, but NHS lawyer Janet Sayers says that in many cases individual awards were dwarfed by the amount their lawyers charged.

This one involves the Mid Essex Hospital Services NHS Trust. The claimant's costs were £42,731.22 and actually the damages were just £3,500. That's a big difference.

SAYERS: It is a big difference. It is extraordinary, but it is something that we see quite often and in fact our own costs in that case were one-tenth of the claimant costs.

O'REILLY: Here's another one – Barking, Havering and Redbridge Hospitals NHS Trust. Claimant's costs £71,953.43, damages £15,000.

SAYERS: Well, as I say, there are many examples of that ratio of damages to claimant costs, and again in that example our own costs were once again one-tenth of the claimant's costs – they were just over £7,000.

O'REILLY: But John McQuater, of the Association of Personal Injury Lawyers, disputes there's a widening gap between compensation and costs. He says the NHS is missing the point.

MCQUATER: I think with the NHS LA focusing on the costs, that's ignoring where this starts. This starts with negligent medical treatment, treatment that was not of the standard the patient was entitled to expect. That will lead to legal claims and it is expensive to injure people. The focus needs to be on avoiding those injuries.

O'REILLY: But my point is that in many cases the injured party will get less than their own solicitor.

MCQUATER: The figures from the NHS LA themselves suggest that the costs are a small proportion of the damages. In fact, over recent years, the gap between damages and the costs has increased.

O'REILLY: An injured party will recover £100,000 in damages but their solicitor may present a bill for £150,000 or £200,000 or £300,000. Isn't that disproportionate?

MCQUATER: Proportionality depends upon the complexity of the issues and what is put in issue by the defendants, and in many of these cases the NHS LA decide to fight cases on liability or even where liability is admitted, to run the case until a very late stage before making adequate offers, and that is what causes the cost.

O'REILLY: This reason is the one most often presented by no win no fee lawyers to explain their costs. According to the NHS, it takes on average less than a year and a half to settle a claim, but they can run up to five years. The longer it takes, the more the fees escalate. No win no fee solicitor, Russell Levy.

LEVY: The NHS doesn't settle cases early enough. We go to the NHS. We say, 'We've had a look at this case, it's a good case, it's going to win, you should pay us now,' and they don't. They delay, they hope that the harder they make it, the more they discourage people, people will either go away or they'll settle for less. And by the time they eventually accept the inevitable, it costs much much more than it should cost.

O'REILLY: They want to investigate a claim, don't they, before they start pointing the finger and saying, you're guilty?

LEVY: Obviously they do have to investigate, but one of the problems is that they don't investigate until they literally see the whites of your eyes.

O'REILLY: Steve Walker of the NHS Litigation Authority agrees that money would be available for patient care if the NHS didn't make mistakes, but he denies that undue delays are the main reason for rising costs.

WALKER: Mistakes are made and the NHS has always conceded that. We've no problem at all with paying compensation.

O'REILLY: If you have no problem paying compensation, why does the NHS take so long to settle claims?

WALKER: Well, I would take issue with the assertion that we take a long time to settle claims. We're charged with settling claims as quickly as we can, but since we're accountable for public money, NHS money, taxpayers' money, we clearly need to satisfy ourselves that there is a legal liability in the first place. Unfortunately that can't be done overnight.

O'REILLY: So there isn't a feeling that you should hold out for as long as possible before admitting liability in a case?

WALKER: We are always working in these cases against claimant lawyers who are paid by the hour. There's absolutely no benefit to us in delaying cases unnecessarily.

O'REILLY: The only control the NHS has on costs incurred by no win no fee solicitors is when they submit their bill after winning a claim. By that time, tens, even hundreds of thousands of pounds could have been incurred. A whole area of law has grown up around contesting and defending these claims.

KNIGHT: My name is Gary Knight, I work for a company, Cain Knight, and we are law costs specialists. It's my role to look at solicitors' costs and to try to decide if they are reasonable and proportionate. It usually comes at the end of a clinical negligence case where we'll be provided with a bill of costs from solicitors setting out what they've done during the life of that case, their hourly rates, the time spent and their disbursements, and then it's my job to go through and try to ascertain what the defendant should be paying.

O'REILLY: Law costs draughtsmen have been around for hundreds of years, but it was arguably a little known area of law until no win no fee cases came about. With such a close eye on the figures, Gary Knight, who works for the NHS, says he can say with confidence that many claimant solicitors are charging too much.

KNIGHT: 80% of the files I see, I would suggest that the costs are excessive and disproportionate. Now there's a differential, some of those costs may be 20% too high, in cases we've seen the costs are overstated by 50%.

O'REILLY: Are you seeing the same things time and again?

KNIGHT: I think the theme is quite clear, that it's hourly rates that the solicitors are charging, it's the amount of time that they're spending on the main issues such as the ... upon the client and general time just reading through documents.

O'REILLY: But aren't they just being thorough?

KNIGHT: A solicitor can be as thorough as they like, and in some cases that will be fully justified, but you have to look at the complexity of the case, and I just find that there's too many solicitors where they want to be hands-on with every aspect of the case. Often it's not necessary, particularly when you see a partner dealing with certain cases that could easily be delegated to a much lower grade of fee earner, and the hourly rate would be significantly reduced.

O'REILLY: Gary Knight concedes there are areas of clinical negligence law where specialist knowledge is needed, but he says too often he's seeing claims for work a junior member of staff could have done more cheaply.

KNIGHT: You see items such as partnering gauge, collating and paginating bundle, which is basically putting a bundle of documents into order and writing numbers at the bottom of each page, and when that's being claimed at £600 per hour we have to step in and say, no, we're not paying for it.

O'REILLY: £600 per hour to collate documents?

KNIGHT: Collate and paginate. Absolutely. Usually in clinical negligence cases there will be a lot of medical notes and records. Those documents are either going to be sent onto experts, who will prepare reports, or they'll be sent on to the barrister who will also want to look at those documents. If a firm of solicitors, if you've got maybe a principal solicitor who's specialising in clinical negligence cases, wants to deal with all of the aspects of that case, there's no delegation of task, so that fee earner at £300 per hour will collate, paginate documents, and at the end of the case, if they're acting on a no win no fee agreement, they can charge up to 100% by way of a success fee. So £300 plus 100%, that fee earner is charging £600 just to put a bundle of documents together. All they're doing is playing by the rules as they apply and they'll charge a rate that they think they can get away with and they'll charge a success fee, because that's what conditional fee agreements, no win no fee agreements are all about.

O'REILLY: The claim that experienced solicitors are taking advantage of the system to make money is strongly refuted by John McQuater of the Association of Personal Injury Lawyers.

We've been told of a case where a senior lawyer on £600 an hour was paginating documents.

MCQUATER: The rates allowed are set by the courts and they are set to cover all types of litigation work run by firms up and down the country.

O'REILLY: Is it right, though, that a senior lawyer will paginate documents and send them out when you could have a clerk in the office to do it for far less?

MCQUATER: Firms will always try and allocate work to the appropriate level, and if a senior lawyer needed to do a particular task, then I think we can assume that that level of expertise was required.

O'REILLY: But would you like to see some claimant solicitors reduce their costs?

MCQUATER: I think claimant solicitors are doing now as they always have done, which is to seek fair payment for the work that is done on the particular case. And what really matters here is a change in culture, a change in attitude by the NHS LA.

O'REILLY: The NHS Litigation Authority always challenges solicitors' bills in excess of £50,000 by bringing in law costs draughtsmen to argue their case. If agreement can't be reached on a final sum, the case is brought before a costs judge. A hearing can take up to five days and can add tens of thousands of pounds to an already expensive claim. One of the biggest bills the NHS challenged in this way was submitted by a Liverpool law firm.

#### EXTRACT FROM 'NORTH WEST TONIGHT'

BURNS: Welcome to North West Tonight. The headlines this Monday evening. It has been claimed that Alder Hey Hospital in Liverpool has removed and kept the hearts of dead children without their parents' knowledge. It's understood in each

BURNS cont: case parental consent was given for a post mortem examination. But a cardiac surgeon at the hospital has admitted parents may not have been aware the procedure allowed them to remove organs for medical research.

DARRACOTT: Phillip was born with a heart defect. He had major heart surgery when he was five, which he didn't recover from. He died three days after the operation. He was five years, three months old.

O'REILLY: Ann Darracott's son was one of over a thousand children whose body parts were taken and stockpiled by a doctor over a seven year period without the knowledge or consent of their families.

DARRACOTT: We received a letter from Alder Hey saying that they had retained all of Phillip's internal organs. You're in a state of shock because you cannot comprehend that somebody would take something which wasn't theirs from a child.

O'REILLY: As the scale of what had happened began to unfold, Mrs Darracott wanted answers. She realised she needed a solicitor, so she approached a well known law firm in her home town of Liverpool, hoping to be taken on on a no win no fee basis. That firm was E Rex Makin and Company, which represented around two hundred of the Alder Hey families. It didn't take long for the NHS to put its hands up and admit liability. A global offer was made to the parents, which gave them £5,000 each. But File on 4 can reveal for the first time that the bill submitted by E Rex Makin and Company totalled £4,479,957.06. File on 4 understands there were duplications within the bill, which ran into a six figure sum, and a claim for costs and disbursements not yet incurred which ran into a seven figure sum. After two months of expensive negotiation, E Rex Makin and Company agreed to accept £430,000 - less than 10% - that was to the relief of Steve Walker at the NHS Litigation Authority, who was horrified by the original bill.

WALKER: We said that we wouldn't be paying it and we began, at considerable expense, to prepare for the bill to be assessed by a judge. The matter didn't go to assessment, although a great deal of work had been done in preparation for that, and it was settled, as I recollect, within a week or so of the date that it had been sent for taxation assessment.

- O'REILLY: Was there no substance then for this £4 million bill?
- WALKER: Not in our opinion, in relation to the work that had been done in respect of the claims, no.
- O'REILLY: Do you think £400,000 was a fair amount for the amount of work carried out?
- WALKER: It was certainly a lot more appropriate than the original figure of £4 million, yes.
- O'REILLY: The partner in the firm who signed the bill was Robin Makin. He wouldn't agree to an interview, but a statement from his firm said:
- READER IN STUDIO: The bill that was submitted included all items of work for which Robin Makin believed he was entitled to recover payment. The bill was never assessed by the court and the negotiated settlement that was reached with the Health Authority's solicitors reflected a number of technical arguments that were raised over the costs claimed.
- O'REILLY: The NHS complained to the Solicitors Regulation Authority and Robin Makin was reprimanded. The statement from his firm addresses this, saying it was because of arithmetical errors and provision for a claim for work still to be carried out. Mr Makin's client, Ann Darracott, said she had no idea her former solicitor had submitted such a large bill for his work.
- DARRACOTT: This is news to me. I cannot quantify whether £400,000 is enough, but I do realise that £4.5 million is too much.
- O'REILLY: But E Rex Makin and Company helped get you access to justice for your son, Phillip.
- DARRACOTT: Yes he did, and I am grateful for that, I really am grateful, but I still think £4.5m is a lot of money. There are people who need medicines who have to

DARRACOTT cont:                    fight through the courts for these medicines, and then if the solicitors who are fighting these cases, no matter who they are, are asking for such sums of money, it doesn't leave much left then to treat the patients, does it?

O'REILLY:                            The system of no win no fee is currently being investigated by the Court of Appeal Judge, Lord Justice Jackson. His interim report highlights the huge success fees charged by lawyers as one factor fuelling the soaring cost of civil litigation. He also questions a system where solicitors' costs are out of all proportion to the damages people receive, and is looking at a series of possible reforms, which includes capping the success fees charged by lawyers. Gary Knight, a law costs draughtsman working for the NHS, says something has got to change as the current system is unsustainable.

KNIGHT:                                Solicitors who represent claimants will continue to ride a gravy train, because at the end of the day they know what cases are going to be successful, and there's little – if any – risk. If you get the situation where claimants are going to run up costs and they back the NHS into a corner by saying we've got no win no fee, so our costs could well be doubled, it's almost bullying the NHS to concede cases that perhaps they wouldn't concede.

O'REILLY:                            Is it time the Government said enough is enough?

KNIGHT:                                I think somebody has got to say enough is enough, whether it's the judiciary or the Government, but to carry on the way it is at the moment benefits only claimant solicitors, and to find costs far exceeding damages, something needs to be done.

SIGNATURE TUNE