

**National Assembly for Wales Health and Social Care Committee
consultation on the Recovery of Medical Costs for Asbestos Diseases
(Wales) Bill**



A response by the Association of Personal Injury Lawyers

January 2013

Health and Social Care Committee
Recovery of Medical Costs for Asbestos Diseases (Wales) Bill
RMCA4 – Association of Personal Injury Lawyers (Apil)

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain the access to justice they need and deserve. APIL currently has more than 4,500 members committed to supporting the association's aims, all of whom sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics. APIL currently has more than 170 members in Wales.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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The Association of Personal Injury Lawyers (APIL) welcomes the opportunity to respond to the Health and Social Care Committee's consultation on the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill, which was tabled by Mick Antoniw AM on Monday 3 December 2012. APIL is encouraged by the support the Bill has received from across the political parties in the National Assembly for Wales.

Consultation questions

General

1. Is there a need for a Bill to allow recovery of costs of NHS treatment for asbestos-related diseases in Wales? Please explain your answer

The purpose of the Bill, to recover costs incurred by the NHS in Wales by treating patients suffering from such asbestos-related diseases from a liable employer or insurer, follows the established principle that the polluter pays. As an organisation which campaigns for the rights of people injured through no fault of their own, APIL believes that it should be the wrongdoer, and not the state, who should pay the costs of compensating and supporting someone who has been injured or who suffers diseases due to negligence.

According to figures obtained from the Office of National Statistics following a Freedom of Information request by APIL, there were 457 deaths in Wales between 2006 and 2010 in which mesothelioma was the underlying cause. With the death rate from mesothelioma expected to peak by 2016, according to the Bill's explanatory memorandum¹, APIL believes this Bill to be very timely.

¹ Recovery of Medical Costs for Asbestos Diseases (Wales) Bill Explanatory Memorandum incorporating the Regulatory Impact Assessment p. 6

2. Do you think the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum? Please explain your answer

The stated objective of the Bill is to recover the costs incurred by the NHS in Wales from the liable employer or insurer. The Bill, as drafted, establishes who will be liable to pay the costs, the mechanism for how those costs will be paid, and the timeframe of when the costs have to be paid. APIL is therefore satisfied that the Bill delivers the stated objectives as set out in the explanatory memorandum.

3. Are the sections of the Bill appropriate in terms of introducing a regime to allow the recovery of costs of NHS treatment for asbestos-related diseases in Wales? If not, what changes need to be made to the Bill?

APIL believes that the sections of the Bill are appropriate in terms of introducing a regime to allow the recovery of costs of NHS treatment for asbestos-related diseases in Wales.

4. How will the Bill change what organisations do currently and what impact will such changes have, if any?

Different organisations and stakeholders will have to carry out various tasks as a result of the changes proposed in the Bill. Insurers will have to apply for the certificate setting out the amount of costs to be paid, the Compensation Recovery Unit will then have to co-ordinate with the relevant NHS Trusts and Local Health Boards, and the NHS Trusts and Local Health Boards will have to calculate how much is to be recovered.

The explanatory memorandum explains that the patient will have to supply the compensator with details of medical treatment. The lawyer acting for the patient, therefore, may have to ensure that information is kept about the location and nature of the treatment received, as the patient may not be able to recall such detailed information. The patient may have received medical treatment not only in Wales, but in England as well, and the lawyer will have to assist the patient in only supplying the relevant information, as some vulnerable patients may find this confusing.

As the NHS in Wales will now have a vested interest in successful litigation, APIL hopes that this Bill will result in the patients' medical records being supplied much more quickly during the initial claim for compensation. If medical records are obtained much earlier, a compensation award could be made much more quickly, providing the financial support for the patient, and also allowing the NHS in Wales to recover its costs from the liable defendant.

The impact on all the above, however, is relatively small compared to the benefits that this Bill will deliver for the NHS and potentially for sufferers of asbestos-related diseases.

5. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

There are some barriers that may prevent the NHS in Wales from recovering the costs from the liable defendant. One such barrier could be enforcement issues, such as ensuring that the liable defendant pays the correct costs within the imposed timeframe. In this instance, however, section 8 of the Bill, recovery of charges, gives powers to allow Welsh Ministers to demand payment, if needed.

Another barrier, which the Bill would be unable to deal with as it is an issue for the UK Government, is the number of sufferers of asbestos-related diseases who are unable to trace an insurer, which means compensation cannot be recovered. The explanatory memorandum issued with the Bill reveals that it can take “anywhere between 10 and 60 years for symptoms to develop after exposure to asbestos²”. During this time, an employer could have gone out of business and the employers' liability (EL) policy could have been lost.

² Recovery of Medical Costs for Asbestos Diseases (Wales) Bill Explanatory Memorandum incorporating the Regulatory Impact Assessment p. 5

An Employers' Liability Tracing Office (ELTO) has been established to help search for EL policies across the UK. According to its annual report, between May 2011 and April 2012, ELTO had a success rate of 71 per cent in tracing EL insurance policies³.

While it is unknown how many sufferers of asbestos-related diseases could not trace an EL policy in Wales, it is inevitable that such cases do exist, and the NHS may be unable to recover the costs incurred by the NHS in Wales in these cases.

6. Do you have any views on the way in which the Bill falls within the legislative competence of the National Assembly for Wales.

APIL welcomes the Bill, but as an organisation which campaigns for the rights of injured people, question six is outside the area of APIL's expertise.

Powers to make subordinate legislation

7. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

As with question six, question seven is not within APIL's expertise as a campaign group for injured people.

Financial implications

8. What are your views on the financial implications of the Bill?

The Bill is likely to have a financial impact on the insurance industry which will almost always be the compensator. The Welsh Government and the NHS in Wales will also bear some operating costs, as explained in the explanatory memorandum.

The costs incurred, however, will be nothing compared to the pain and suffering of victims of asbestos-related diseases, and this Bill recognises that in terms of caring and

³ ELTO Twelve Month Report May 2011-April 2012 p. 15

supporting for a sufferer of one of the diseases, it should be the liable defendant who should cover the costs.

Other comments

9. Are there any other comments you wish to make about specific sections of the Bill?

There are no further comments APIL wishes to make about specific sections of the Bill itself.

In the explanatory memorandum, however, the Compensation Recovery Unit (CRU) is referred to as the preferred body to administer the scheme. If this is to be the case, APIL believes there should be a dedicated team at the CRU to deal with these claims.

- Ends -

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