

Department of Health and Social Care

**Proposals for a mid-year tariff uplift of the NHS's Injury
Cost Recovery Scheme**

A response by the Association of Personal Injury Lawyers

August 2023



Introduction

APIL welcomes the opportunity to respond to the consultation on proposals for a mid-year tariff uplift of the NHS's Injury Cost Recovery (ICR) scheme.

We have long advocated that the 'polluter should pay'. When a person is injured or made ill as result of the negligence of someone else, the principle that the responsible party should pay for the injured person's treatment should be unarguable. It is inequitable that the taxpayer should have to foot the NHS bill for such treatment. The proposed mid-year tariff increase supports this principle.

There are, however, other problems with the scheme which mean that the at-fault party is only responsible for a fraction of the injured person's NHS treatment costs. As a result, we strongly recommend that the DHSC consider a more fundamental review of the scheme which would address these problems. This would build upon the pro-active proposals for a mid-year tariff increase.

Question 1: Do you support a mid-year tariff increase from October 2023 to reflect the figure for NHS pay inflation for the relevant period more accurately? Please provide justification for your answer.

We welcome these pro-active proposals for a mid-year tariff increase. If the tariff is not increased to take account of significant inflationary pressures, the NHS would become responsible for an even greater element of the injured person's treatment costs. This would be unacceptable, particularly as the NHS is already responsible for a significant proportion of these treatment costs. See our response to question 2 for further detail.

Any other damages caused by the at-fault party, for example injuries requiring private rehabilitation or care which is unavailable on the NHS, would be fully funded by the wrongdoer. NHS treatment costs should not be an exception to this rule.

Question 2: Do you have any further comments or suggestions on the proposals that you think we should consider, including any equality impacts on specific groups? Where possible please provide evidence in support of your comments.

In addition to these proposals, a fundamental review of the scheme should also be considered to ensure that the NHS is fully recovering treatment costs where someone has been injured because of someone else's negligence. APIL understands that the DHSC is open to such a review, which is to be warmly welcomed.

There are several problems with the existing scheme which mean that the NHS, rather than the at-fault party, must cover a significant proportion of these treatment costs. These aspects of the scheme are outlined below:

- **The cap on the amount which the NHS can recover for treatment, set at around £58,000 (60 days inpatient treatment).** Any treatment costs above this amount must be covered by the NHS, rather than the at-fault party. APIL's research suggests that, even without changes to the level of the tariff (discussed below), removing this cap would have resulted in £52.4 million of additional income for the NHS over the past three years.
- **The level of the existing tariff for inpatient treatment (£968 per day).** Under the existing tariff, the NHS can only recover £968 per day for inpatient treatment costs. Even when you remove the recent effects of inflation, which the mid-year increase seeks to address, the level of the tariff is still likely to be too low to cover the daily costs of treatment. For example, in some major trauma cases, our members understand that treatment costs can be as high as £2,571 per day – two and a half times greater than the current daily tariff for inpatient treatment.
- **In cases where inpatient costs have been recovered, the NHS is unable to recover outpatient costs.**
- **The NHS is only able to recover £788 in outpatient costs for each patient, regardless of how many outpatient appointments are attended.** This severely limits the amount of outpatient treatment costs which the NHS can recover. In many cases, these outpatient costs are likely to significantly exceed £788.

Any changes to the scheme should ensure that the party responsible for causing the injury should also take full responsibility for the resulting NHS treatment costs. While this would increase insurer contributions to NHS treatment costs, it should be borne in mind that this would take place against a backdrop where recoveries have fallen significantly over recent years. Between 2012/13 and 2022/23, the total amount recovered fell from £219.9 million to £171.5 million – a reduction of 22% before inflation is taken into account. See figure 1 below. After inflation is taken into account, the real terms drop in recoveries since 2012/13 is approximately 38%¹.

A significant fall in the number of injured people going onto claim compensation is likely to have contributed to this reduction in recoveries. A drop in claims has an inevitable impact on recoveries, as the NHS cannot recover any treatment costs where the injured person has not claimed compensation. For example, while road injury casualties have now returned to almost pre-pandemic levels, compensation claims for such injuries remain 45% below pre-pandemic levels². This reduction in claims is likely to be related to reforms which have disincentivised injury claims and significantly reduced the amount which insurers spend on these claims³.

¹ CPI inflation increased by 26.64% between 2012 and 2022:

<https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7bt/mm23>

² APIL analysis of Compensation Recovery Unit (CRU) data and Department for Transport data on reported road casualties

³ Data published by the Association of British Insurers shows that the amount spent by motor insurers on settled injury claims fell by 17% between 2019 and 2022. These costs fell by 36% between 2013 and 2022. Data accessed at: <https://www.abi.org.uk/account/my-statistics/>

Figure 1: NHS Injury Costs Recovery (ICR) scheme: amounts collected⁴

	England	Scotland	Wales	Ambulance Trusts	Total
2012/13	£183,493,949	£13,922,866	£12,210,074	£10,258,924	£219,885,813
2013/14	£185,904,254	£14,528,552	£13,048,964	£10,229,809	£223,711,578
2014/15	£173,126,446	£14,195,555	£11,943,763	£9,420,579	£208,686,343
2015/16	£162,830,855	£14,545,088	£11,103,737	£8,798,354	£197,278,035
2016/17	£166,114,097	£14,410,685	£10,516,334	£8,737,927	£199,779,044
2017/18	£165,576,642	£14,929,591	£10,335,156	£8,489,784	£199,331,172
2018/19	£166,833,981	£14,757,990	£10,598,134	£8,010,414	£200,200,518
2019/20	£167,999,957	£14,543,223	£9,814,667	£7,630,315	£199,988,161
2020/21	£162,739,800	£14,546,095	£9,396,338	£7,062,671	£193,744,905
2021/22	£139,987,628	£12,121,237	£7,767,669	£5,834,125	£165,710,661
2022/23	£145,975,415	£12,300,772	£7,579,600	£5,665,460	£171,521,246

If reforms are made to the ICR scheme which ensure that at-fault parties take greater responsibility for the damage they cause, this could encourage insurers to introduce changes which incentivise their policyholders to drive more safely. This could help limit additional insurer expenditure on NHS treatment costs and reduce injuries.

Ultimately, the wrongdoer should be responsible for funding the treatment of those who they negligently injure, and the taxpayer should not have to subsidise them for the damages they are responsible for. Wider reform of the scheme should move us closer to that position, and APIL would welcome the opportunity to be involved in any future discussions about such reform.

For any queries about this response, in the first instance please contact:

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⁴ <https://www.gov.uk/government/collections/dh-nhs-injury-costs-recovery-scheme>