

DEPARTMENT OF WORK AND PENSIONS

AMENDING THE VACCINE DAMAGE PAYMENTS ACT 1979

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

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The executive committee would like to acknowledge the assistance of the following people who contributed to the preparation of this response:

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1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents more than 4900 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. The aims of the association are:
 - To promote full and prompt compensation for all types of personal injury;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To alert the public to dangers in society such as harmful products and dangerous drugs;
 - To provide a communication network exchanging views formally and informally.

2. APIL welcomes this opportunity to respond to the Department of Work and Pensions' consultation paper regarding the amendment of the Vaccine Damage Payments Act 1979. We believe the proposals contained within the paper are a welcome start and so have only a few submissions to make on the issues raised.

Time Limits for Making Claims

3. Whilst APIL is pleased that the Government has recognised the problems caused by the current time limits for making claims under the Vaccine Damage Payments Act, we do not believe that the proposed relaxation of the time limit goes far enough. We believe the time limits applied to personal injury claims for compensation under the Limitation Act 1980 should also apply to claims under the Act, as recommended by the Law Commission in their recent report (Law Com No 270). The rules under the Limitation Act 1980 take into account the difficulties that can be experienced by a minor under a disability in pursuing a claim for compensation and the various issues

that should be considered in assessing when a claimant can be expected to have sufficient knowledge to bring a claim. The same should be taken into account in for those making claims for vaccine damage payments.

4. We note that the Department of Work and Pensions argue “that lengthening the time limit for claims substantially could make it difficult to obtain the necessary medical or other relevant evidence after long periods of time and could create practical difficulties”. Vaccine damage claims pose the same evidential difficulties as any other personal injury claim (to which less strict rules apply) and so we do not believe this is a strong argument. The Limitation Act 1980 and the recommendations of the Law Commission on the same are based on careful consideration and balance of the interests of injured victims and those that may be liable to pay compensation to them. We can see no reason why claims under the Vaccine Damage Payments Act should be handled any differently in respect of time limits for making claims.

The Disability Threshold

5. Again, whilst we welcome the Government’s recognition that the current disability threshold is too high, we do not believe that reducing the threshold to 60 per cent disablement is sufficient. Those who are less than 60 per cent disabled may still be severely handicapped. For this reason, APIL submits that payments under the Act should be payable on a sliding scale as suggested by many of the families of vaccine damaged children so that anyone who can establish a causal link between their injury and a vaccine would be able to receive some financial compensation.

Compensation

6. Whilst we recognise that vaccine damage payments awarded under the Act have been raised substantially in recent years, we still believe that the payments are too low. As we have submitted in relation to compensation for

criminal injuries, we believe that vaccine damaged people should be entitled to payments which are comparable to awards made through the civil courts. We believe that this is the position in the USA where those damaged by vaccines, who succeed in a claim to the Federal Vaccine compensation scheme, receive full compensation. This is funded in part by a levy on every vaccine sold.

Awareness of the Act

7. In the consultation paper reference is made to the “perceived poor publicity” of the vaccine damage payments scheme. As noted above, our members represent the victims of personal injury, some of whom will include those injured by vaccines. We are committed, therefore, to raising our members’ awareness of the Vaccine Damage Payments Act 1979 through our communications with them.

Funding

8. Our final point relates to funding. We believe it is important that those injured by vaccines should have access to adequate funding to assist them in establishing that they qualify for a payment under the Act. Establishing causation, for example, can be extremely complex and applicants should be assured of access to those who will be able to assist them in doing this.