

LORD CHANCELLOR'S DEPARTMENT

QUINQUENNIAL REVIEW OF THE LAW COMMISSION

SUBMISSIONS OF THE ASSOCIATION OF PERSONAL INJURY LAWYERS

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APIL's executive committee would like to acknowledge the assistance of the following in preparing this response:

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1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has over 4900 members in the UK and abroad and membership comprises barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.
2. APIL welcomes the opportunity to contribute to this review of the Law Commission. The Commission has considered several issues of interest to APIL in recent years and we have contributed fully to its work in these areas. We have also monitored closely the Government's approach to Commission final recommendations.
3. In the context of the last quinquennial review of the Law Commission, it was concluded that "a managed programme of law reform remains an essential part of modern democracy's responsibilities and that the Law Commission remained a vital part of that process"¹. APIL believes that this remains the case. It is essential to have a continuous rolling programme of law reform achieved through detailed and long-term research projects. Government departments, whose priorities focus on more immediate concerns and fulfilling manifesto commitments, cannot achieve this in the same way. We support fully the role and function of the Law Commission. We do, however, have concerns about the Government's approach to its work, and in particular, the time it can take for the Government to consider, respond and act upon Commission recommendations.
4. In some instances, the Government responds quickly to Commission recommendations in a particular area. For example, in 2001, the Commission reported on the limitation of actions and by July 2002 the Government had announced that it largely accepted the recommendations and intended to bring forward legislation as soon as parliamentary time allowed. On other occasions, however, the

Government has, in our view, delayed unreasonably in responding to Commission reports. For example in 1998, the Law Commission reported on liability for psychiatric illness and in 1999 reported on: damages for medical, nursing and other expenses; collateral benefits and claims for wrongful death.

5. In November 1999, David Lock, Parliamentary Secretary at the Lord Chancellor's Department, stated in written answer that:

“The Government have carefully considered the Law Commission's recommendations in its Report on ‘Liability for Psychiatric Illness’ (Law Com Rep No. 249). They believe that it would be worthwhile to undertake a comprehensive assessment of the individual and aggregate effects of the proposals for legislation that are contained in this Report and ‘Damages for Personal Injury: Medical, Nursing and Other Expenses; Collateral Benefits’ (Law Com Rep No. 262) and ‘Claims for Wrongful Death’ (Law Com Rep No. 263). I have asked my officials to undertake the assessment in co-ordination with officials from the other Departments which have an interest in the outcome. It is hoped that the full assessment will be available to inform the Government's final decision on the Law Commission's proposals early next year.”²

6. Despite this statement almost three years ago, the Government has still not announced its position on these reports. It is, in fact, still considering the issues and it intends to consult with interested parties shortly. This is partly necessary because of the time that has elapsed since the recommendations were made. The result of the Government's approach is that the problems identified by the Law Commission some time ago have been allowed to continue unaddressed. In addition, interested parties that contributed to the Law Commission's original consultations on the issues will have to cover the same ground again. Whilst the Law Commission's work in these areas has not been wasted, its value has been seriously undermined. We do not

¹ House of Commons Hansard: 19 March 1998

² House of Commons Hansard (Written Answers): November 9, 1999

believe that this represents the most efficient approach to law reform, especially when Government departments themselves contributed to the Commission's work at the time. For example, the Lord Chancellor's Department contributed to the Commission's work on liability for psychiatric illness and the Department of Health on medical, nursing and other expenses. It is vital that the Government should respond and act upon Law Commission reports as quickly as possible.

7. The Government should also allocate sufficient parliamentary time for the implementation of the Law Commission recommendations with which it agrees. In achieving this, it is not in our view, adequate to seek to align the reform programme of the Commission with that of the Government. In 1999, the Lord Chancellor stated:

“Where implementing Law Commission reports requires legislation, it is necessary for Law Commission Bills to be considered in the context of the Government's legislative programme as a whole. David Lock MP, one of Parliamentary Secretaries, will chair a Committee of Ministers whose role it is to develop a greater alignment between the Law Commission's programme of work and the Government's priorities for legislation...”

8. We are extremely concerned that the Government should be seeking to accord the Commission's research/reform programme with its own legislative programme, which is based on the Government's own political objectives and manifesto commitments. If the Law Commission is to achieve its objectives in improving and modernising the law, this must be achieved in areas falling both within and outside the Government's own reform programme.

9. In conclusion, whilst APIL has no submissions to make on role and function of the Law Commission itself, we do believe that the Government's approach to the Law Commission's work should be reviewed in detail. The Law Commission consults

widely with interested organisations, non-departmental public bodies and even Government departments, and in view of this, the Government should be much more willing to support and act on the Commission's resulting recommendations.