

DEPARTMENT OF HEALTH

**THE RECOVERY OF NATIONAL HEALTH SERVICE COSTS IN CASES
INVOLVING PERSONAL INJURY COMPENSATION**

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

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THE RECOVERY NHS COSTS IN CASES INVOLVING PERSONAL INJURY COMPENSATION

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 comment on the proposed extension of the current system for recovering the cost of NHS treatment given to road traffic accident victims, where that victim claims personal injury compensation. APIL supports such an extension because, as noted by the Law Commission, which reported on this issue in 1999, in ‘providing free care under legal compulsion, the NHS in effect discharges part of the tortfeasor’s liability’.¹ We further agree that the scheme should be administered centrally by the Compensation Recovery Unit.

¹ Paragraph 3.22, Damages for Personal Injury: Medical, Nursing and Other Expenses, 1999 (Law Com No 262)

3. Our support for such an extension is subject, however, to its reliance on the following two principles, as outlined in chapter 3 of the consultation paper:

- The payment of NHS costs should be made by the person or organisation paying compensation and not the person receiving treatment;
- The payment of NHS costs is additional to the payment of compensation, i.e. the amount of personal injury compensation would not be reduced to take account of the NHS costs.

The claimant's damages should not be reduced or affected by the recovery of NHS charges in any way. As was noted by the Law Commission:

“[O]ne could not simply apply the scheme for social security recoupment. Under the Social Security (Recovery of Benefits) Act 1997, recoupable benefits are set off against some of the damages received by a tort victim. However, it would be inappropriate to deduct the costs of NHS care, since a claimant has no claim for damages to cover these costs.”²

Q1: Do consultees agree that restricting recovery to hospital and ambulance costs provides sufficient restitution to the NHS whilst retaining simplicity of administration and therefore reduced costs of recovery?

4. APIL agrees that recovery should be restricted to hospital and ambulance costs, as this would, as suggested, provide sufficient restitution to the NHS whilst retaining simplicity of administration. It would, in our view, cause difficulties if the NHS were to be able to recover primary care, i.e. general practitioner-related, costs, as

² Paragraph 3.33, Damages for Personal Injury: Medical, Nursing and Other Expenses, 1999 (Law Com No 262)

there are a large number of GP practices of differing sizes and organisational arrangements.

Q2: Do consultees consider that recovery of costs should include cases involving industrial illness?

5. APIL can see no reason in principle why cases involving industrial illness should be excluded from the scheme. The justifications for extending the recovery scheme apply equally to defendants and their insurers in such cases, as to defendants responsible for industrial or other accidents.

Q3: Do consultees agree that the costs and practicalities outweigh the principle that the negligent party should have to pay costs in proportion to their liability:

- (i) in all cases; or
- (ii) only in cases where there has not been a finding of contributory negligence by a court.

If so, do you think there is a risk that this option could encourage people to pursue cases solely for a finding of negligence?

6. APIL's primary concern is that injured victims' damages should not be reduced or affected in any way by the extended recovery of NHS charges. Provided this principle is followed, we are less concerned about whether NHS charges should be recovered in proportion with liability. As we stated to the Law Commission, however, we appreciate it may not be practical to develop a policing mechanism, particularly for settlements, to enable contributory negligence to become a factor in adjusting the amount to be recouped. We believe, therefore, that if the victim's claim proves successful, irrespective of reduction for contributory negligence and/or litigation risk, the NHS should be entitled to recover its full costs. We do

not believe that there is a significant risk that this would encourage people to pursue cases solely for a finding of negligence.

Q4: Do consultees agree that all payments of compensation should attract the potential for repayment of NHS costs regardless of the nature or size of the parties involved? If not, should this be for insured cases only?

7. APIL agrees that all payments of compensation should attract the potential for repayment of NHS costs regardless of the nature or size of the parties involved. As recognised by the Department of Health, one of the reasons for adopting such a scheme is to ensure that bodies which do not ensure the safety of people who come into contact with their work have to meet the full costs of their shortcomings. Such a message is as relevant to businesses of any size as it is to central and local government, both as employers and providers of services.