

31 January 2003

Mr Yassin
Lord Chancellor's Department
Freedom of Information and Data Protection Division
Room 151
Selbourne House
54-60 Victoria Street
London, SW1E 6QW

Dear Mr Yassin

LCD consultation on subject access and the Data Protection Act 1998

The Association of Personal Injury Lawyers (APIL) was formed 12 years ago to represent the interests of those injured or bereaved through negligence. The association's membership comprises around 5000 solicitors, barristers, legal executives and academics with an interest in personal injury law.

Many of the association's members represent injured victims in their claims for personal injury compensation and they frequently seek to obtain copies of medical records on their clients' behalf for this purpose. Several of our members have reported difficulties in obtaining access to manual health records, although few have reported any difficulties in relation to obtaining access to those held in an electronic format.

The Lord Chancellor's Department is seeking views on whether a subject access fee should continue to be charged, and if so, what that fee should be. Ideally, patients should not have to pay anything to receive a copy of their own medical records. We recognise, however, that public authorities incur administration costs in providing them and that a fee should be charged. In view of the wider implications of this fee, as outlined below, it should remain at the lowest possible level.

Most of our members' clients are financially disadvantaged as a result of their injury and they seek to recover compensation to reflect the resulting losses and expenses from the responsible party. In assessing whether they have a valid claim for compensation it is important for the relevant lawyers and expert witnesses to see the client's medical records. Copies of the medical records are usually sought, therefore, at the outset of a claim and if the case is conducted on a conditional fee basis, as most are, then the client pays the relevant fee. Whilst the fee is recoverable from the responsible person or company at the end of a successful claim, it usually takes quite some time for a claim to reach a conclusion. The injured person has, therefore, to absorb the cost in the interim and the fee can not only affect the ability of a victim to obtain access to their medical records, but also their ability to achieve access to justice more generally. For this reason, the fee must remain as low as possible and APIL supports a retention of the current maximum £10 fee, subject to an inflationary increase to reflect the fact that it has not been increased for some time. We appreciate that some patients' records will cost more than £10 to copy. Others, however, will cost less and we do not believe that a retention of the current fee level will cause undue hardship, as actual costs are likely to be recovered on a 'swings and roundabouts' basis.

I hope the above is helpful but please do not hesitate to contact me if you would like any further information in relation to our position.

Yours sincerely

Annette Morris
Policy Research Officer