



DEPARTMENT FOR WORK AND PENSIONS CONSULTATION

PATHWAYS TO WORK: HELPING PEOPLE INTO EMPLOYMENT

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

JANUARY 2003

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 5300 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. APIL does not generate business on behalf of its members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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1. In view of APIL's remit and the expertise of its members, the association is unable to comment generally on the Government's welfare to work strategy or on all of the issues raised in the paper. In representing the interests of injured victims, APIL does, however, have a direct interest in the provision of rehabilitation and it is on this issue that APIL's response concentrates. APIL's interest in rehabilitation generally arises within the context of personal injury litigation. The association was involved in drafting the Code of Best Practice on Rehabilitation and it regularly encourages its members to follow the code and to secure rehabilitation for their injured clients.
2. APIL supports rehabilitation and would welcome a dramatic increase in the quality and quantity of rehabilitation services in the UK. Providing rehabilitation to those on incapacity benefit would, of course, be a start but we would hope that this would lead to other initiatives from both the Department for Work and Pensions and the Department of Health. We would, however, like to make two comments on the provision of rehabilitation, as proposed in the consultation paper.
3. Firstly, rehabilitation should seek to restore an injured person to as productive and as independent a lifestyle as possible through the use of medical, functional and vocational interventions¹. It appears that rehabilitation provided through the Government's scheme will, however, focus on increasing the chances of injured workers returning to work. Whilst this may be synonymous with the stated aims of rehabilitation, we do not believe that is necessarily the case. We would urge the Department of Work and Pensions to ensure that rehabilitation services provided through the welfare to work strategy seek to improve quality of life generally, rather than seek to achieve specific and limited objectives.

4. Secondly, APIL believes that the NHS could play a much more significant role in the provision of rehabilitation and is slightly concerned to see that it is intended to “build on best practice within the NHS”. In APIL’s experience, there is not an accepted system, statutory or otherwise, within the NHS as to:
 - the circumstances in which rehabilitation should be made available;
 - how rehabilitation services should be organised;
 - how any rehabilitation that is provided should be financed.
5. As a result rehabilitation is, essentially, available, organised and financed on an ad hoc basis and rehabilitation is not the priority it should be within the healthcare and social support system. This is likely to need further attention before the Government’s welfare to work strategy is put into operation, as otherwise the initiative may fail.
6. The Department for Work and Pensions also considers the contributions other stakeholders can make. We agree with the Department for Work and Pensions that employers have a key role to play in the provision of rehabilitation and helping injured workers to remain in, or return to, employment. We do not believe it is sufficient, however, to collate and disseminate a best practice guide to employers on the effective management of health at work and the rehabilitation of employees with health problems, as suggested. We believe that change will only be effected if employers are under a legal duty to commit themselves to rehabilitation. Rehabilitation should be an integral part of an employer’s health and safety strategy and, more specifically, it should be mandatory for employers to have a rehabilitation policy. In addition, employers should have a statutory duty to consider an employee’s request for rehabilitation.

¹ This definition appeared in the Association of British Insurers and TUC’s consultation paper entitled ‘Getting Back to Work’ and dated June 2002.

7. In conclusion, whilst APIL supports the increased provision of rehabilitation as envisaged in the consultation paper, it has concerns about:

- The limited nature of the proposed rehabilitation; and
- The ability of the NHS to deliver the proposed rehabilitation.

APIL calls on both the Government and employers to make rehabilitation the priority that it could, and should, be.