

2 June 2003

Mrs E Neil
Scottish Executive Health Department
Area GER
St. Andrew's House
Edinburgh
EH1 3DG

Dear Mrs Neil

Reforming the NHS Complaints Procedure: Patient Focus and Public Involvement

I am writing on behalf of the Association of Personal Injury Lawyers (APIL) in response to the Scottish Executive's consultation on the above. APIL was formed in 1990 to promote the interests of pursuers in the personal injury litigation process. The association currently has over 5,300 members, 121 of which are based in Scotland and membership comprises barristers, solicitors, legal executives and academics.

APIL supports improvements to the complaints system, although in view of the remit of the association and the expertise of its members, we are unable to comment on individual improvements in detail. We are, however, able to highlight the relationship between the quality and effectiveness of the NHS complaints system and the volume of clinical negligence claims.

We believe that an improved complaints system should lead to a reduction in the number of clinical negligence claims against NHS hospitals. When patients feel that something has gone wrong with their treatment, they usually want any or all of the following:

- A detailed explanation;
- An apology where appropriate;
- Reassurance that the same mistake will not happen again.

If a patient feels that his complaint is not being dealt with properly, or that it is unlikely that it will be, he may be tempted to pursue a legal claim for compensation instead. This is undesirable if it is not what the patient actually wants. A legal claim, for example, will not usually result in an apology but may involve considerable expense.

The suggested improvements in the complaints system would allow patients to have more confidence in the complaints system and encourage them to follow the complaints procedure rather than embark on litigation, where that is what they would prefer.

Similarly, however, patients seeking low levels of compensation for negligent treatment or diagnoses are required to pursue a legal claim, even if they would rather pursue the issue through the NHS complaints system. This restriction is undesirable for patients and as low-value claims tend to be disproportionately expensive to litigate, it is against the public interest. Whilst hospitals currently have some powers to make ex gratia payments, as noted by the Expert Group on Financial and Other Support, this power is rarely used.

In summary, APIL calls for financial compensation of up to £10,000 to be awarded to injured patients through the complaints system in appropriate cases. We should stress, however, that injured patients or bereaved families should always be free to pursue legal claims for compensation if that is what they would prefer.

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 or if I can be of any further assistance.

Yours sincerely

Lorraine Gwinnutt
Press & Parliamentary Manager