

30 October 2006

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Finance, Policy and Accountability Unit
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Sent by e-mail to: Ryan.Wilson@dhsspsni.gov.uk

Dear Mr Wilson,

The recovery of health services costs in all cases involving personal injury compensation

Thank you for inviting APIL to participate in the consultation on the expanded health services costs recovery scheme.

APIL fully supports the principle underpinning the Recovery of Health Services Charges (Northern Ireland) Order 2006, “that those causing injury to others should pay the full cost of their actions, including associated health care costs”.¹ We consider the extension of this principle to all cases of personal injury right and appropriate because, as noted by the Law Commission in 1999, in “providing free care under legal compulsion, the NHS in effect discharges part of the tortfeasor’s liability”.² APIL has previously supported the same principle in relation to road traffic accident victims in Northern Ireland³, as well as in relation

¹ Consultation document, para 1.2.

² Paragraph 3.22, Damages for Personal Injury: Medical, Nursing and Other Expenses, 1999 (Law Com No 262).

³ APIL response to DHSSPS Consultation on the Recovery of Health Service costs in Cases Involving Personal Injury Compensation, November 2003.

to road traffic and other personal injury victims in England and Wales⁴, and considers current proposals the logical extension of previous legislation.

In line with recommendations APIL has made in the past, we welcome the principles that health services costs are to be recovered from the compensator, not the person receiving treatment, and that payment of health service costs are additional to and separate from the payment of compensation, rather than reducing the amount a victim receives.

We are pleased to note that new regulations allow for contributory negligence to be taken into account in certain circumstances for the first time, a rule APIL had advocated during the DHSSPS consultation in 2003.⁵ It seems both fair and equitable to the association, that health services costs recovery should be proportional to liability in the same way as a victim's award. In the interest of consistency, this principle ought to apply to compromised settlements as well as to cases decided by a court. APIL would submit that the failure to extend this principle to out of court settlements might in certain cases make litigation a rational choice for defendants, in order to obtain a finding of contributory negligence and thus reduce their liability for medical costs.

APIL agrees that tariffs and caps should rise in line with inflation, allowing the health service to recover its costs at current prices in future.

We further agree that the scheme should be administered centrally by the Compensation Recovery Unit (CRU), using information provided by the parties to the compensation claim.

APIL would wish to highlight the importance of personal injury lawyers in the operation of the proposed scheme. In line with comparable legislation in England and Wales, the regulations place a duty on claimant solicitors to provide the department with any relevant information on request. Unlike solicitors in England and Wales, Northern Irish practitioners will not receive any payment for this additional work. Whereas English practitioners are remunerated according to hourly rates, the Northern Irish scale cost regime provides for a set fee to be paid on conclusion of a court case. While insurers are likely to offset the additional administrative costs Regulation 5 creates for defendants with higher premiums, no recompense for the additional administrative burden on the claimant side has been considered. APIL would therefore reiterate its earlier recommendation that the CRU pay a standard fee to Northern Irish claimant solicitors for each case in which the latter obtain and provide information for CRU use.

⁴ APIL response to the DoH consultation on the Recovery of National Health Service costs in cases involving personal injury compensation, November 2002/ APIL response to DoH consultation on the recovery of NHS costs in all cases involving personal injury compensation, November 2004.

⁵ Paragraphs 9 – 12. APIL response to DHSSPS Consultation on the Recovery of Health Service costs in Cases Involving Personal Injury Compensation, November 2003.

On a broader note, APIL would like to point out the possible future reduction in personal injury cases, as a result of which health services costs may be recovered in far fewer cases than currently expected and budgeted for.

Recovery of health service charges is possible only after the injured individual has successfully claimed compensation. The number of personal injury claims brought is, however, likely to drop as a direct result of imminent multiple increases to court fees.⁶ APIL has previously warned that such steep rises will make a large number of currently successful personal injury cases financially unviable, and that the bargaining position of injured people outside court will be substantially weakened as a result.⁷ Consequently, many cases in which a third party is at fault, and would be liable to repay the injured party's medical costs, may not lead to the recovery currently expected.

The DHSSPS may wish, therefore, to carry out a full assessment of the effects increases in court fees and patients' potential inability to claim compensation will have on the expanded scheme, possibly weighting the resultant loss to health and other services against savings expected in the court system.

If you would like to discuss any of our comments further, please do not hesitate to contact me, by telephone on 0115 958 0585, or by email at almut.gadow@apil.com.

Yours sincerely

Almut Gadow
Policy Research Officer

⁶ Proposals currently under consultation, Northern Ireland Court Service, Consultation Paper on Fee Changes, available at http://www.courtsni.gov.uk/NR/rdonlyres/1D62AF74-767F-463F-A8DE-D0624246962A/0/p_pc_Consultation_Paper_Fee_Changes.pdf

⁷ See APIL's responses to the Northern Ireland Court Service's consultations on county court scale costs and fee changes, available at <http://www.apil.com/responding-on-behalf-of-injured-people.php>