



**Law
Commission**

Reforming the law

Health and Social Care Committee
Recovery of Medical Costs for Asbestos Diseases (Wales) Bill
RMCA5 - Law Commission

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Mark Drakeford AM
National Assembly for Wales
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Dear Mr Drakeford,

Thank you for your letter of 11 December 2012.

In 1999 the Law Commission produced a report entitled "Damages for personal injury: medical, nursing and other expenses; collateral benefits". One issue considered as part of that project was the recovery of NHS expenditure from a tortfeasor where the victim of a tort had been treated by the NHS. We considered whether the recovery scheme should be expanded from road traffic accidents (which it covered at the time) to include all personal injury cases where a victim had been compensated.

In our 1996 consultation paper on the same topic, we noted that this was a controversial issue with party-political aspects. We therefore considered it from a purely legal standpoint, and our report did not investigate in depth the policy advantages and disadvantages of the idea.

Our report did recommend the recognition of a general legal principle to the effect that the NHS would be able to recover its expenditure from a tortfeasor. This was on the basis that by treating the victim for free, the NHS had effectively discharged part of the tortfeasor's liability. We argued that this was an unjust enrichment, and the NHS should have a restitutionary claim as a result. We did consider briefly the argument that administration costs would outweigh the benefit to the NHS, and stated that our recommendation was subject to a full cost/benefit analysis being undertaken.

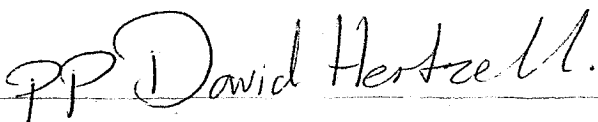
We did not consider illness or industrial disease separately from accident claims. Our recommendation was based on general legal principle which does not offer an obvious distinction between those two types of personal injury.

Our recommendations were adopted by the Department of Health in their 2002 consultation "The Recovery of National Health Service costs in cases involving personal injury compensation: a consultation". That consultation did specifically ask whether industrial diseases should be included within the scope of the recovery scheme. The Department of Health expressed an initial view that they should be included, although by the time the Health and Social Care Act 2003 was passed there was a specific exemption for "freestanding" diseases, which no doubt is the gap in the law your proposals are aimed at.

We mentioned the 2002 Department of Health consultation in our 2003 Annual Report, noting that our proposals were being taken forward. However we were not involved in this issue beyond the publication of our 1999 Report. We had no involvement in the preparation or enactment of the Health and Social Care Act 2003 and did not produce any publications on this topic in 2003. A search of our archive catalogue has shown that there are no files relating to this project extending beyond 2001. We were therefore at a bit of a loss as to what report the ABI was referring to. Having asked to see a copy we have now established that it was in fact a Northern Ireland Department of Health consultation, considering whether the Law Commission's 1999 proposals ought to be adopted in Northern Ireland. As far as we are aware the Law Commission has never expressed a firm view on whether the NHS cost recoupment scheme should extend to industrial diseases.

We have spoken with the ABI and clarified the matter. It seems unlikely, given the limited scope of our prior work in this area, that we would be able to provide any useful substantive input on this matter within the timescales needed. However, we will of course do whatever we can to assist the Assembly with what information we have.

Yours sincerely,

A handwritten signature in black ink that reads "David Hertzell". To the left of the name are the initials "PP".

David Hertzell