

Health and Social Care Committee  
Recovery of Medical Costs for Asbestos Diseases (Wales) Bill  
RMCA13 – Lyons Davidson Industrial Disease Group

Response to Consultation Questions

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The views expressed in this response are my own gained from my experience over several years dealing solely with claims on behalf of individuals affected by asbestos related diseases and their families.

1. I agree that there is a need for a Bill to allow recovery of costs of NHS treatment for asbestos related diseases in Wales. This is an innovative step taken by the Welsh Ministers. Following the case of Drake -v- Foster Wheeler [2010] EWHC 2004, I have included several successful claims for contributions towards Hospice care on behalf of the families of mesothelioma victims. This has secured thousands of pounds for Hospices who otherwise rely on raising their own funds. In the same way the costs of NHS care should be repaid by the "polluting" party which will provide valuable resources for the Welsh Government to support the sufferers of asbestos related diseases and invest in research. In my experience the families of the bereaved will also take comfort from the fact that the monies are recovered and used to help others.
2. I think the Bill does deliver the stated objectives as set out in the Explanatory Memorandum particularly with regard to patients suffering from mesothelioma. I think it may be more difficult to deliver the objectives for non malignant asbestos related diseases such as pleural thickening particularly where the patient is suffering from other conditions.
3. My concern would be the time it would take to obtain the NHS certificate of costs but the cost of this administrative process has been built into the planning notes. I have experienced delayed responses from finance departments at Hospices who are unused to requests for statements of the costs of their care which has from time to time held claims up for a short period. Admittedly the procedure outlined in the Bill should not hold up settlement of a civil claim for damages as the onus appears to be on the paying Defendant party to account to the Welsh Ministers for the cost and takes place post settlement of claims.
4. The Bill should not affect the Claimant solicitor process as the recovery process of costs takes place post settlement. However paying Defendant parties will have to also take into account the costs of the NHS care as an additional cost alongside compensation and other related costs of the claim.
5. I do not foresee any barriers to implementing the provisions save for objections from the paying parties because of the additional cost.
6. My view is that this is an innovative and impressive use by Welsh Ministers of the legislative competence of the National Assembly for Wales.
7. The Welsh Ministers have to be able to retain sufficient powers to make subordinate legislation to ensure that the Bill can become a useful and workable vehicle for change.
8. I believe the costs of introducing the Bill are justified. Given the estimate of approximately 80 mesothelioma claims successfully being brought in Wales, if the average cost to the NHS for each

patient is approximately £25,361 then the gross annual recovery would be £2.3 million so the comparative administrative costs of introducing this new scheme is worthwhile.

9. My view is that this will be easiest to introduce insofar as patients suffering from mesothelioma are concerned. As outlined in the explanatory notes many cases of asbestos related lung cancer remain undiagnosed. Further complications may be caused by asbestos related pleural thickening where provisional damages are awarded but presumably the medical certificate cost will be triggered at the date of settlement. It makes sense for the Department for Work and Pensions to contact the appropriate NHS Finance Board to alert them to the fact that a medical certificate needs to be produced. As already noted there may be delay caused by the fact that costs might have been produced by more than one NHS Board.

Insofar as claims are concerned, paying Defendants should be reassured by the fact that the costs of Claimant's solicitors should not be increased by the introduction of these measures.

I would be interested to have more information about how the Welsh Ministers propose to use the funds.

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