

THE RECOVERY OF NHS COSTS IN ALL CASES INVOLVING PERSONAL INJURY COMPENSATION

A CONSULTATION ON THE DRAFT REGULATIONS

RESPONSE BY



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Thompsons Solicitors is the UK's largest personal injury law firm. At any one time Thompsons runs over 70,000 personal injury cases. The vast majority of the cases run by Thompsons are referred to it by trade unions. Thompsons is also the UK's largest trade union law firm.

In this response Thompsons only highlight those areas where we have a problem or a concern.

THE PRINCIPLE BEHIND THE REGULATIONS

Thompsons is a firm believer in the concept that individuals should face the full financial consequences of their negligence.

RECOVERY FROM THE NEGLIGENT PARTY

It is, in Thompsons view, fundamental that where there is recovery that should only be from the negligent party and should not be a burden that falls upon the innocent victim of accident or disease.

At present Thompsons provide details in road traffic accident cases of treating hospitals to the defendant insurers and they then deal with the NHS costs recovery element. Within our special damages claims in personal injury cases we seek to recover a sum representing the NHS costs recovery but where there is recovery the payment is between the insurer and the government agency recovering on behalf of the NHS. This is how it should remain, our response is predicted on the basis that this will be the case.

ARE DISEASE CASES COVERED?

It is not made clear whether a disease case would be covered by the new regulations. The fact that disease cases are not specifically exempted suggests that this is so although the examples given in paragraph 1.4 on page 4 are accident type injuries only.

There may well be circumstances in which an individual or their estate recovers personal injury compensation following exposure to, say, asbestos and in the course of the disease's progression they will have received hospital treatment.

Again so long as there is no possibility of the victim of the negligent exposure to asbestos having to make a payment we have no problem with the principle that those who injured them should meet the costs of their negligence including costs incurred by the NHS.

We note that on page 45 there is reference to claims under the Fatal Accidents Act 1976 and a statement that claims under that act, which may have attracted NHS charges, will no longer be recoverable. Thompsons has no problem with this so long as the claimant is not affected in any way.

We do not though understand why, if there is a claim under the Act, the negligent party should not pay the cost of any treatment that the deceased received before their death. The reason for the exemption is not made clear.

REDUCTION OF NHS CHARGES AND CASES OF CONTRIBUTORY NEGLIGENCE (REGULATION 3)

Thompsons are concerned that the way that Regulation 3 is drafted appears to introduce an entirely new and unnecessary layer of bureaucracy in personal injury claims that may slow up their settlement. It would be ironic if this were the case at a time when the government is keen to speed up the throughput of personal injury claims through actions such as the Department of Work and Pensions (DWP) pilot on ELCI.

To require that every personal injury case that is settled by way of a compromise on liability should have to be put through a mediator in order to justify a reduction in NHS charges seems preposterous.

At present there may well be negotiations either in writing or on the telephone (but always confirmed in writing) about contributory negligence. A claim may be settled on a basis other than full liability but that would be concluded by correspondence not through the involvement of any mediator.

Thompsons would be very opposed to the introduction of anything that would slow up the settlement of personal injury claims. If there is agreement between a law firm and the insurers or the insurers appointed solicitors that should be sufficient evidence that contributory negligence applies in the case. There should be no need to involve a mediator.

INFORMATION TO BE PROVIDED ABOUT AN INJURED PERSON (REGULATION 5)

Thompsons would not want to increase the amount of work they have to do around NHS recovery from the present level (we doubt insurers would want that either). It should be sufficient for Thompsons to provide details of the injured person's treatment and the hospital they attended and nothing further.

LIABILITY OF INSURERS (REGULATION 11)

Thompsons has a concern here. It may be a misunderstanding of the intention of the regulations.

As long as the principle remains that the injured person should not pick up any of the cost, Thompsons has no problem with the idea that if an employer's insurance policy has a maximum limit the balance should be met by the employer themselves. Our concern would be that this regulation might be used to recover compensation from an insurance policy taken out by an individual to cover their sickness.

Thompsons would suggest a simple emphasis in the regulations that the recovery only applied to employers should ensure that if individual's made provision for their own sickness they would no run the risk that that policy could be drawn upon by any party in a personal injury compensation situation.

EXEMPTED PAYMENTS (REGULATION 12)

Thompsons do not think it is practical to list all the possible schemes that should be exempted. One possible scheme might be the current one for payment to former miners for vibration white finger or chronic bronchitis and emphysema. Another might be payments to ex-employees of T&N.

It would be more practical and fairer if a decision as to whether there should be an exemption was one decided upon by the Industrial Injuries Advisory Council (IIAC) to whom organisations could make representations. The decision of IIAC as to whether a payment is exempted could be specified to be final.