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Submission to the Health and Social Care Committee

National Assembly for Wales

Recovery of Medical Costs for Asbestos Diseases (Wales) Bill

The Forum is a national organisation representing asbestos victims support groups throughout the UK. The groups provide a dedicated service to asbestos victims including: home visits for benefits and compensation advice; representation at tribunals; support meetings for mesothelioma sufferers and their families. The Forum campaigns for: improved services and treatment for asbestos victims; justice and full compensation, and; a ban on the trade and use of asbestos world-wide.

Submission

We have addressed the consultation questions below which come within the scope of our work, knowledge and expertise.

1. Is there a need for a Bill to recover medical costs?

We think there is a need for the Bill for the following reasons:

To properly fulfil the 'polluter pays principle' by meeting the full societal cost of asbestos-related diseases.

The established principle that the polluter pays is only fully complied with in respect of asbestos-related diseases where: the full societal costs of asbestos disease is met by those employers who negligently caused damage to health or loss of life through exposure to asbestos, and; where appropriate, by those who insured negligent employers.

The exigencies of life result in many people suffering many different diseases, incurring costs of medical treatment within the NHS, which are rightly funded through National Insurance. However, asbestos diseases, in the majority of cases, are caused by negligence and could, and should, have been prevented. The cost to society of fully meeting the treatment and care needs of asbestos victims resulting from negligence should be borne by the guilty party, or their insurers, not through National Insurance.

To fulfil unmet medical needs, the costs of which fall on the wider society

Often, medical costs are met by asbestos victims and their families who try to make up for unmet medical needs, as shown in the two examples below.

Mesothelioma sufferers and their families provide an enormous amount of funding for research into the treatment of mesothelioma, which attracts very little funding from the Department of Health. The Mick Knighton Mesothelioma Research fund has donated over £1 million, supporting many research projects, as has the June Hancock Mesothelioma Research Fund. Since Action Mesothelioma Day was inaugurated in 2006 over £110,000

has been donated to these research funds by mesothelioma sufferers and their families in Greater Manchester. A similar sum has been collected by other Forum members.

Insurers have acknowledged this unmet need by donating £3 million for mesothelioma research. However, we ask the Committee to understand that insurers received a huge windfall from the tax payer through recovery of state lump sum payments for over a decade. The compensation insurers paid to successful claimants was reduced by the amount of the state lump sum payment until 2008 when the Government finally decided to recover those payments, ending the tax payers' subsidy to insurers. The DWP recovered £23,953,961.00 in 2011¹, which is the amount that insurers would have recovered in that year. It is clear that over a decade, insurers received a windfall from the tax payer of well over £100 million.

It is our view that the insurers' donation to research came from the tax payer, not the insurers. Notwithstanding that view, we believe that the unmet need for research could be supported by recovery of NHS costs as set out in the Bill, which provides for certain and dependable income based on the polluter pays principle, and not reliant on goodwill (sic).

Mesothelioma Nursing posts. The charity Mesothelioma UK has, to date, funded three specialist mesothelioma nursing posts. Funding has come from a wide source of charitable donations to provide more specialist care for mesothelioma sufferers. The cost to society of specialist care of mesothelioma sufferers could be met by those who negligently caused this disease through the recovery of NHS costs as set out in the Bill.

To relieve the cost of occupational ill health as well as injury, which falls mainly on those affected and by their families.

The HSE estimate² that in 2011, 54% of the cost of occupational injury and ill health (excluding cancer) was borne by individuals, with employers bearing 24% and Government 23%. The HSE Executive Board (22 Aug. 2012) indicated that the cost to society of occupational cancer is in the region of 'double billion figures'.

The cost of ill-health, injury and cancer places an unacceptable burden on individuals and their families: over double the burden on the rest of society. This Bill goes a small, but significant way in reducing that burden.

8. Does the Bill deliver the stated objectives?

The Bill seeks to recover NHS costs of treating asbestos victims negligently exposed to asbestos to Welsh Ministers for the general benefit of asbestos victims and their families. As set out, we believe that the Bill does deliver those objectives by providing for the recovery of NHS costs in cases of negligent exposure to Welsh Ministers (S2) in accordance with the National Health Service (Wales) 2006 for the purposes of treatment of, or other services relating to, asbestos-related diseases (S16).

4. How will the Bill change what organisations do? What will the impact be?

¹ <http://www.dwp.gov.uk/other-specialists/compensation-recovery-unit/2008-diffuse-mesothelioma/>

² HSE Costs to Britain of workplace injuries and work-related ill health: 2010/2011

A compensation system which reflects the true cost to society of employer negligence properly fulfils an important objective common to all compensations systems: the prevention of further injury and disease. In 2002, an HSE report³ concluded that *'UK employers only bear a minority of the tangible costs of occupational ill health and injury through insurance premiums, and an even smaller fraction if non-tangible costs are included.'* It is unsurprising that the Report further concluded that employers did not cite the reduction of the cost of insurance premiums as a reason for improving standards of health and safety management.

In making employers and insurers more responsible for the cost to society of asbestos disease, the Bill will encourage better prevention, affirming the view that employer negligence should not be a cheap option. This is especially important as the failure of duty holders to comply with the Control of Asbestos Regulations, especially in respect of asbestos in schools, has caused public dismay, particularly in Wales. Moreover, the HSE has asked that the asbestos Hidden Killer Campaign is urgently reinstated because of their deep-felt concerns about the lack of worker awareness of the hazards of asbestos and the failure of duty holders to comply with the law.

8. Financial implications of the Bill

We support option 2i for the reasons set out in paragraph 123 of the Explanatory Memorandum.

With reference to paragraph 129 of the Explanatory Memorandum, we do not think that the proposed tariff scheme for mesothelioma untraced insurance, as announced by Lord Freud on the 25 June 2012, will impact on the number of mesothelioma claimants in Wales which will allow for recovery of NHS costs. This is because the tariff scheme is to be funded by a levy on insurers, which is likened to a 'tax', so that payments to mesothelioma sufferers successful in a claim on the scheme will be paid by public funds. Furthermore, payments are envisioned to be paid at approx. 75% of average mesothelioma awards and will not conform to the usual civil law rules for payment, e.g. payment to the deceased's estate.

Had the Government adopted the main, and only costed option, in the consultation i.e. an Employers Liability Insurance Bureau (ELIB), similar to the Motor Insurers' Bureau (MIB), then mesothelioma sufferers would be treated no less favourably than injured drivers and would receive a payment from an insurance fund which could be vulnerable to recovery of NHS costs.

Tony Whitston

Forum Chair

20 December 2012

³ HSE Report 436/2002. 'Changing business behaviour – would bearing the true cost of poor health and safety performance make a difference?'

