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Vaughan Gething AM
Chair, Health and Social Care Committee
National Assembly for Wales
Cardiff
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17 April 2013

Dear Vaughan

Stage 1 Report on the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill – further information in response to recommendation 5

I have previously provided Members with a supplementary note in response to recommendation 5 of the Committee's Stage 1 report on my Bill. For convenience, I have reproduced recommendation 5 below and attached my supplementary note at Annexe 1.

Recommendation 5: We recommend that the financial estimates, on which the Bill is based, are updated as quickly as possible, ideally before the Stage 1 debate, and in any event before detailed consideration of the Bill at Stage 2. In doing so, we expect the Member in charge and the Welsh Government to address more thoroughly the extent to which recovered funds are likely to recirculate within the Welsh public sector, looking in particular at likely future patterns of liability within the public sector.

As part of this note, I said that I had contacted Thompsons solicitors for some more detailed information regarding the claims they have processed and that a note on this from Thompsons would follow. Please find this attached at Annexe 2.

Yours sincerely



Mick Antoniw AM

Member in charge, Recovery of Medical Costs for Asbestos Diseases (Wales) Bill

Recovery of Medical Costs for Asbestos Diseases (Wales) Bill

Supplementary Note: In response to the Health Social and Social Care Committee Stage 1 Report - recommendation 5

Proportion of claims in the public sector

Following the Committee's report, we have contacted Thompsons solicitors for more detailed information regarding the claims they have processed, the Association of Personal Injury Lawyers and also the CRU.

Thompsons calculated that 9.7% of the defendants involved in 165 successful claims that they processed in England and Wales were from the public sector. Analysis of these defendants reveals that seven were local authorities, eight were government departments and one was an NHS Trust. Collectively the public sector defendants represent 9.7% of the total of identified defendants by number. One was a Welsh public sector body while others were UK public sector organisations, such as the Ministry of Defence. A note from Thompsons on this point will follow.

Thompsons deal with the majority of cases in Wales, but for completeness of coverage, we have contacted the Association of Personal Injury Lawyers (APIL) to see if information can be collected from other legal firms on the proportion of cases that would fall on the public sector. We are awaiting a response from APIL.

Number of settled claims in the state sector

We approached CRU to see if they could provide a similar breakdown for us. The CRU have provided statistics in relation to mesothelioma disease claims registered with the CRU in the last 5 years in Wales. Of 242 cases that have been settled in this period, 85.1% were in the non-state category. The 14.9% remaining relate to local government, NHS, Government departments and national industry, or 12.8% if we remove national industry. It is worth noting that the number of Welsh cases may be underrepresented as some postcode areas, such as Chester and Shrewsbury, appear to be missing from the CRU analysis.

Mesothelioma disease claims relating to Wales registered with CRU, between 1 April 2007 and 31 March 2012

<u>Compensatory Category</u>	<u>% of settled claims</u>
Government Department	2.5%
Local Authority	7.4%
National Industry	2.1%
NHS	2.9%
Non-State	85.1%
Total	100.0%

Source: Compensation Recovery Unit (CRU)

Notes: The classification the CRU have used to identify a 'State' claim is as follows. If the Compensator, Compensators Representative or Policy Holder is a Government Department (both central and local), Local Authority, NHS, National Industry or Possible National Industry the claim is classified as State. The remaining claims are classified as 'Non-state'.

Some Compensators within the State category may have commercial insurance, however this data does not identify such cases.

The data relates to mesothelioma claims only, registered with the CRU between 1st April 2007 - 31st March 2012 where the claimant's home address is Wales. Claims where an interim settlement date is held are categorised as being live rather than settled.

The CRU do not hold details relating to cases where no liable party could be traced and for which state compensation was provided. If state compensation only was provided, the details would not be registered with the CRU. The CRU would only be informed if a compensator was subsequently identified.

Based on this information it would be reasonable to assume that the proportion of cases for which the public sector would be liable will be in the region of 9% to 15%. This does not take into account those cases where public bodies have their own insurance arrangements.

Following the mention of the possible implications for local authorities in the Welsh Local Government Association's (WLGA) evidence to the Committee, we also requested information from the WLGA in terms of the number of cases in which Welsh local authorities have been liable for damages arising from asbestos related diseases, and estimates of future cases. The WLGA found it difficult to get absolute figures across Wales. This means they are unable to estimate the current or future volume of claims for which local authorities would be liable as a result of the Bill.

More detailed financial information outside of mesothelioma cases

The Welsh Government has commissioned further analysis to extend the sample of mesothelioma cases and to sample cases for pleural thickening, asbestosis and asbestos related lung cancer cases. The results of this additional research will be considered prior to the Stage 2 debate.

Proportion of CRU settled cases that relate to mesothelioma

The majority of settled claims that the Claims Recovery Unit (CRU) have processed over the past four years have been in relation to mesothelioma. Between April 2009 and March 2012, of 255 settled cases, 158 (62%) were mesothelioma, 67 (26%) were asbestosis, 29 (11%) were bilateral pleural thickening and 1 was pleural plaques. (Note, this does not include asbestos related lung cancer as cancer cases are not captured under this).

This does demonstrate that using mesothelioma cases as a starting point for estimating the potential reclamation of NHS costs is appropriate to get an early view of the potential impact of the Bill. While there will be reductions in terms of co-morbidity in settled claims and proportion of public sector claims, these could be balanced by additional recoupment of costs from cases other than mesothelioma.

Mick Antoniw AM

Member in charge, Recovery of Medical Costs for Asbestos Diseases (Wales) Bill

Asbestos (Recovery of Medical Costs) Bill

Thompsons' Defendant Data

March 2013

About Thompsons

Thompsons is the UK's most experienced trade union and personal injury law firm. It has a network of offices across England & Wales and the separate legal jurisdictions of Scotland and Northern Ireland. Thompsons only acts for trade union members and the victims of injury, never for employers or insurance companies. At any one time, the firm will be running 70,000 personal injury claims.

Thompsons brought the first ever successful claim for asbestos disease in the House of Lords in 1972 and since then has been at the forefront of asbestos litigation representing trade unions and their members in major test cases including *T&N Plc (In Administration) v RSA*, Companies Court 2003; *Cape PLC (Scheme of Arrangement)* Companies Court 2006; *Barker v Corus*, House of Lords 2006; *Pleural Plaques Test Cases*, House of Lords 2007 and the *Mesothelioma Trigger Litigation*, Supreme Court 2012.

The firm participates regularly in government consultations on legislative issues.

Our data

In response to a request from Mick Antoniw AM we have collated data from a batch of 165 successful asbestos cases concluded in England and Wales during 2012. All of these cases were registered with the CRU.

Analysis of those defendants reveals that seven were local authorities, eight were government departments and one was an NHS Trust. Collectively the public sector defendants represent 9.7% of the total of identified defendants by number. One was a Welsh public sector body while others were UK public sector organisations, such as the Ministry of Defence.

The reliability limit of assumptions based on this data is confined by our case management reporting system which identifies only one defendant in each successful case when in practice a proportion of those cases will have been pursued successfully against one or more separate defendants, in addition to the defendant named in the attached list.

Our reporting system does not identify what proportion of cases involved multiple defendants, how many other defendants there were or the identity of any other defendants.

Further information:

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