



## **Health and Social Care Committee - scrutiny of the Recovery of Medical Costs for Asbestos Diseases (Wales) Bill**

### **Written submission from Tenovus, Wales' largest cancer charity**

This paper is Tenovus' written response to the Health and Social Care Committee's call for evidence in relation to Mick Antoniw's Bill for the Recovery of Medical Costs for Asbestos Diseases.

During the initial consultation phase, Tenovus issued a statement fully supporting the general principles of the Bill and highlighting the effects the civil litigation costs reforms, as cited in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), will have on compensation claims for victims of asbestos-related diseases, namely that victims would be required to surrender a quarter of the damages that they have been awarded to pay for legal costs.

On 26 June 2012 Bill Esterson MP (Sefton Central, Labour) stated

*"The legislation requires terminally ill asbestos victims who succeed in a claim for compensation against negligent, guilty employers to pay up to 25% of their damages for pain and suffering in legal costs. They are not part of the compensation culture, nor are they legally aided, so to include them in that provision is wholly wrong. Many sufferers are so defeated by their illness that they never make a claim under current circumstances. Victim support groups have been told by victims that the change proposed would be a significant further deterrent to them making a claim at all".*

The UK government have subsequently stated that the (LASPO) reforms will not apply to mesothelioma cases and a review of the effects of the reforms on such cases will be implemented in Spring 2013.

In July 2012 the UK government announced new measures to speed up the process of compensating mesothelioma victims. These measures would be introduced as part of a multi-million pound support scheme to help those victims who cannot trace a liable employer or employers' liability insurer.

Some support groups welcomed the scheme as a step in the right direction but criticised its scope and particularly the exclusion of sufferers of other asbestos-related diseases such as lung cancer caused by exposure to asbestos.

A further announcement made by the UK government in December 2012 regarding the plans to speed up the process of compensating mesothelioma victims through the introduction of a pre-action protocol and electronic portal to register claims has also been met with criticism and is viewed by some as a further erosion of victims' access to justice and compensation. Concerns have been raised about making the process automated and not personal and that pay-outs will be significantly smaller as a result. This will have a huge impact on sufferers and their families.

There has been much discussion surrounding the notion of the 'polluter must pay' which is commendable and right; however, there needs to be further thought given to the very real possibility that this Bill will act as a deterrent to would-be claimants who may witness employers and insurers defending claims far more vigorously as they have more to lose where the recovery of medical costs becomes an additional factor.

It is well documented that mesothelioma is an aggressive and terminal disease with an average life expectancy of less than two years from diagnosis. A claim for compensation can take up to two years to settle which means that sufferers often die before their claims are paid out.

At Tenovus, we believe that the starting point should be the victims of asbestos-related diseases themselves and any discussion should surround how they can benefit from any proposed legislation. Victims and support groups should be at the forefront of these discussions and their views given weight above all others with an interest in the process.

With regard to the Bill generally, on 5 December 2012 Mick Antoniw made the following statement:

*"The purpose of the Bill is simple. In cases where compensation has been paid in respect of a victim of an asbestos-related disease, with or without an admission of liability, the Welsh Government will be entitled to recover the cost of the medical treatment provided. The Bill does not create any new legal entitlement to compensation. It merely says that where compensation has been paid, the cost of medical treatment can be recovered by the Welsh Government with the intention that the costs recovered will be used to provide additional medical support and assistance to asbestos victims and their families. As Members will see from the Bill and the explanatory memorandum, the Bill could recover costs of just over £2 million each year. It is intended that that would be used, for example, to provide additional nursing and hospice care, support and counselling for families and other medical assistance. In this way, I believe that the Bill can make a real difference to the quality of life of asbestos victims who have been so cruelly smitten by this terrible occupational disease, and also to their families".*



Tenovus broadly agrees with the premise that costs recovered will be used to provide additional medical support and assistance to asbestos victims and their families. However, what assurances can be given, and checks and balances put in place, to ensure that all the money recovered will go directly back into funding services for asbestos sufferers and not swallowed up by a cash strapped NHS?

Tenovus also raises the following questions: Will medical support and assistance not be available without this Bill? Will there be cause for concern amongst sufferers that resources are limited and they may not receive the best possible care? We believe that more consideration should also be given to the wider network of support services available to victims from the third sector for example, and whether there would be provision for financially supporting those vital services alongside those provided by the NHS.

Will there also be further provision for victims and their families to be supported through the cost of lengthy legal cases where an employer / insurance company is challenging a claim for compensation? It is noted that much of the delay in these cases is due to defendant tactics and thus the fear is that the added dimension of the recovery of medical costs will compound this.

Tenovus would like to thank the Health and Social Care Committee for the opportunity to respond to the Bill and look forward to viewing its development through the next stage.

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