HOUSE OF COMMONS

HEALTH COMMITTEE

INQUIRY INTO HEAD INJURY REHABILITATION

WRITTEN EVIDENCE OF THE ASSOCIATION OF PERSONAL INJURY LAWYERS

19 FEBRUARY 2001

The executive committee would like to acknowledge the assistance of the following people who contributed to the preparation of this evidence:

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HEAD INJURY REHABILITATION

1. The Association of Personal Injury Lawyers (APIL) was formed as a membership organisation in 1990 by claimant lawyers committed to providing the victims of personal injury with a stronger voice in litigation and in the marketplace. We now have around 4,900 members across the UK and abroad, and membership comprises solicitors, barristers, legal executives and academics.

2. The association's main objectives are:

   - To promote full and just compensation for all types of personal injury
   - To promote wider redress for personal injury victims in the legal system
   - To campaign for improvements in personal injury law
   - To promote safety and alert the public to hazards
   - To provide a communication network for members
   - To promote and develop expertise in the practice of personal injury law

3. APIL has, for many years, actively encouraged and supported the timely provision of rehabilitation to all those with personal injuries, including adults with head injuries.

4. This evidence is provided on the basis of APIL members' observations and experience of adults with head injuries who consult them for advice on, and assistance with, an actual or potential legal claim for damages. From this perspective, our members gain a deep understanding of the medical, social and financial aspects of a head injury and of the services available to their injured clients both within the statutory and non-statutory sector.

Summary

5. There is not an accepted system, statutory or otherwise, within England and Wales as to:
    - the circumstances in which rehabilitation should be made available to those with head injuries;
    - how rehabilitation services should be organised;
    - how any rehabilitation that is provided should be financed.

6. As a result:

    - rehabilitation is, essentially, available, organised and financed on an ad hoc basis across England and Wales;
    - rehabilitation is not the priority it should be within the healthcare and social support system;
    - seamless care is not provided to head injured adults.

7. APIL believes that the availability, organisation and resourcing of head injury rehabilitation should be prioritised and clearly defined within the healthcare and social support system.

Evidence

8. Medical progression has meant that increasing numbers of people can physically survive despite head injury. Following medical stabilisation, head injured people can suffer varying degrees of emotional, intellectual, social and physical handicaps. It is well recognised that rehabilitation can assist such people to maximise their quality of life and to adjust to their pre-head injury familial and social situation.

9. Despite its importance rehabilitation does not appear to have a defined place within the healthcare and social support system. It is not clear whether

rehabilitation constitutes 'medical treatment' or 'care and support' as it does not fall neatly into either category. Whilst this is not inherently problematic, it seems to have caused confusion as to where both the general and financial responsibility for rehabilitation lies, as health authorities are responsible for medical treatment and local authorities are responsible for care and support.

10. As a result, once medical stabilisation has been achieved, there is no set practice as to what should happen next. In the experience of APIL members, head injured adults often do not receive any rehabilitation at all. Many will be unable to afford rehabilitation through the non-statutory sector and the need will, therefore, fall to be met by the statutory sector.

11. The statutory sector often, does not, however, meet this need either immediately or at all. This appears to be for several reasons including:

    - Prolonged and/ or unresolved discussion as to how rehabilitation will be financed (i.e. by the health or local authority);
    - General resourcing problems leading to low levels of rehabilitation services within both hospitals and the community.

12. The provision of rehabilitation, therefore, is generally provided on an ad hoc basis depending on the particular health and local authorities involved and circumstance. Essentially, the head injured adult falls into a 'black hole' following medical stabilisation. They may be fortunate enough to receive rehabilitation from the statutory sector but this is in no way certain. The provision of rehabilitation services often seems to fall to the voluntary sector. In fact, many who do not receive head injury rehabilitation are, inappropriately, treated and cared for the same as, and alongside, those with mental health problems and learning disabilities.

13. APIL would also like to stress that even if rehabilitation is provided, it is often not provided in a timely manner due to inevitable delays caused by the system outlined above. This reduces, though does not eliminate, the impact and

success of rehabilitation. In addition, the observations of our members suggest that, on many occasions, minor head injuries are undetected. This means that, often, those who could benefit from rehabilitation have no hope of accessing it.

Rehabilitation within the Context of a Claim for Damages

14. APIL has, for many years, recognised the importance of rehabilitation and the ad hoc basis on which it is available to those that need it from the statutory sector. For this reason, APIL actively supports and encourages the provision of rehabilitation through the non-statutory sector, where possible, in the context of a legal claim for damages.

15. Such rehabilitation can be funded by interim payments from defendants or their insurers, which are paid on account of damages. In fact a Code of Best Practice on Rehabilitation, Early Intervention and Medical Treatment in Personal Injury Claims has been developed for claimant solicitors, defendant solicitors and insurers to follow to encourage such a practice and is increasingly being used in the context of settlement and litigation. This Code is attached for information.

16. Even rehabilitation within the non-statutory sector, in the context of litigation, occurs on an ad hoc basis depending upon:

    - Co-operation between the claimant's solicitor, defendant's solicitor and the insurer in the particular case;
    - The commitment to, and knowledge of, rehabilitation of all involved;
    - The extent to which liability is disputed (if disputed, an insurer will obviously be unwilling to fund rehabilitation).

17. Where another is legally responsible for the head injury and is liable to pay damages, the local authority may charge for various services, including

rehabilitation, under s.17(2) Health and Social Services and Social Security Adjudication Act 1983. It should be noted, however, that in the experience of APIL members, this power is not used as often as it could be. In addition, in the same circumstances, health authorities have no power to charge for treatment provided on the basis of medical need (with the exception of initial treatment). A system of recoupment for the costs of rehabilitation provided by health and local authorities, similar to that under the Compensation Recovery Unit, could assist with resourcing problems in this area.

Recommendations

18. It is imperative that rehabilitation:

- is prioritised and made comprehensively available as far as is financially possible;
- has a clearly defined place within our healthcare and social support system in terms of organisation and resourcing.

Further Evidence

19. APIL would be happy to assist in collating further evidence, through our members, on the availability, organisation and financing of rehabilitation within the statutory and non-statutory sector.

20 February 2001