

# **Tackling the “Compensation Culture”**

## **Government Response to the Better Regulation Task Force Report: ‘Better Routes to Redress’**

**10 November 2004**

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The Government is determined to scotch any suggestion of a developing ‘compensation culture’ where people believe that they can seek compensation for any misfortune that befalls them, even if no-one else is to blame. This misperception undermines personal responsibility and respect for the law and creates unnecessary burdens through an exaggerated fear of litigation.

The Government is grateful to the Better Regulation Task Force (BRTF) for its report *‘Better Routes to Redress’* (<http://www.brta.gov.uk/reports/litcompensation.asp>). The report provides a valuable independent insight into how the current compensation system works together with recommendations on how access to redress might be improved.

An essential purpose of the law is to define people’s rights and responsibilities towards each other. A fair and properly balanced framework of rights underpins respect for the rule of law which is the bedrock of a healthy society and economy.

The law requires people to take reasonable care towards one another, and to compensate for damage they cause when they fail to do so. But the law also puts a duty on individuals to take reasonable care of their own safety, and reasonable steps to reduce the cost of any damage that others cause them. Failure to do so can virtually extinguish any right to make a claim.

Of course the Government believes that people who have a genuine claim should be able to enforce their right to compensation. Otherwise people would be able to offload the cost of their negligence onto their victim or the taxpayer. But we strongly oppose any culture where people believe that if there is an injury there must inevitably be someone else to blame, and someone else to pay. And we oppose people being encouraged to believe it is always worth “having a go”, however meritless the claim. This creates false expectations that there is easy money just waiting to be had. Some personal injury advertising does just this.

### **What can be done to stop such a culture growing?**

First it must be emphasised that there is no link whatsoever between the alleged existence of a compensation culture and the Human Rights Act. The Act did not create any new rights. It simply enabled people in this country to access their basic rights and liberties in their own courts instead of having to make the long and costly journey to the European Court of Human Rights in Strasbourg.

And we can re-assure those who fear being claimed against that accident claims, which are the sort of claims that generally give rise to these fears, are not soaring. The trend has been reasonably static for the past four years – indeed they fell by 9.5% in the year to March 2004.

But we recognise that just quoting facts and figures will not be enough to allay their fears. We need to take action: both to tackle practices that help spread the

misperceptions and false expectations; and to improve the effectiveness and efficiency of the system for those who have a genuine claim to compensation.

For example, the Government strongly opposes advertisements in hospitals that encourage patients to claim against doctors, or doctors being paid to refer patients to a particular solicitor. These practices are both distasteful and help to fuel the perception of a 'compensation culture' and increase the fear of litigation. We welcome the statement from the General Medical Council that paid referrals by doctors are not appropriate. We also agree with the BRTF that the advertising standards codes must be adhered to and rigorously enforced and we will support any further action that may be needed by the advertising standards authorities, the Law Society or the new Claims Standards Council to achieve this.

It is also important that the courts continue to do their part in setting the standards and applying the current law, which reflects the right to compensation for injuries caused by negligence, but not otherwise. This in turn sets the standard against which claims are settled out of court.

Where people have a genuine claim we need to provide an effective system for dealing with that claim. The Government will focus on making this more timely, cost effective and proportionate. As recommended by the BRTF, we will explore how earlier and better rehabilitation can be provided, and how we can encourage much greater use of alternative dispute resolution. Where the courts are used, we will ensure that procedures and costs are proportionate.

Where legal aid is granted to pursue a claim, the merits test must be applied rigorously. For example, claims against educational establishments concerning the provision of educational services, which can be made many years after education has been completed, have a low success rate and high cost. The Legal Services Commission is currently consulting on the funding approach to be taken towards these claims.

But we must also tackle the causes of the underlying problems. So in consultation with the various sectors, we will develop appropriate guidance on issues like health and safety. We will encourage appropriate and proportionate risk management procedures and promote the need for responsible behaviour, not only from those in charge of the activity but also from those taking part. These actions will not only help to give those providing the activity confidence about risk, its management and their role but will also give the insurance industry confidence that risk is being managed responsibly. And while Government cannot determine the commercial pressures upon them, we want to encourage local authorities and their insurers to resist bad claims if they are made. Where state bodies are involved, we will do our bit to resist such claims, because not doing so only encourages more bad claims to be made.

The Government is committed to tackling all these issues. If we want to stop, for example, local authorities closing down sensible activities because they unrealistically fear litigation then people need to be confident that the system is fair and that it will deliver proportionate dispute resolution.

## **Our Objectives**

To do this the Government will need the support and involvement of all those stakeholders who have an interest in these issues. There is only so much the Government can do, and all those involved have an important part to play. With them we will want to build on existing initiatives and develop further policies that:

- reduce accidents in the first place through better health and safety measures and proportionate risk assessment procedures;
- encourage good occupational health plans;
- promote the availability of affordable insurance. We will work with the insurance industry to explore how premiums can be linked more effectively to risk, and to promote greater transparency - all too often increases in premiums, or refusals to provide cover, are unjustifiably blamed solely on a rising number of claims or the 'compensation culture', which in turn helps fuel the perception;
- encourage better and earlier rehabilitation. Rehabilitation is most effective when provided early. It not only benefits the injured but can also help reduce the level of claims;
- publicise the law to make it clear that compensation will only be awarded where an injury is caused through someone else's fault; and that contributory negligence will be taken into account;
- ensure proper regulation of claims management companies. Effective regulation will ensure that frivolous claims are not encouraged by claims management companies, the legal profession or others. Such claims are a drain on the resources of those who have to investigate them in order to reject them.
- encourage alternative dispute resolution. Often an explanation and an apology are what the injured and the bereaved most want;
- provide procedural, legal aid and costs rules which facilitate good claims, but make it clear there is a price to be paid for meritless or false claims;
- encourage the media and senior commentators to ensure that the debate is constructive, informed and evidence-based. Questionable figures or research publicised through the media gain credence as those who have seen the headlines repeat them.

### **How will the Government take this work forward?**

The Government will set up a Ministerial Steering Group to ensure that this work and the BRTF's recommendations are taken forward in a co-ordinated way across Government. The Group will be led by David Lammy, Parliamentary Under Secretary of State at the Department for Constitutional Affairs (DCA).

However it will be for organisations outside Government to take the lead on some of the initiatives. To help facilitate and support these initiatives it is intended that the Ministerial Steering Group should be informed by an Action Group, which will be set up by the DCA. Its membership will be drawn both from within Government and from outside organisations. We welcome the indications we have already received from stakeholders of their willingness to work with Government in this way. The role of the Action Group will be to:

- provide a catalyst for action within the various sectors represented;
- develop an action plan and monitor delivery;

- ensure initiatives are taken forward in a co-ordinated and informed way;
- share good ideas and practices;
- set up smaller expert working groups on specific issues;
- provide support and encouragement to organisations in considering and developing new initiatives themselves; and
- advise the Ministerial Group on initiatives and progress.

The Department for Constitutional Affairs will monitor progress and provide the BRTF with an update every six months.

## **Response to Individual Recommendations**

The Government's response to the specific recommendations is set out below.

### **Recommendation 1: Claims Management Companies**

#### **(i) Regulation**

*The Task Force recommends that:*

- *by September 2004, the Claims Standards Federation approach the Office of Fair Trading to apply for approval of its Code of Practice, which should set out how claims management companies should operate. The Claims Standards Federation should work towards the approval of its Code by the OFT by September 2005*

*and if, by December 2005, progress is not made:*

- *the Department for Constitutional Affairs should regulate the sector.*

**The Government accepts that the claims management sector must be properly regulated. We agree that the claims management sector should be given one last chance to put its own house in order and if it doesn't then we will consider how new formal regulation could be introduced. The Government wants to see a major change in quality and behaviour by claims management companies so that the service provided to consumers is significantly improved and consumers' expectations are not raised falsely through potentially misleading advertising and other sales practices. We also want to see a renewed focus on improving transparency of processes and fees, better quality control and the speedier conclusion of any claims made. An improvement in the services provided to, and relationships with, solicitors, funders and insurers is another important requirement.**

The Government agrees that the successor body to the Claims Standards Federation (CSF), the Claims Standards Council (CSC) appears to provide the opportunity to make significant progress now towards better regulation and to ensure consumer interests are safeguarded. The Government wants the CSC to work vigorously towards approval of its code of practice by the Office of Fair Trading (OFT) by

September 2005 and is pleased that the CSC has met the first part of the BRTF's recommendation and submitted its code to the OFT. Code approval would represent significant progress towards raising standards in the sector and will be a crucial factor informing future decisions on further formal regulation. Such decisions, particularly on the delivery of any new formal regulation, will also be informed by the outcome of Sir David Clementi's review of the legal services regulatory framework.

The development of an industry body that can act as a 'self-regulator' provides an opportunity to produce much improved service levels, better standards and an independent compliance and complaints regime. The CSC has a key role to play in ensuring that this improvement continues if it can deliver on its promises. The success of the CSC will depend partly on being able to establish sufficient credibility with key stakeholders in the personal injury sector.

DCA has been working with the Working Party on Standards in Accident Compensation, chaired by a director of the Law Society to encourage improved standards in the claims management sector. The Working Party included a range of representatives from the legal and insurance sectors, government, regulators, consumer groups and claims management representatives. The Working Party took the initial steps needed to bring together those companies who could develop a draft model code of practice and new consumer guidance.

Sir David Clementi is considering regulatory gaps as part of his independent review into the legal service framework commissioned by the Government in July 2003. The review, which is due to report by the end of December 2004, is expected to make recommendations that will inform the Government's consideration of further formal regulation of the claims management sector and how this could be delivered.

**(ii) Advice for Consumers**

*The Task Force recommends that the Department for Constitutional Affairs should publicise through Directgov, and other Government websites aimed at consumers, the protection which consumers have against claims management companies.*

**Accepted - Improved consumer guidance, including new information about existing protections, will be made available via relevant Government websites, including Directgov, by December 2004. DCA will work with the OFT, other regulators, consumer groups and the CSC to devise better ways to help consumers who either have concerns about the activities of a claims management company or have had problems making a personal injury claim via a claims management company. DCA will prepare additional guidance on what protections and remedies already exist for consumers who have a complaint or concerns about a claims management company, either in relation to an individual claim or the activities of a particular company (for example advertising or sales). DCA will publicise this through the websites mentioned above and work with the CSC to identify new outlets.**

Although the claims management sector is not subject to sector specific regulation, there is protection for consumers through general trading standards legislation covering the supply of goods and services, unfair contracts terms and trades descriptions and, from 2005, financial services regulation if insurance is sold. Companies offering loans need to be licensed under the Consumer Credit Act 1974. The Law Society and the Bar Council respectively regulate the conduct of solicitors and barristers who take work from these companies. The Advertising Standards Authority (ASA) (backed up by OFT enforcement) regulate all advertising standards

(the Office of Communications - OFCOM's responsibilities in respect of broadcasting transferred to the ASA in November 2004).

There are a number of existing channels available which could be used more effectively to provide information to consumers about the organisations they can approach to seek assistance. Government websites include Directgov, DCA ([www.dca.gov.uk](http://www.dca.gov.uk)) and the Community Legal Services (CLS) website ([www.clsdirect.org.uk](http://www.clsdirect.org.uk)). The CLS website already features guidance on making a personal injury claim (Personal Injury: Complaining and claiming compensation - [www.clsdirect.org.uk/legalhelp/leaflet12](http://www.clsdirect.org.uk/legalhelp/leaflet12)) and using no win fee agreements (No win No fee actions - [www.clsdirect.org.uk/legalhelp/leaflet17](http://www.clsdirect.org.uk/legalhelp/leaflet17)). The former includes information about engaging claims management companies to help bring a claim. Both leaflets are currently being revised. We will incorporate links to this guidance on other public sector websites including Directgov.

Websites are an increasingly good source of consumer information but it is important that other delivery channels are exploited to reach all consumers likely to interact with claims intermediaries. The CLS has been improving public access to information and advice services. This includes CLS information leaflets covering key social welfare areas of law, and over 10,000 CLS information points that include community outlets like libraries, GP surgeries and local courts. Information points hold stocks of the CLS leaflets and a CLS Directory. DCA will consider with the Legal Services Commission how these delivery channels could be expanded to incorporate further advice for consumers who wish to make a personal injury claim, the options that may be available and any specific factors related to making a claim via a claims intermediary. DCA will also work with the Department for Trade and Industry to explore how information might be made available via Consumer Direct<sup>1</sup>.

**(iii) Advertising**

*The Task Force recommends that the Chief Medical Officer and the NHS Chief Executive should issue immediately joint guidelines to NHS hospitals and surgeries on the content of advertising by claims management companies on their premises.*

**Accepted** - The Government agrees with the Task Force and is strongly opposed to advertisements that encourage people to claim compensation being displayed on NHS premises. The current policy has therefore been revised and a joint letter is being issued by the Chief Medical Officer and the Chief Executive. The Government also does not want to see anywhere any form of personal injury advertising that raises false hopes of unrealistic or unachievable compensation awards and encourages people to have a go.

The Department of Health (DH) has previously issued guidance to NHS Trusts which points out that they should not encourage patients to make claims and that any information on claiming compensation should be of a factual nature. The Department also asks Trusts to avoid advertising on "politically sensitive or controversial" topics.<sup>2</sup>

DH will remind Trusts and Primary Care Trusts of that guidance in the light of the Task Force's recommendation. Further, it will amend the guidance to advise that all NHS organisations should have a clear policy about what posters can be put up on

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<sup>1</sup> the new consumer online service and telephone help line that will provide information on a range of consumer matters including consumer rights, practical guidance on individual problems and how to gain redress.

<sup>2</sup> in 'Estatecode' which is available for all NHS organisations free of charge from the NHS Estates website at [www.nhsestates.gov.uk/publications\\_guidance/index.asp](http://www.nhsestates.gov.uk/publications_guidance/index.asp)

notice boards in hospital, surgeries or other premises, and that posters should only contain general non-offensive information and avoid politically sensitive or controversial areas which may undermine morale or the relationship between staff and patient.

With regard to advertising generally, the Government believes that the ASA and OFCOM advertising codes and the Law Society's publicity code must be adhered to rigorously and will support any further action needed to help achieve this. The Government believes there is no place for advertising of whatever kind whether by claims management companies or lawyers that either raises false expectations of large compensation pay outs for minor injuries or that directly or indirectly promotes the bringing of frivolous claims. We do recognise that advertising, if carried out in full accordance with the relevant codes, can provide an important means for people with genuine claims who otherwise might have difficulty accessing justice to do so. The Government also supports the approach being promoted by the Claims Standards Council which will ensure that any member company will be required to conform to the British Code of Advertising, Sales Promotion and Direct Marketing. In particular the CSC will require members to avoid misleading or extravagant statements; avoid advertisements that place undue emphasis upon the speed with which compensation payments will be made or the amounts that might be awarded; not offer any inducement for making a claim; avoid unfair or unethical methods to obtain enquiries; and withdraw immediately any advertising material which contravenes the CSC Code. The OFT's consideration of the CSC's consumer code will include assessment of the effectiveness of its advertising provisions.

### **Recommendation 2: Small Claims Track**

*The Task Force recommends that the Department for Constitutional Affairs should carry out research into the potential impact of raising the limit under which personal injury claims can be pursued through the small claims track. The research should establish a limit which best balances the benefits to the claimant and to society against the costs, but justify any limit lower than £5000. The research should report by May 2005.*

**Accepted -The small claims personal injury limit of £1,000 has not been raised since 1991 and the Government accepts the Task Force's recommendation to undertake research into the benefits and costs of raising it.**

The small claims housing disrepair limit was also last raised in 1991 and it is over five years since the general small claims and the fast track limits were set. We therefore recognise the need to undertake a review of all these limits including whether they should be retained at their present level. We would hope to undertake research to inform this review by May 2005.

However we recognise concerns have been expressed about the potential lack of legal representation for claimants in personal injury cases if the limit was raised to £5000. We also recognise the concerns expressed that the processes and costs in these lower value cases are often the most disproportionate. We therefore intend to consider other options in addition to raising the small claims limit. In doing so we will consult widely with interested stakeholders, including the legal profession, insurers, trade unions and consumer groups.

### **Recommendation 3: Ombudsmen**

- (i) *The Task Force recommends that the Cabinet Office, working with the public services ombudsmen, should examine and remove overlap between the work*

*of the ombudsmen. This work should be completed by November 2004, with a view to making any changes in 2005.*

**Rejected** - The Government believes that Ombudsmen provide an important service in helping to resolve disputes without recourse to litigation. We do not agree that there is overlap between the work of the Ombudsmen. Public Service Ombudsmen are established with specific remits and we are not aware of any overlapping responsibilities.

The Government is, however, working closely with the Ombudsmen community to establish what more can be done under existing statutory arrangements to promote joint working between Ombudsmen and ensure that Ombudsman arrangements are fit for purpose. The Government is in discussion with the Ombudsmen community about how best this might be achieved, and the timescale for doing so.

(ii) *All ombudsmen should publicise their work better to all section of society. The Task Force would welcome seeing communications strategies by September 2005.*

Following joint research commissioned by Ombudsmen last year, they have indicated that they recognise that public awareness of their role is not as wide as they would like. They are therefore planning outreach work and other initiatives to tackle this issue. However, in view of the independence of Ombudsmen from Government, they have informed the BRTF that they do not consider it appropriate to supply the BRTF with communication strategies.

**Recommendation 4: More Consideration of mediation and rehabilitation**  
*The Task Force recommends that the Department for Constitutional Affairs, working with the Rules Committee, should strengthen the pre-action protocols that deal with mediation and rehabilitation. The protocols should require parties to provide an explanation of why they had rejected mediation as a means of resolving a dispute. The judge should consider this explanation in awarding costs.*

**Accepted in principle** - The Government is committed to the principle that parties should seriously consider resolving disputes by means of various alternative dispute resolution (ADR) processes including mediation. It is acknowledged that the pre-action protocols could be made more consistent in the message that they give concerning ADR and in particular the need to provide an explanation that ADR has been considered. DCA will therefore seek the agreement of the Master of the Rolls, who as Head of Civil Justice is responsible for approving pre-action protocols, to make the necessary changes. In addition, proposed amendments to the Pre-Action Protocol for Personal Injury Claims include additional measures dealing with the need to consider rehabilitation.

The overriding objective of the Civil Procedure Rules (CPR 1.4(2)(e)) already encourages the use of ADR, and goes on to state, in CPR 44.5 (3), that when deciding the amount of costs, "the court must also have regard to the conduct of all the parties, including in particular the efforts made, if any, before and during the proceedings in order to try to resolve the dispute".

DCA is committed to encouraging disputing parties to consider ADR, and to increase advice and assistance in order to help people resolve their disputes earlier and more effectively, as well as increase the opportunities for people involved in court cases to settle their disputes out of court. In line with this objective, the Department is

currently running a number of mediation pilots and will be developing a further range of tailored dispute resolution options and initiatives.

The proposed amendments to the Personal Injury Protocol provide that promoting the provision of medical or rehabilitation treatment will be included as one of the aims of pre-action protocols; a new section “*Rehabilitation*” will require parties to consider the need for rehabilitation treatment or other measures as early as possible and how that need can be addressed; and a copy of the Rehabilitation Code will be annexed to the protocol. Agreement to the amended protocol will be sought from the Master of the Rolls.

#### **Recommendation 5: Towards contingency fees**

*The Task Force recommends that the Department for Constitutional Affairs should carry out, by May 2005, research into the potential impact and effectiveness of contingency fees in securing access to justice in the UK.*

**Rejected** – The BRTF report supports the simplification of CFAs. On 29 June DCA published *Making Simple CFAs a Reality* setting out its proposals for simplifying the regulations for consultation. There is general support for the simplification of the secondary legislation governing CFAs and the proposals would reduce regulation and make the legal profession’s conduct rules the primary means for regulating lawyers’ conduct and approach to client care. This approach follows the principles of good regulation set out by the BRTF and the regulations will be simple and user friendly as possible. The operation of the proposed new simplified CFA regulations will be reviewed three years after they are introduced. Evaluation criteria will be developed with stakeholders, taking into account the research mentioned above, to inform this future review.

The Government believes that Conditional Fee Agreements (CFAs) should remain the principal form of private contingent funding in the civil justice system and does not think there is a need for new research to be carried out into exploring the extension of contingency fees. Contingency fees already play a role in helping people bring cases to some tribunals where limited or no costs recovery is provided for, and they can be used for other non contentious business; – but contingency fees are not enforceable in contentious business. The Government believes that the primary focus should remain on making CFAs work better rather than exploring the potential impact of allowing contingency fees beyond their existing use. DCA will however continue to monitor the use of contingency fees in overseas jurisdictions.

Last year DCA commissioned a research study to assess the impact on the outcome of personal injury claims of the introduction of recoverable success fees and related changes through the Access to Justice Act reforms in April 2000. The research is due to be completed early in 2005. It should provide both an objective assessment of the impact of the reforms on outcomes for claimants and help with evaluation criteria for future reforms to the CFA regime. It will also provide an analysis of the experience of funding mechanisms in certain other European jurisdictions. DCA will take full account of the findings of this research in considering the long-term development of the CFA and the related costs regime.

#### **Recommendation 6: Rehabilitation**

(i) *The Task Force recommends that the Chief Medical Officer should lead a cross-Departmental group to assess the economic benefits of greater NHS provided rehabilitation. The group should report by February 2005.*

**Accepted - DH will work with partners in Government to improve the provision of NHS Rehabilitation services. The Chief Medical Officer (CMO) has commissioned a scoping study of current provision of NHS and social care rehabilitation services. It aims to identify where service improvements are needed, and will involve other government departments as appropriate. Economic issues will be considered within that initiative. In addition, the CMO is setting up a wide-ranging cross-government group to address issues of shared interest in the area of health and social care; rehabilitation is one issue which that group will consider.**

The NHS Improvement Plan '*Putting people at the heart of public services*' published in June sets out clearly the Department's drive for responsive, convenient and personalised service across the NHS. This will provide greater choice for hospital patients, and much closer personal attention and support in the community and at home for those living with complex conditions for many years. Provision of more responsive, high quality rehabilitation services to maximise functional recovery after illness or injury is an important element in this drive for high quality, responsive, personalised care.

In addition to undertaking work to improve the provision of healthcare rehabilitation services in the NHS, DH is also working with other government departments to improve access to vocational rehabilitation (services to enable those disadvantaged by illness, injury or disability to access, retain or regain employment) which includes elements of healthcare rehabilitation. This work on occupational health provision is currently being led by NHS plus.

DH is also working closely with the Department for Work and Pensions (DWP) on their Pathways to Work Incapacity Benefit Reform programme, which aims to improve access to work for those with longer-term health problems on long-term benefit. The Framework for Vocational Rehabilitation, promised in the report on Employers Liability Compulsory Insurance published last December, is another area of joint work with DWP which will feed into Recommendation 6(ii).

*(ii) The Department for Work and Pensions should lead a group, which includes insurers, lawyers, HSE and the NHS and others, to develop mechanisms for earlier access to rehabilitation. The group should report by February 2005.*

**Accepted -The Government will initiate the required steps to deliver a report by February 2005. This report will outline stakeholder thoughts on how to work towards achieving the above goal.**

Rehabilitation is likely to be most effective when provided early and so it is important that it is provided quickly when appropriate. The steps that can be taken by Government, devolved administrations, the justice system, insurers, lawyers, employers, employees and their representatives and the NHS to achieve this goal will be explored in preparing this report. This work will help ensure that individual needs, not issues of liability, are placed at the centre of the claims process.

This recommendation relates to rehabilitation being considered for an individual who is covered by insurance and where an insurance claim is likely to be made by that individual or their representatives. The aim of such a claim is to return the injured party as far as possible to the situation they were in before the accident. This will not just involve the payment of money but also the use of rehabilitation. If they were in work, and are able to return, this will involve the vocational rehabilitation required to help them return to employment.

This project overlaps with the DWP's current work to develop a Framework for Vocational Rehabilitation. In particular, in relation to the need to make the case for rehabilitation (for example, the costs and benefits) and to identify the key principles to follow when delivering rehabilitation. DWP will ensure that the work to deliver the BRTF recommendation and the developing Framework for Vocational Rehabilitation complement each other and are delivered in a joined up way.

If early access to rehabilitation is to be successfully achieved, then there is a need to consider if sufficient capacity already exists in the UK, and just needs to be used more effectively, or if measures to generate the required capacity are needed. This is where this recommendation links with recommendation 6(i) and the work being taken forward by DH and the CMO. There will be a need for officials and stakeholders to work closely together.

In addition the Health and Safety Commission/Executive's (HSC/E) Strategy for workplace health and safety in Great Britain to 2010 identifies the importance that greater emphasis on health and safety can play in return to work and vocational rehabilitation. HSC/E is already contributing with others to making this a greater reality for employees who, following ill health, injury or disability from whatever cause, are at risk of being off-work sick for a long period and run the very real risk of job loss. HSC/E therefore welcomes the opportunities that this report creates in providing additional impetus to working in partnership with other government departments and key stakeholders.

**Recommendation 7: Promoting better management of occupational health**

*The Task Force recommends that the Health and Safety Executive should publicise better its information on the beneficial tax provisions relating to employers purchasing occupational health support.*

**Accepted - HSE's programme for improving access to occupational health support fully recognises the need for appropriate and timely advice. The HSE guidance leaflet on beneficial tax provisions relating to the purchase of occupational health support is currently available on the HSE website, with links to the Small Business Service and DTI websites. HSE accepts that there is scope for raising awareness of the leaflet and so will relaunch the tax leaflet in Autumn 2004. It will still be available on the HSE website with additional links to other websites including Inland Revenue, 'Businesslinks' and other HSE topic webpages such as Stress, MSD, Construction, etc. HSE will also explore with the British Chamber of Commerce ways of making the information available to their members.**

HSE recognises that tackling occupational health and safety in the workplace needs a strategic and partnership based approach. This is being delivered through the Better Health at Work Partnership Programme, which is in the HSC Business Plan 2004/05. Through it HSE is working to influence, support and encourage stakeholders and to raise their awareness of the benefits of an effective and sensible health and safety culture.

**Recommendation 8: Managing risk and lower insurance premiums**

*The Association of British Insurers should work to extend its "Making the Market Work" scheme to other organisations, such as schools, hospitals and local authorities who would also benefit from better insurance terms for good risk management.*

**The Government supports this recommendation. The Association of British Insurers (ABI) has indicated its willingness to work with Government on new approaches or initiatives and the Government welcomes this commitment.**

The Department for Education and Skills (DfES) will discuss with ABI how this would work in practice and how insurance companies can help in advising schools/LEAs on how to manage risks and learn from each other through dissemination of good practice case studies. In addition to working with the ABI, DfES will work with local authorities and LEAs to ensure that any scheme meets all their needs.

Given the current trend towards rising insurance premiums and the limited market for school insurance providers, it is recognised that linking risk management to lower insurance premiums should prove a big incentive for schools and Local Education Authorities (LEAs) to manage risks better. At present schools who manage risk well do not benefit from lower premiums. An accreditation scheme would help insurance companies to recognise good risk management. On an invest to save basis, it should also encourage LEAs to invest more resources in training schools about their risk management and gaining accreditation.

At present, we believe that professional priorities on risk-taking, and expenditure on safety measures, are about right in education. Many areas report healthy increases in well-run outdoor activities, school staff are increasingly competent - and confident – when they lead pupils on outdoor pursuits. We want to reject the “have a go” culture, so that activities with clear educational objectives and proper risk management can continue to thrive.

Perceptions within parts of the voluntary and community sector about the ‘compensation culture’ and its impact on insurance cover are being addressed by the Home Office through the proposed development of guidance in the form of a Government publication on risk and its management in that sector. This will be developed in consultation with key stakeholders from the sector, the ABI and the insurance industry. The Home Office will also be working with the relevant bodies to establish whether there would be benefit in the development of “Making the Market Work” to make this applicable to the sector.

However, the Government considers that “Making the Market Work” or any extension thereof to NHS hospitals would not be appropriate as the purchase of commercial insurance cover for NHS hospitals was replaced five years ago with two new schemes to allow them to pool the cost of non-clinical risks. The Liabilities to Third Parties Scheme covers employers’ and public liabilities and the Property Expenses Scheme covers damage or loss to buildings and contents. The schemes, which are administered by the NHS Litigation Authority, were established to provide indemnity cover for non-clinical risks for NHS trusts at a much lower cost. They operate in a similar way to the Clinical Negligence Scheme for Trusts which already existed to provide indemnity cover for clinical risks. The amounts that NHS trusts contribute to the schemes reflect both compliance with risk management standards and claims experience.

We have received a helpful and informative response from the Association of Local Authority Risk Managers – the national forum for risk management in the public sector – and we will work with ALARM in taking forward both this recommendation and the report generally.